

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

559I0652

## CONFERENCE COMMITTEE ENGROSSED NO. **SB** **144** - 03/07/2003

Introduced by: Senators Bogue and McCracken and Representatives Smidt and Michels

1 FOR AN ACT ENTITLED, An Act to revise the rules promulgation process.

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

3 Section 1. That § 1-26-4.7 be amended to read as follows:

4 1-26-4.7. The interim rules review committee may require an agency to revert to any step  
5 in the adoption procedure provided in § 1-26-4 ~~or~~. The interim rules review committee may  
6 require an agency to hold public hearings in addition to those provided for in § 1-26-4 if, in the  
7 judgment of the committee:

8 (1) ~~There has been a significant substantive alteration of~~ The substance of the proposed  
9 rule has been significantly rewritten from the originally proposed rule which was not  
10 the result of testimony received from the public hearing; ~~or~~

11 (2) The proposed ~~rules need~~ rule needs to be significantly rewritten in order to  
12 accomplish the intent of the agency; or

13 (3) The proposed rule needs to be rewritten to address the recommendations or  
14 objections of the interim rules review committee.

15 If the committee requires an agency to revert to any step in the adoption procedure pursuant



1 to this section, the time limitations set by chapter 1-26 shall also revert to the same step.

2 Section 2. That § 1-26-5 be amended to read as follows:

3 1-26-5. Prior to the adoption or amendment of an emergency rule, an agency shall publish  
4 a notice of intent to adopt an emergency rule in the manner prescribed in § 1-26-4.1 and shall  
5 serve on the person specified by subdivision 1-26-4(1), each member of the Interim Rules  
6 Review Committee, and the director:

7 (1) A copy of the proposed rule, which shall bear a special number to distinguish it from  
8 a permanent rule;

9 (2) Any publication described in § 1-26-6.6 which shall be returned to the agency upon  
10 completion of the director's review and retained by the agency; and

11 (3) A statement, with the reasons therefor, that the emergency procedure is necessary  
12 because of imminent peril to the public health, safety, or welfare, is necessary to  
13 prevent substantial unforeseen financial loss to state government, or is necessary  
14 because of the occurrence of an unforeseen event at a time when the adoption of a  
15 rule in response to such event by the emergency procedure is required to secure or  
16 protect the best interests of the state or its residents.

17 No agency may use the emergency rule adoption procedure for the convenience of the  
18 agency merely to avoid the consequences for failing to timely promulgate rules.

19 Section 3. That § 1-26-38 be amended to read as follows:

20 1-26-38. The Interim Rules Review Committee may, by an affirmative vote of not less than  
21 ~~three-fourths~~ a majority of the members of the committee, suspend provisional rules or rules  
22 which have not become effective. To suspend a rule, the committee shall:

23 (1) Give the agency which promulgated the rule at least two weeks notice of a hearing  
24 on the proposed suspension;

1       (2)    Hold a hearing, which may be in conjunction with a regular committee meeting. At  
2            the hearing, the burden of proof that the rule is necessary and does not violate any  
3            constitutional or statutory provision or the legislative intent when authority to  
4            promulgate the rule was given, is on the agency;

5       (3)    File an appropriate resolution of such action with the secretary of state.

6        The suspension is effective from the date of such filing. A suspended rule shall remain  
7        suspended until July first of the year following the year in which it became, or would have  
8        become, effective, and may not be enforced during that period.