

AN ACT

ENTITLED, An Act to revise certain provisions regarding public records.

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

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

1-26D-4. Hearing examiners have all powers delineated in §§ 1-26-19.1 and 1-26-19.2 and shall hear all contested cases that arise under Titles 10 and 58 and chapter 1-27.

Section 2. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of this Act do not apply to the Unified Judicial System or Public Utilities Commission.

Section 3. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Any informal request for disclosure of documents or records shall be made to the custodian of the record. The custodian of the record may then provide the requestor with the document or record upon payment of the actual cost of mailing or transmittal, the actual cost of reproduction, or other fee established by statute or administrative rule. A requestor that makes an informal request requiring the dedication of staff time in excess of one hour may be required to pay the cost of the staff time necessary for the location, assembly, or reproduction of the public record. If any records are required or permitted to be made public upon request and no other rate is prescribed for reproduction or retrieval of such records, the Bureau of Administration shall establish, by rules promulgated pursuant to chapter 1-26, the maximum rate, or the formula for calculating rates, for reproduction and retrieval.

Section 4. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

For any informal request reasonably likely to involve a fee in excess of fifty dollars, the custodian shall provide an estimate of cost to the requestor prior to assembling the documents or records and the requestor shall confirm in writing his or her acceptance of the cost estimate and agreement to

pay. The custodian may exercise discretion to waive or reduce any fee required under this section if the waiver or reduction of the fee would be in the public interest.

Section 5. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

If an informal request is denied in whole or in part by the custodian of a document or record, a written request may be made by the requestor pursuant to this section:

- (1) A written request may be made to the public record officer of the public entity involved. The public record officer shall promptly respond to the written request but in no event later than ten business days from receipt of the request. The public record officer shall respond to the request by:
 - (a) Providing the record in whole or in part to the requestor upon payment of any applicable fees pursuant to sections 3 and 4 of this Act;
 - (b) Denying the request for the record; or
 - (c) Acknowledging that the public record officer has received the request and providing an estimate of the time reasonably required to further respond thereto;
- (2) Additional time to respond to the written request under subsection (1)(c) of this section may be based upon the need to clarify the nature and scope of the written request, to locate and assemble the information requested, to notify any third persons or government agencies affected by the written request, or to determine whether any of the information requested is not subject to disclosure and whether a denial should be made as to all or part of the written request;
- (3) If a written request is unclear, the public record officer may require the requestor to clarify which records are being sought. If the requestor fails to provide a written response to the public record officer's request for clarification within ten business days, the request shall be deemed withdrawn and no further action by the public records officer is required;

- (4) If the public record officer denies a written request in whole or in part, the denial shall be accompanied by a written statement of the reasons for the denial;
- (5) If the public record officer fails to respond to a written request within ten business days, or fails to comply with the estimate provided under subsection (1)(3) of this section without provision of a revised estimate, the request shall be deemed denied.

Section 6. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

If a public record officer denies a written request in whole or in part, or if the requestor objects to the public record officer's estimate of fees or time to respond to the request, a requestor may within ninety days of the denial commence a civil action by summons or, in the alternative, file a written notice of review with the Office of Hearing Examiners. The notice of review shall be mailed, via registered or certified mail, to the Office of Hearing Examiners and shall contain:

- (1) The name, address, and telephone number of the requestor;
- (2) The name and business address of the public record officer denying the request;
- (3) The name and business address of the agency, political subdivision, municipal corporation, or other entity from which the request has been denied;
- (4) A copy of the written request;
- (5) A copy of any denial or response from the public record officer; and
- (6) Any other information relevant to the request that the requestor desires to be considered.

Section 7. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt, the Office of Hearing Examiners shall promptly mail a copy of the notice of review filed pursuant to section 6 of this Act and all information submitted by the requestor to the public record officer named in the notice of review. The entity denying the written request may then file a written response to the Office of Hearing Examiners within ten business days. If the entity does not file a written response within ten business days, the Office of Hearing Examiners shall act on the

information provided. The Office of Hearing Examiners shall provide a reasonable extension of time to file a written response upon written request or agreement of parties.

Section 8. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt and review of the submissions of the parties, the Office of Hearing Examiners shall make written findings of fact and conclusions of law, and a decision as to the issue presented. Before issuing a decision, the Office of Hearing Examiners may hold a hearing pursuant to chapter 1-26 if good cause is shown.

Section 9. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The aggrieved party may appeal the decision of the Office of Hearing Examiners to the circuit court pursuant to chapter 1-26. In any action or proceeding under this Act, no document or record may be publicly released until a final decision or judgment is entered ordering its release.

Section 10. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The public record officer for the state is the secretary, constitutional officer, elected official, or commissioner of the department, office, or other division to which a request is directed. The public record officer for a county is the county auditor or the custodian of the record for law enforcement records. The public record officer for a first or second class municipality is the finance officer or the clerk or the custodian of the record for law enforcement records. The public record officer for a third class municipality is the president of the board of trustees or the custodian of the record for law enforcement records. The public record officer for an organized township is the township clerk. The public record officer for a school district is the district superintendent or CEO. The public record officer for a special district is the chairperson of the board of directors. The public record officer for any other entity not otherwise designated is the person who acts in the capacity of the chief financial officer or individual as designated by the entity.

Section 11. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The following forms are prescribed for use in the procedures provided for in sections 3 to 10, inclusive, of this Act, but failure to use or fill out completely or accurately any of the forms does not void acts done pursuant to those sections provided compliance with the information required by those sections is provided in writing.

NOTICE OF REVIEW REQUEST FOR DISCLOSURE OF PUBLIC RECORDS
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Date of Request:	_____
Name of Requestor:	_____
Address of Requestor:	_____
Telephone Number of Requestor:	_____

Type of Review Being Sought:
___ Request for Specific Record
___ Estimate of Fees
___ Estimate of Time to Respond
Short Explanation of Review Being Sought Including Specific Records Requested:

Name of Public Record Officer:	_____
Address of Public Record Officer:	_____
Name of Governmental Entity:	_____
Address of Governmental Entity:	_____

You must include with the submission of this Notice of Review - Request for Disclosure of Public Records form the following information: (1) A copy of your written request to the public record officer; (2) A copy of the public record officer's denial or response to your written request, if any; and (3) Any other information relevant to the request that you desire to be considered.

I hereby certify that the above information is true and correct to the best of my knowledge.

Signature of Requestor: _____

The Notice of Review - Request for Disclosure of Public Records form shall be completed and submitted, via registered or certified mail, return receipt, to the following address:

Office of Hearing Examiners

500 E. Capitol Avenue

Pierre, South Dakota 57501

605-773-6811

SOUTH DAKOTA OFFICE OF HEARING EXAMINERS
NOTICE OF REQUEST FOR DISCLOSURE
OF PUBLIC RECORDS

TO: (Public Record Officer & Governmental Entity) _____

_____ has filed a Notice of Review - Request for Disclosure of Public Records. A copy of the Notice of Review - Request for Disclosure of Public Records is attached for your review.

You may file a written response to the Notice of Review - Request for Disclosure of Public Records within ten (10) business days of receiving this notice, exclusive of the day of service, at the following address:

Office of Hearing Examiners
500 E. Capitol Avenue
Pierre, South Dakota 57501
605-773-6811

The Office of Hearing Examiners may issue its written decision on the information provided and will only hold a hearing if it deems a hearing necessary.

If you have any questions, please contact the Office of Hearing Examiners.

Dated this ___ day of _____, 20__.

Office of Hearing Examiners

An Act to revise certain provisions regarding public records.

I certify that the attached Act
originated in the

SENATE as Bill No. 186

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 186

File No. _____

Chapter No. _____

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State