

State of South Dakota

SEVENTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2003

565I0597

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 177 - 02/21/2003

Introduced by: Senators de Hueck and Knudson and Representatives Garnos, Cradduck, 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 § 1-26-33 be amended to read as follows:

13 1-26-33. Within thirty days after the service of the notice of appeal, or within further time
14 allowed by the court, the agency shall transmit to the reviewing court the original or a certified
15 copy of the entire record of the proceeding under review. By stipulation of all parties to the



1 review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to
2 limit the record may be taxed by the court for the additional costs. The court may require or
3 permit subsequent corrections or additions to the record.

4 ~~It shall be the duty of the~~ The agency to or the Office of Hearing Examiners, if the contested
5 case was heard by the Office of Hearing Examiners, shall assemble and consecutively number the
6 pages of all documents, papers, and exhibits filed with the agency or office, including any
7 opinions and decisions which the agency or office may have filed or authorized for filing. The
8 agency or office shall then prepare and attach an alphabetical and chronological index to the
9 record and shall serve a copy of such index on all parties to the review proceedings at the time
10 the record is submitted to the reviewing court.

11 Section 3. That § 1-26D-8 be amended to read as follows:

12 1-26D-8. The reviewing agency shall personally consider the whole record or, alternatively,
13 such portions of it as may be mutually cited by the parties. If the reviewing agency rejects or
14 modifies proposed findings or a proposed decision, it the reviewing agency shall give reasons for
15 doing so in writing. In reviewing proposed findings of fact entered by the presiding hearing
16 examiner, the reviewing agency shall give due regard to the hearing examiner's opportunity to
17 observe the witnesses.

18 Section 4. That § 1-26D-10 be amended to read as follows:

19 1-26D-10. Within ten days after written notification to the parties of the appointment of a
20 hearing examiner in any contested case, any party to that contested case may file an affidavit
21 requesting the appointment of another hearing examiner. The chief hearing examiner shall then
22 appoint another hearing examiner to hear that contested case. Each party may file only one such
23 affidavit in any contested case.

24 Section 5. That § 1-26-17 be amended to read as follows:

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

2 (1) A statement of the time, place, and nature of the hearing;

3 (2) A statement of the legal authority and jurisdiction under which the hearing is to be
4 held;

5 (3) A reference to the particular sections of the statutes and rules involved;

6 (4) A short and plain statement of the matters asserted. If the agency or other party is
7 unable to state the matters in detail at the time the notice is served, the initial notice
8 may be limited to a statement of the issues involved. Thereafter upon application a
9 more definite and detailed statement shall be furnished;

10 (5) A statement of any action authorized by law, which may affect the parties, as a result
11 of any decision made at the hearing, whether it be the revocation of a license, the
12 assessment of a fine or other effect;

13 (6) A statement that the hearing is an adversary proceeding and that a party has the right
14 at the hearing, to be present, to be represented by a lawyer, and that these and other
15 due process rights will be forfeited if they are not exercised at the hearing;

16 (7) A statement that if the amount in controversy exceeds two thousand five hundred
17 dollars or if a property right may be terminated, any party to the contested case may
18 require the agency to use the Office of Hearing Examiners by giving notice of the
19 request to the agency no later than ten days after service of a notice of hearing issued
20 pursuant to § 1-26-17;

21 (8) A statement that the decision based on the hearing may be appealed to the circuit
22 court and the State Supreme Court as provided by law.