

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

616J0483

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 112** - 02/23/2004

Introduced by: Senators Bogue, Dennert, McCracken, and Sutton (Dan) and Representatives Peterson (Bill), Bartling, Nesselhuf, Olson (Mel), and Rhoden

1 FOR AN ACT ENTITLED, An Act to require state agencies promulgating rules pursuant to the  
2 Administrative Procedures Act to provide an impact statement on small business.

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

4 Section 1. That § 1-26-1 be amended by adding thereto a NEW SUBDIVISION to read as  
5 follows:

6 "Small business," a business entity that employs twenty-five or fewer full-time employees.

7 Section 2. That chapter 1-26 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 An agency shall, when submitting any proposed rule that will have a direct impact on small  
10 business, prepare an impact statement that includes the following:

11 (1) A narrative explanation in plain, easy-to-read language of the effect of the rule on  
12 small business, the basis for its enactments, and why the rule is needed;

13 (2) An identification and estimate of the number of small businesses subject to the  
14 proposed rule;

15 (3) The projected reporting and recordkeeping required for compliance with the proposed



1 rule, including the types of professional skills necessary for preparation of the report  
2 or record;

3 (4) A statement of the probable effect on impacted small business; and

4 (5) A description of any less intrusive or less costly alternative methods of achieving the  
5 purpose of the proposed rule.

6 An agency is only required to use readily available information and existing resources to  
7 prepare the impact statement.

8 Section 3. That § 1-26-4 be amended to read as follows:

9 1-26-4. The following procedure shall be complied with prior to the adoption, amendment,  
10 or repeal of any rule, except an emergency rule:

11 (1) An agency shall serve a copy of a proposed rule and any publication described in  
12 § 1-26-6.6 upon the departmental secretary, bureau commissioner, or constitutional  
13 officer of the department to which it is attached;

14 (2) Fifteen days after the service required by subdivision (1) or upon receiving the  
15 written approval of that officer to proceed, whichever comes first, and twenty days  
16 before the hearing, the agency shall serve the director with a copy of the proposed  
17 rules, a copy of any publication described in § 1-26-6.6, a copy of the fiscal note  
18 described in § 1-26-4.2, a copy of the impact statement on small business described  
19 in section 2 of this Act, and a copy of the notice of hearing required by § 1-26-4.1.

20 Any publication described in § 1-26-6.6 shall be returned to the agency upon  
21 completion of the director's review and retained by the agency. Also, twenty days  
22 before the hearing, the agency shall serve the Bureau of Finance and Management  
23 with a copy of the proposed rules, a copy of the fiscal note described in § 1-26-4.2,  
24 a copy of the impact statement on small business described in section 2 of this Act,

- 1 and a copy of the notice of hearing required by § 1-26-4.1;
- 2 (3) The agency shall publish the notice of hearing in the manner prescribed by  
3 § 1-26-4.1, at least twenty days before the hearing;
- 4 (4) The agency shall afford all interested persons reasonable opportunity to submit data,  
5 opinions, or arguments, either orally or in writing, or both, at a hearing held for that  
6 purpose. The hearing may be continued from time to time until its business has been  
7 completed. The agency shall keep minutes of the hearing. A majority of the members  
8 of any board or commission authorized to pass rules must be present during the  
9 course of the hearing required by this subdivision;
- 10 (5) For a period of ten days after the hearing, the agency shall accept written comments  
11 regarding the proposed rule, unless the entity promulgating the rule is a part-time  
12 citizen board, commission, committee, task force, or other multiperson decision  
13 maker, in which case the record of written comments shall be closed at the  
14 conclusion of the public hearing. However, the hearing may be specifically continued  
15 for the purpose of taking additional comments;
- 16 (6) After the written comment period, the agency shall fully consider all written and oral  
17 submissions regarding the proposed rule. A proposed rule may be modified or  
18 amended at this time to include or exclude matters which were described in the notice  
19 of hearing;
- 20 (7) After reviewing the proposed rule, the director shall advise the agency of any  
21 recommended corrections to the proposed rule;
- 22 (8) If the agency does not concur with any recommendation of the director, the agency  
23 shall appeal the recommended correction to the Interim Rules Review Committee for  
24 appropriate action; and

1       (9)    The agency shall, at least five days prior to the time set for the agency to appear  
2            before the committee to present the rules, serve the minutes of the hearing, a  
3            complete record of written comments, and a corrected copy of the rules on the  
4            members of the Interim Rules Review Committee.

5        The time periods specified in this section may be extended by the agency. The requirement  
6        to serve the committee in subdivision (9) may be waived by the committee chair if the agency  
7        presents sufficient reasons to the committee chair that the agency is unable to comply with the  
8        time limit. The waiver may not be granted solely for the convenience of the agency.

9        Section 4. That chapter 1-26 be amended by adding thereto a NEW SECTION to read as  
10       follows:

11       The provisions of section 2 of this Act do not apply to the Game, Fish and Parks  
12       Commission.