

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

565I0597

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 177** - 03/03/2003

Introduced by: Senators de Hueck and Knudson and Representatives Garnos, Craddock, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to contested cases under  
2 the Administrative Procedures Act and the Office of Hearing Examiners.

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

4 Section 1. That § 1-26-18.3 be amended to read as follows:

5 1-26-18.3. In a any contested case, if the amount in controversy exceeds two thousand five  
6 hundred dollars or if a property right may be terminated, any party to the contested case may  
7 require the agency to use the Office of Hearing Examiners by giving notice of the request no later  
8 than ten days ~~prior to the hearing. Except as otherwise provided for cases arising under Title 61,~~  
9 ~~if such requesting party does not prevail, the Office of Hearing Examiners shall require the~~  
10 ~~requesting party to pay the cost of the services rendered in hearing the contested case~~ after  
11 service of a notice of hearing issued pursuant to § 1-26-17.

12 Section 2. That § 1-26D-10 be amended to read as follows:

13 1-26D-10. Within ten days after written notification to the parties of the appointment of a  
14 hearing examiner in any contested case, any party to that contested case may file an affidavit  
15 requesting the appointment of another hearing examiner. The chief hearing examiner shall then



1 appoint another hearing examiner to hear that contested case. Each party may file only one such  
2 affidavit in any contested case.

3 Section 3. That § 1-26-17 be amended to read as follows:

4 1-26-17. The notice shall include:

- 5 (1) A statement of the time, place, and nature of the hearing;
- 6 (2) A statement of the legal authority and jurisdiction under which the hearing is to be  
7 held;
- 8 (3) A reference to the particular sections of the statutes and rules involved;
- 9 (4) A short and plain statement of the matters asserted. If the agency or other party is  
10 unable to state the matters in detail at the time the notice is served, the initial notice  
11 may be limited to a statement of the issues involved. Thereafter upon application a  
12 more definite and detailed statement shall be furnished;
- 13 (5) A statement of any action authorized by law, which may affect the parties, as a result  
14 of any decision made at the hearing, whether it be the revocation of a license, the  
15 assessment of a fine or other effect;
- 16 (6) A statement that the hearing is an adversary proceeding and that a party has the right  
17 at the hearing, to be present, to be represented by a lawyer, and that these and other  
18 due process rights will be forfeited if they are not exercised at the hearing;
- 19 (7) A statement that if the amount in controversy exceeds two thousand five hundred  
20 dollars or if a property right may be terminated, any party to the contested case may  
21 require the agency to use the Office of Hearing Examiners by giving notice of the  
22 request to the agency no later than ten days after service of a notice of hearing issued  
23 pursuant to § 1-26-17;
- 24 (8) A statement that the decision based on the hearing may be appealed to the circuit

1 court and the State Supreme Court as provided by law.