

AN ACT

ENTITLED, An Act to permit the summary disposition of certain contested cases.

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

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

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

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or
- (2) At the close of the evidence offered by the proponent of the defense or claim if it determines that the evidence offered by the proponent of the defense or claim is legally insufficient to sustain the defense or claim.

A party to a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross-examine witnesses, may present evidence in support of the party's interest, and may have subpoenas issued to compel attendance of witnesses and production of evidence in the party's behalf.

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

3-6A-38. If a grievance remains unresolved after exhaustion of a departmental grievance procedure, an employee may demand a hearing before the Career Service Commission as provided for in contested cases in chapter 1-26 and proceedings shall be held as provided in chapter 1-26. The Career Service Commission shall provide notice of the hearing within thirty calendar days of an employee's request for a hearing. The commission shall conduct a hearing within thirty calendar days

of the notice of the hearing unless the hearing is continued for good cause or unless the commission determines, upon the motion of any party, that the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that a grievance, defense, or claim presents no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law. The Career Service Commission, upon the motion of any party, may dispose of any grievance, defense, or claim at the close of the evidence offered by the proponent of the grievance, defense, or claim if it determines that the evidence offered by the proponent of the grievance, defense, or claim is legally insufficient to sustain the grievance, defense, or claim. The commissioner shall schedule the hearing to ensure compliance with the time frames provided in this section. If the grievant agrees, the commissioner may appoint a hearing examiner as authorized in § 1-26-18.1.

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

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

3-18-15.2. If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved, except in cases provided for in § 3-6A-38, it may be appealed to the Department of Labor, if notice of appeal is filed with the department within thirty days after the final decision by the governing body is mailed or delivered to the employee. The Department of Labor shall conduct an investigation and hearing and shall issue an order covering the points raised, which order is binding on the employees and the governmental agency. However, the department, upon the motion of any party, may dispose of any grievance, defense, or claim:

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or
- (2) At the close of the evidence offered by the proponent of the grievance, defense, or claim if it determines that the evidence offered by the proponent of the grievance, defense, or

claim is legally insufficient to sustain the grievance, defense, or claim.

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

An Act to permit the summary disposition of certain contested cases.

=====

I certify that the attached Act
originated in the

SENATE as Bill No. 18

Secretary of the Senate

=====

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 18

File No. _____

Chapter No. _____

=====

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
SS.

Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State