



## 2023 South Dakota Legislature

# Senate Bill 116

SENATE STATE AFFAIRS ENGROSSED

Introduced by: **Senator Schoenbeck**

1 **An Act to authorize legislative intervention into certain cases pertaining to election**  
 2 **law.**

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

4 **Section 1. That chapter 12-1 be amended with a NEW SECTION:**

5 When a party to an action in state or federal court challenges the constitutionality  
 6 of a statute in title 12, facially or as applied; challenges a statute in title 12 as violating  
 7 or preempted by federal law; or otherwise challenges the construction or validity of a  
 8 statute in title 12 as part of a claim or affirmative defense; that party must provide a copy  
 9 of the pleading to the director of the Legislative Research Council within fourteen days of  
 10 filing the pleading with the court. The Executive Board of the Legislative Research Council  
 11 may, in a properly noticed public meeting, intervene in the action at any time in the action  
 12 as a matter of right by serving a motion upon the parties as provided in the rules of civil  
 13 procedures. The intervention must be in the name of the Executive Board of the Legislative  
 14 Research Council on behalf of the Legislature.

15 **Section 2. That chapter 12-1 be amended with a NEW SECTION:**

16 In the event of an intervention pursuant to section 1 of this Act, no public official  
 17 or attorney representing or acting on behalf of a public official or the state has the  
 18 authority to settle the action or consent to any compromise, decree, agreement, or  
 19 judgment in connection therewith without first receiving the specific approval of the  
 20 Executive Board of the Legislative Research Council.

21 **Section 3. That chapter 12-1 be amended with a NEW SECTION:**

22 In the event of an intervention pursuant to section 1 of this Act, the Governor, the  
 23 secretary of state, or any other officer of the executive branch may not enter into a  
 24 consent decree or other agreement with any state or federal court or any other party

1 regarding the enforcement of election law or the alteration of election procedure without  
2 specific approval of the Executive Board of the Legislative Research Council. Any  
3 settlement in violation of section 2 of this Act is void and has no legal effect.

4 **Section 4. That chapter 12-1 be amended with a NEW SECTION:**

5 The Executive Board of the Legislative Research Council may obtain legal counsel  
6 other than the attorney general, with the cost of representation paid from funds  
7 appropriated for this purpose, to represent the Legislature in any action in which the  
8 Executive Board intervenes.

9 **Section 5. That chapter 12-1 be amended with a NEW SECTION:**

10 Notwithstanding any provision of law to the contrary, the participation of the  
11 Legislature or the Executive Board of the Legislative Research Council pursuant to this act,  
12 as party or otherwise, does not constitute a waiver of the legislative immunity or legislative  
13 privilege of any member, officer, or staff of the Legislature.