

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

883L0220

SENATE BILL NO. 69

Introduced by: Senators McCracken, Bogue, and Smidt and Representatives Hunhoff and
Dennert at the request of the Interim Committee on Rules Review

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

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

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

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

6 (1) An agency shall serve a copy of a proposed rule and any publication described in § 1-
7 26-6.6 upon the departmental secretary, bureau commissioner, or constitutional
8 officer of the department to which it is attached;

9 (2) Fifteen days after the service required by subdivision (1) or upon receiving the
10 written approval of that officer to proceed, whichever comes first, and twenty days
11 before the hearing, the agency shall serve the director with a copy of the proposed
12 rules, a copy of any publication described in § 1-26-6.6, a copy of the fiscal note
13 described in § 1-26-4.2, a copy of the impact statement on small business described
14 in § 1-26-2.1, and a copy of the notice of hearing required by § 1-26-4.1. Any
15 publication described in § 1-26-6.6 shall be returned to the agency upon completion



1 of the director's review and retained by the agency. Also, twenty days before the
2 hearing, the agency shall serve the Bureau of Finance and Management with a copy
3 of the proposed rules, a copy of the fiscal note described in § 1-26-4.2, a copy of the
4 impact statement on small business described in § 1-26-2.1, and a copy of the notice
5 of hearing required by § 1-26-4.1;

6 (3) The agency shall publish the notice of hearing in the manner prescribed by § 1-26-
7 4.1, at least twenty days before the hearing;

8 (4) The agency shall afford all interested persons reasonable opportunity to submit data,
9 opinions, or arguments, either orally or in writing, or both, at a hearing held for that
10 purpose. The hearing may be continued from time to time until its business has been
11 completed. The agency shall keep minutes of the hearing. A majority of the members
12 of any board or commission authorized to pass rules must be present during the
13 course of the hearing required by this subdivision;

14 (5) For a period of ten days after the hearing, the agency shall accept written comments
15 regarding the proposed rule, unless the entity promulgating the rule is a part-time
16 citizen board, commission, committee, task force, or other multiperson decision
17 maker, in which case the record of written comments shall be closed at the
18 conclusion of the public hearing. However, the hearing may be specifically continued
19 for the purpose of taking additional comments;

20 (6) After the written comment period, the agency shall fully consider all written and oral
21 submissions regarding the proposed rule. A proposed rule may be modified or
22 amended at this time to include or exclude matters which were described in the notice
23 of hearing;

24 (7) After reviewing the proposed rule, the director shall advise the agency of any

1 recommended corrections to the proposed rule;

2 (8) If the agency does not concur with any recommendation of the director, the agency
3 shall appeal the recommended correction to the Interim Rules Review Committee for
4 appropriate action; and

5 (9) The agency shall, at least five days prior to the time set for the agency to appear
6 before the committee to present the rules, serve the minutes of the hearing, a
7 complete record of written comments, the impact statement on small business, the
8 fiscal note, the information required in section 3 of this Act, and a corrected copy of
9 the rules on the members of the Interim Rules Review Committee.

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

14 Section 2. That § 1-26-4 be amended to read as follows:

15 1-26-4. The following procedure shall be complied with prior to the adoption, amendment,
16 or repeal of any rule, except an emergency rule:

17 (1) An agency shall serve a copy of a proposed rule and any publication described in § 1-
18 26-6.6 upon the departmental secretary, bureau commissioner, or constitutional
19 officer of the department to which it is attached;

20 (2) Fifteen days after the service required by subdivision (1) or upon receiving the
21 written approval of that officer to proceed, whichever comes first, and twenty days
22 before the hearing, the agency shall serve the director with a copy of the proposed
23 rules, a copy of any publication described in § 1-26-6.6, a copy of the fiscal note
24 described in 1-26-4.2, and a copy of the notice of hearing required by § 1-26-4.1. Any

1 publication described in 1-26-6.6 shall be returned to the agency upon completion of
2 the director's review and retained by the agency. Also, twenty days before the
3 hearing, the agency shall serve the Bureau of Finance and Management with a copy
4 of the proposed rules, a copy of the fiscal note described in § 1-26-4.2, and a copy of
5 the notice of hearing required by § 1-26-4.1;

6 (3) The agency shall publish the notice of hearing in the manner prescribed by § 1-26-
7 4.1, at least twenty days before the hearing;

8 (4) The agency shall afford all interested persons reasonable opportunity to submit data,
9 opinions, or arguments, either orally or in writing, or both, at a hearing held for that
10 purpose. The hearing may be continued from time to time until its business has been
11 completed. The agency shall keep minutes of the hearing. A majority of the members
12 of any board or commission authorized to pass rules must be present during the
13 course of the hearing required by this subdivision;

14 (5) For a period of ten days after the hearing, the agency shall accept written comments
15 regarding the proposed rule, unless the entity promulgating the rule is a part-time
16 citizen board, commission, committee, task force, or other multiperson decision
17 maker, in which case the record of written comments shall be closed at the
18 conclusion of the public hearing. However, the hearing may be specifically continued
19 for the purpose of taking additional comments;

20 (6) After the written comment period, the agency shall fully consider all written and oral
21 submissions regarding the proposed rule. A proposed rule may be modified or
22 amended at this time to include or exclude matters which were described in the notice
23 of hearing;

24 (7) After reviewing the proposed rule, the director shall advise the agency of any

1 recommended corrections to the proposed rule;

2 (8) If the agency does not concur with any recommendation of the director, the agency
3 shall appeal the recommended correction to the Interim Rules Review Committee for
4 appropriate action; and

5 (9) The agency shall, at least five days prior to the time set for the agency to appear
6 before the committee to present the rules, serve the minutes of the hearing, a
7 complete record of written comments, the fiscal note, the information required in
8 section 3 of this Act, and a corrected copy of the rules on the members of the Interim
9 Rules Review Committee.

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

14 Section 3. That chapter 1-26 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 If an agency proposes a rule to increase a fee, the agency shall provide information to the
17 Interim Rules Review Committee about the financial resources available to the agency. This
18 information consists of the agency's beginning fund balance, receipts, disbursements, ending
19 fund balance for each of the last two fiscal years and consists of the agency's beginning fund
20 balance, projected receipts, projected disbursements, and ending balance for the current fiscal
21 year and the next fiscal year.

22 Section 4. The provisions of section 2 of this Act are effective on July 1, 2007.