

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0183

## SENATE BILL NO. 18

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, on its own initiative or  
7 upon the motion of any party, may dispose of any claim:

8 (1) Without a hearing if the claim presents no genuine issue as to any material fact and  
9 a party is entitled to a judgment as a matter of law; or

10 (2) At the close of the evidence offered by the proponent of the claim.

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



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

2 3-6A-38. If a grievance remains unresolved after exhaustion of a departmental grievance  
3 procedure, an employee may demand a hearing before the Career Service Commission as  
4 provided for in contested cases in chapter 1-26 and proceedings shall be held as provided ~~therein~~  
5 in chapter 1-26. The Career Service Commission shall provide notice of the hearing within thirty  
6 calendar days of an employee's request for a hearing ~~and the~~. The commission shall conduct a  
7 hearing within thirty calendar days of the notice of the hearing unless the hearing is continued  
8 for good cause or unless the commission determines, on its own initiative or upon the motion  
9 of any party, that a grievance, defense, or claim presents no genuine issue as to any material fact  
10 and a party is entitled to a judgment as a matter of law. The Career Service Commission, on its  
11 own initiative or upon the motion of any party, may dispose of any grievance, defense, or claim  
12 at the close of the evidence offered by the proponent of the grievance, defense, or claim. The  
13 commissioner shall schedule the hearing to ensure compliance with the time frames provided in  
14 this section. If the grievant agrees, the commissioner may appoint a hearing examiner as  
15 authorized in § 1-26-18.1.

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

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

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

1 defense, or claim:

2 (1) Without a hearing if the contested matter presents no genuine issue as to any material  
3 fact and a party is entitled to a judgment as a matter of law; or

4 (2) At the close of the evidence offered by the proponent of the grievance, defense, or  
5 claim.

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