Attachment #1

TRANSPORTATION COMMISSION MEETING MINUTES
August 24, 2016 – 9:30 A.M.
CITY HALL – 108 SHERMAN STREET
DEADWOOD, SD

COMMISSIONERS PRESENT:

Tim Dougherty, Chairman
Rod Fouberg, Member
Ralph Marquardt, Member
Don Roby, Member
Ron Rosenboom, Member
Larry Thompson, Member
Kim Vanneman, Member
Kyle White, Member (present for meeting on 8/25)
Kathy Zander, Member

DOT STAFF PRESENT: Darin Bergquist, Karla Engle, Mike Behm, Laurie Schultz, Tammy Williams, Doug Kinniburgh, Greg Fuller, Bonnie Olson, Mark Leiferman, Sam Weisgram, Becky Janssen, Dustin DeBoer, Adam McMahon, Tom Horan, and Kellie Beck

OTHERS PRESENT: Representative Mary Duvall, Mark Clausen – FHWA, Chuck Turbiville – Mayor of Deadwood, David Larson – citizen, Allan Bonnema – Lawrence County Highway Superintendent, Holli Hennies – Pennington County, Deb Hadcock – Pennington County Commission, Kevin Kuchenbecker – Deadwood HP, Mike Trucano – citizen, Ron Green – Deadwood Public Works, George Ferebee – Pennington County Commission

OTHERS PRESENT VIA CONFERENCE CALL: Lindsey Willis – AGC, Bob Mercer - Press

The meeting was called to order at 1:00 MDT p.m. by Chairman Tim Dougherty. Roll call was taken and a quorum was determined.

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Chairman Dougherty asked for a motion to approve the minutes of July 28, 2016.

A MOTION WAS MADE by Roby to approve and seconded by Thompson. All voted aye by roll call vote and motion carried.

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Mayor Chuck Turbiville expressed his thanks to the Commission and the Department for their foresight to fund the recent project in Deadwood that will be toured after the meeting. He expressed the outstanding relationship and ease of working with DOT staff and the city is very pleased with the project.

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Chairman Dougherty opened the floor to Commission members to disclose potential conflicts of interest and to present requests for waivers pursuant to South Dakota Codified Law (SDCL) chapter 3-23.

Fouberg submitted a letter (Attached as Letter 1), dated August 3, 2016, disclosing a potential conflict of interest to the Commission. Chairman Dougherty read the written disclosure into the record. Fouberg and his wife own more than a 5% interest in two companies: Dakota Bank, Inc. and E.C. Rhodes Insurance Inc. To the best of Fouberg's knowledge, there are no contracts or other matters involving transportation-related activities. If Fouberg becomes aware of a specific contract or matter that creates a conflict of interest, Fouberg will submit a letter of disclosure to the Commission and request a waiver.

A MOTION WAS MADE by Rosenboom that the matters underlying the potential conflict are fair, reasonable, and not contrary to the public interest, but that Fouberg should disclose the details of any specific conflicts of which he becomes aware for the Commission's particular consideration. This motion was seconded by Vanneman. All voted aye by voice vote, except for Fouberg, who abstained from the Commission discussion and vote. The motion carried.

White submitted a letter (Attached as Letter 2), dated August 3, 2016, disclosing a potential conflict of interest to the Commission. Chairman Dougherty read the letter into the record. White is employed by Black Hills Utility Holdings Company which is a subsidiary of Black Hills Corporation. White and his wife are shareholders of Black Hills Utility Holdings Company. White also provides business support services to Black Hills Power, Inc. which does business as Black Hills Energy in South Dakota and is an affiliate of Black Hills Utility Holdings Company. To the best of White's knowledge, there are no contracts or other matters involving transportation related activities. If White becomes aware of a specific contract or matter that creates a conflict of interest, White will submit a letter of disclosure to the Commission and request a waiver.

A MOTION WAS MADE by Zander that the matters underlying the potential conflict are fair, reasonable, and not contrary to the public interest, but that White should disclose the details of any specific conflicts of which he becomes aware for the Commission's particular consideration. This motion was seconded by Vanneman. All voted aye by voice vote, except White, who was absent from the meeting. The motion carried.

Chairman Dougherty turned over the meeting to Vice Chairman Thompson, who then presided.

Dougherty submitted a letter (Attached as Letter 3), dated August 23, 2016, disclosing a potential conflict of interest to the Commission and requesting a waiver. Vice Chairman Thompson read the letter into the record. Dougherty is a government affairs consultant for BNSF Railway Company. His duties include lobbying legislators and other government officials on matters affecting BNSF Railway Company's operations. Dougherty will abstain from any discussion and vote relating to contracts and other matters involving BNSF Railway Company.

A MOTION WAS MADE by Vanneman to approve the waiver request submitted by Dougherty as the Commission has determined that the matter underlying the conflict is fair, reasonable, and not contrary to the public interest. The motion was seconded by Rosenboom. All voted aye by voice vote, except for Dougherty, who abstained from the Commission discussion and vote. The motion carried.

Vice Chair Thompson turned the meeting back over to Chairman Dougherty, who then presided.

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Karla Engle of the Office of Legal Counsel asked the Commission to set a public hearing for September 26, 2016 to consider proposed changes to the following speed zone rules: 70:01:02:01 – Custer County and 70:11:02:03 – Identification of responsible person – Operation and maintenance of newspaper vending devices.

A MOTION WAS MADE by Marquardt to set the public hearing date of September 26, 2016, and seconded by Thompson. All voted aye by roll call vote and motion carried.

Bergquist asked the Commission to set a public hearing for September 26, 2016 to consider proposed changes to the following speed zone rule: 70:01:02:05 – Codington County.

A MOTION WAS MADE by Rosenboom to set the public hearing date of September 26, 2016, and seconded by Fouberg. All voted aye by roll call vote and motion carried.

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A public hearing was conducted to consider adopting amendments to rules 70:13:01:01 to 70:13:01:04, inclusive, 70:13:01:06 to 70:13:01:10, inclusive, 70:13:01:12, and 70:13:01:13. Written comments from Gregory Vavra, Chad Hanisch, Vanessa Victor, Shannon Schultz, and Sara Show were provided to the Commission and entered into the record. Laurie Schultz of the department's Office of Administration explained the process she employed to solicit feedback about the proposed rule changes. Schultz distributed copies of the proposed rule changes to the South Dakota Transportation Advisory Committee and invited them to distribute the proposed rules to their stakeholders for comments. Schultz held a videoconference meeting with committee members and representatives of Minnehaha County. Schultz summarized feedback received during this meeting and described rule revisions she recommended as a result of this feedback. The rule revisions recommended by Schultz are contained in the attached **Exhibit A,** except Schultz recommended rule 70:13:01:06 be further revised to require the department to propose procedures annually rather than on or before July 1 of each year. No members of the public offered testimony in support of or in opposition to the rules.

After discussion, commission members reached consensus that rule 70:13:01:06 should require the department to propose procedures "at least annually" for commission approval, rather than "annually" as recommended by Schultz. Commission members also reached consensus that the sentence in rule 70:13:01:06 authorizing the award of bonus points should be deleted and the last sentence of the second-to-last paragraph of rule 70:13:01:06 should be revised to read: "The local participation factors may include points for the amount of wheel tax, any increase in local financial obligations beyond the program requirements, and project plans that are complete for preservation, rehabilitation and replacement projects."

A MOTION WAS MADE by Roby to approve the administrative rules revisions as recommended by Schultz, except that the revisions reached by consensus of the commission members should be adopted. The motion was seconded by Thompson. All voted aye by roll call vote and motion carried.

RESOLUTION #2016-08.01 was adopted.

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Secretary Bergquist informed the Commission that a number of commissioners have a scheduling conflict with the September 29th Transportation meeting. Bergquist is proposing rescheduling the meeting for Monday, Sept 26th.

A MOTION WAS MADE by Rosenboom to change the date for the next regularly scheduled Commission meeting to September 26, 2016 at 9:30 a.m. and seconded by Marquardt. All voted aye by roll call vote and motion carried.

Bergquist requested a conference call be set for Sept 9th at 9:30 a.m. for consideration of a bid letting and an earmark repurposing agreement.

Secretary Bergquist informed the commission of the MOU between DOT and Game Fish & Parks. The current MOU states DOT will provide $500,000 annually for GFP projects. Last year the Commission provided an additional $500,000 for one year for additional needed projects. Bergquist requested the Commission again award an additional $500,000 for fiscal year 2017.

A MOTION WAS MADE by Marquardt to provide an additional $500,000 in funding to GFP, resulting in a total DOT contribution of $1,000,000 for fiscal year 2017. This motion was seconded by Zander. All voted aye by voice vote and motion carried.

Secretary Bergquist share information previously reported to GOAC Committee on the state highway fund revenue impacts from the passage of SB1. Bergquist explained to the Committee that the comparison was done from 2014 to 2016 figures so we had two full years for comparison. The revenues that came in were very close to the estimates provided at the time SB1 was considered and passed.

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Mike Behm, Director of Planning & Engineering, presented the 2017 – 2020 STIP, Rapid City TIP, Sioux Falls TIP, Sioux City TIP, Transit STIP.

A MOTION WAS MADE by Fouberg to approve the 2017 – 2020 STIP, Rapid City TIP, Sioux Falls TIP, Sioux City TIP, and Transit STIP. This motion was seconded by Roby. All voted aye by voice vote and motion carried

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Mike Behm, Director of Planning & Engineering, provided the following items for Commission consideration:

1. Abandonment – in Davison County:

   Request Transportation Commission approval to abandon portions of South Dakota Highway 37:

   This resolution will abandon by resolution the following properties acquired for highway right-of-way:

   Lot AB1 in a portion of Lot H-5 in the SE1/4 of Section 27, Township 103 North, Range 60 West of the 5th P.M., City of Mitchell, Davison County, South Dakota.

   Said Lot AB1 contains 0.25 acres, more or less.

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Lot AB1 in a portion of Lot H-4 in the NE1/4 of Section 27, Township 103 North, Range 60 West of the 5th P.M., City of Mitchell, Davison County, South Dakota.

Said Lot AB1 contains 0.28 acres, more or less.

Lot AB3 in a portion of Lot H-4 in the NE1/4 of Section 27, Township 103 North, Range 60 West of the 5th P.M., City of Mitchell, Davison County, South Dakota.

Said Lot AB3 contains 0.21 acres, more or less.

Lot AB4 in a portion of Lot H-4 in the NE1/4 of Section 27, Township 103 North, Range 60 West of the 5th P.M., City of Mitchell, Davison County, South Dakota.

Said Lot AB4 contains 0.16 acres, more or less.

The properties are no longer needed for highway purposes and abandonments are recommended by DOT Mitchell Area.

A MOTION WAS MADE by Vanneman to approve Item #1 and seconded by Marquardt. All voted aye by voice vote and motion carried.

RESOLUTION #2016-08.02 was adopted.

2. Disposal of excess property in Pennington County.

Request Transportation Commission approval to dispose of the following DOT property in accordance with the procedures provided by SDCL 31-2-27 and ARSD chapter 10:02:01.

That portion of the NW1/4 SW1/4 of Section 24, Township 1 North, Range 7 East of the B.H.M., Pennington County, South Dakota, lying north of Catron Boulevard, containing 17.56 acres.

Lot A in a portion of the NE1/4 SW1/4 of Section 24, Township 1 North, Range 7 East of the B.H.M., lying north of the Highway Right-of-Way, Pennington County, South Dakota, containing 0.22 acre.

Appraised Value: $62,000

The above property consists of rugged terrain and wetlands located in southern Rapid City on the north side of Catron Boulevard (Hwy 16B). Public utilities are

nearby and would need to be extended to the property. Black Hills Corporation holds a power line easement along the west property boundary. An adjoining landowner holds a water pipeline easement to the dam located on the property.

Zoning is general agriculture. DOT controls the access from Catron Boulevard (Hwy 16B).

Rapid City Area DOT advises the property is not needed for future department use.

A MOTION WAS MADE by Roby to approve Item #2 and seconded by Rosenboom. All voted aye by voice vote and motion carried.

3. Abandonment – Stanley County

This resolution will abandon the temporary easements on Stanley County Project
F 0014(38)202, PCN 5913.

A MOTION WAS MADE by Rosenboom to approve Item #3 and seconded by Marquardt. All voted aye by voice vote and motion carried.

RESOLUTION # 2016-08.03 was adopted.

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Sam Weisgram, Engineering Supervisor in Project Development, presented the following bid letting results:

August 3, 2016 letting

Structure (132' Continuous Concrete) & Approach Grading

1	01DZ	BRO 8064(27)	Union County
	Graves Construction Co Inc		$1,211,984.30
	Structure 10.9 miles south of Beresford over Brule Creek		

Horizontal Curve Delineation

2	05FW	PH 0010(126)	Brookings, Brown, Codington, Deuel, Edmunds, Grant, Hamlin, Kingsbury, Marshall, McPherson, Roberts County
	Dakota Pro Striping LLC		$49,777.60
	Various locations in the Aberdeen Region		

A MOTION WAS MADE by Roby to approve bids #1 & #2 and seconded by Zander. All voted aye and motion carried.

August 17, 2016 letting

Culvert Replacement and Repair

1 041T P 0032(15) Campbell, McPherson County
Midwest Contracting, LLC $270,565.15
SD10 from east of US83 to west of Eureka

Grading and Asphalt Concrete Surfacing

2 04QA P TAPU(04) Codington County
Bituminous Paving Inc $326,688.70
From Sunset Dr. along the South side of North lake Dr. through Memorial Park to Park View Drive

Signing & Delineation

3 02UL PH 8064(29) Clay, Lincoln, Union County
Dakota Traffic Services, LLC $1,738,787.15
Various County, City, & Township Roads in Union County

A MOTION WAS MADE by Vanneman to approve bids #1 - #3 and seconded by Zander. All voted aye and motion carried.

August 9, 2016 – Rapid City Region Letting

Rehabilitation of Crossing Surface

04CQ PS 0044(180)43 Pennington County
Complete Concrete $40,398.90
SD44 - Mt. View Rd in Rapid City, crossing 190277T, RCP&E

A MOTION WAS MADE by Roby to approve the bid for PCN 04CQ and seconded by Marquardt. All voted aye and motion carried.

August 16, 2016 - Mitchell Region Letting

Grading, Curb & Gutter, and PCC Sidewalk

04P1 P TAPR(42) Minnehaha County
Hulstein Excavating Inc $109,621.05
Valley Springs

A MOTION WAS MADE by Fouberg to approve the bid for PCN 04P1 and seconded by Zander. All voted aye and motion carried.

August 23, 2016 – Rapid City Region Letting

Slide Repair

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05KH P 0040(237)68 Custer County
Adams Civil Resources $688,262.50
SD40, 1 mile north of the Cheyenne River

A MOTION WAS MADE by Rosenboom to approve the bid for PCN 05KH and seconded by Vanneman. All voted aye and motion carried.

August 23, 2016 – Mitchell Region Letting

Grading, Sidewalk, and Flashing Beacons
04NR P SRTS(34) Union County
REJECTED BY THE SDDOT COMMISSION
SD11 in Alcester

Temporary Signal & Minor Shoulder Widening
05XG NH 0115(59)78 Lincoln County
Dakota Road builders, Inc $133,224.75
SD115/County Road 106 Intersection

A MOTION WAS MADE by Marquardt to reject the bid for PCN 04NR and seconded by Thompson. All voted aye and motion carried.

A MOTION WAS MADE by Vanneman to approve the bid for PCN 05XG and seconded by Rosenboom. All voted aye and motion carried.

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The Commission toured the Highway 85 Reconstruction project in Deadwood then continued on to tour the Reconstruction of Exit 14 project in Spearfish. The Commission recessed at 6 p.m. MDT.

The Commission reconvened at 8 a.m. MDT on August 25th, 2016 at the Rapid City Region Office. The Commisison toured the Reconstruction of I-190, the Reconstruction of Exit 1, and the Reconstruction of Highway 16 - Mt. Rushmore Road in Rapid City.

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With no other business to come before the Commission, the meeting was declared adjourned at 12:00 p.m. (MST)

Submitted by: Approved by:

Kellie J. Beck
Recording Secretary

Darin P. Bergquist
Secretary of Transportation

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Letter 1

August 8, 2016

Aberdeen SD

Mr. Tim Dougherty, Chairman

South Dakota Transportation Commission

700 E. Broadway Ave

Pierre, SD 57501

Dear Chairman Dougherty,

This letter is in response to SDCL 3-23-1 and 3-23-2 and is intended to address whether I, my wife, or any entity in which we have a 5% or more interest derives any direct benefit from a contract or transaction with the State of South Dakota that specifically relates to the South Dakota Department of Transportation and my involvement as an active SDDOT Commissioner.

I am a retired banker and my wife Glenna Fouberg is a retired educator. My wife and/or I own more than a 5% beneficial interest in two companies.

1. Dacotah Banks, Inc. Dacotah Bank's Inc. is the parent company and sole owner of Dacotah Bank, Aberdeen SD. Dacotah Bank through a system of branches provides typical banking services to approximately 70,000 customers in South Dakota, North Dakota and Minnesota. I am a board member and shareholder.

2. E.C. Rhodes Insurance Inc. E.C. Rhodes Insurance Inc. is a member of Rhodes Insurance LLC aka Rhodes Anderson Insurance. Rhodes Anderson provides typical casualty and bonding services to customers in SD and adjacent states. I am an officer, board member and shareholder.

There are no existing contracts or transactions between the South Dakota Department of Transportation and me, my wife or either of the above two entities and no direct benefit to me or my spouse currently exists. Therefore, I am not requesting a waiver.

I am, however, aware that from time to time customers of Dacotah Bank and Rhodes Anderson Insurance bid on projects that come within the jurisdiction of the South Dakota Transportation Commission.

In the future when I am aware that a commission meeting agenda contains an item involving my wife, me or a customer of either Dacotah Bank or Rhodes Anderson Insurance, I will announce that conflict during the "Conflicts disclosure" agenda item at the beginning of the meeting and will excuse myself from discussion and consideration of the announced matter.

Sincerely,

Rodney Fouberg

Letter 2

Black Hills Corporation
Kyle D. White
Vice President Regulatory Affairs
kyle.white@blackhillscorp.com

PO Box 1400
Rapid City, SD 57709
P: 605.721.2313
F: 605.721.2568

August 3, 2016

Mr. Tim Dougherty, Chairman
South Dakota Transportation Commission
700 E. Broadway Ave.
Pierre, SD 57501

Dear Chairman Dougherty:

House Bill 1214 – an Act to Regulate Conflicts of Interest for Authority, Board or Commission Members which became effective July 1, 2016 requires the disclosure of potential conflicts of interest related to an appointed Commissioner on the State of South Dakota Transportation Commission.

I am employed by Black Hills Utility Holdings (BHUH) Company which is a subsidiary of Black Hills Corporation. Black Hills Corporation is publically traded on the New York Stock Exchange and my wife and I are shareholders. Black Hills Power, Inc. which does business as Black Hills Energy in South Dakota is an affiliate of BHUH and at times I provide business support services to it. Although I am not personally aware of business dealings that are or may occur between the Department of Transportation, its contractors and Black Hills Power, the business dealings likely include relocation of electric utility infrastructure, installation of new electric services and electric service for DOT highway lighting and maintenance facilities.

In my present position with BHUH, I do not foresee any conflicts of interests in performing my duties as a Transportation Commissioner, and therefore I am not requesting that a waiver be granted. If for some reason this were to change, I will make an additional disclosure at that time.

If you have any questions or concerns regarding this statement of potential conflicts of interest, please contact me.

Sincerely,

Kyle D. White

Kyle D. White

cc: Darin Berquist, DOT Secretary
Transportation Commissioners

Letter 3

DOUGHERTY&DOUGHERTY, LLP
LAWYERS
100 N. PHILLIPS AVE. • SUITE 705 • P.O. BOX 2376 SIOUX FALLS, SD 57101-2376

PATRICK T. DOUGHERTY
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605-335-8586
FAX: 605-331-2519

August 23, 2016

South Dakota Transportation Commission
South Dakota Department of Transportation
700 East Broadway Avenue
Pierre, South Dakota 57501

Re: Conflict of Interest Disclosure

Dear Commissioners:

This is intended as a written disclosure under SDCL 3-23-3.

SDCL 3-23-1 prohibits a member of the South Dakota Transportation Commission from having an interest in any contract or deriving a direct benefit from any contract with the state that is within the jurisdiction or relates to the subject matter of the Commission. A member derives a direct benefit from a contract if the member "[d]erives income, compensation, or commission directly from the contract or *from the entity that is a party to the contract*." SDLC 3-23-2.

Under SDCL 3-23-3, the Transportation Commission may authorize a member to have an interest in or derive direct benefit from a contract if "the member has provided full written disclosure" or "the member publicly discloses his or her interest in a contract, direct benefits, or other conflict with any matter on the agenda" at a regular meeting of the Commission.

I am a government affairs consultant for BNSF Railway Company. BNSF operates approximately 900 miles of rail line in South Dakota. My services on behalf of BNSF include lobbying legislators and other government officials on matters affecting the company's operations in the state. BNSF compensates me for these services.

The South Dakota Transportation Commission authorizes the allocation of state and federal funds for the construction, maintenance, repair and improvement of highway crossings over railroad rights of way. Some of the crossing projects under the Commission's jurisdiction are located on BNSF right of way. In those instances, BNSF may be a party to the contract for the project. As a BNSF consultant, I am not responsible for soliciting, negotiating, drafting or reviewing these contracts. And if I were not a member of the Commission, I would have no particular knowledge of these contracts. Nonetheless, under SDCL 3-23-2, I am deemed to derive a direct benefit from these contracts because I derive income from BNSF.

In addition to this written disclosure, I will publically disclose at Commission meetings any interest in a contract, direct benefits, or other conflict with any matter on the agenda in which BNSF is a party.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Timothy J. Dougherty

cc: Darin Bergquist, Secretary
South Dakota Department of Transportation

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EXHIBIT A

CHAPTER 70:13:01

LOCAL BRIDGE IMPROVEMENT GRANT REQUIREMENTS

Section

70:13:01:01 Definitions

70:13:01:02 Eligibility and compliance.

70:13:01:03 Application.

70:13:01:04 Application and approval periods.

70:13:01:05 Bridge improvement grant award.

70:13:01:06 Criteria.

70:13:01:07 Conditions of bridge improvement grant.

70:13:01:08 ~~Financial~~ Project agreement.

70:13:01:09 Delegation of administrative functions.

70:13:01:10 Project ~~fund availability~~ requirements.

70:13:01:11 Access and reporting.

70:13:01:12 BIG Default.

70:13:01:13 Remedies.

70:13:01:01. Definitions. Terms used in this chapter mean:

(1) "ADT," average daily traffic;

(2) "BIG," bridge improvement grant;

(3) "Bridge," as defined in SDCL 31-14-1, a structure, including supports, erected over a depression or an obstruction, as water, highway, or railway, the structure having a length measured along the center of the roadway of more than twenty feet between undercopings of abutments or extreme ends of openings for multiple boxes and pipes where the clear distance between openings is less than half of the smaller contiguous opening;

(4) "Bridge condition," an engineering analysis of the structural components of a bridge ~~as per~~ pursuant to national bridge inspection guidelines;

(5) "Commission," the South Dakota Transportation Commission;

(6) "Department," the South Dakota Department of Transportation;

(7) "Local participation," based on the level of wheel tax as implemented by county and determination of ability to let project to bid within six months of grant award;

(8) "LPA," any local public agency authorized by statute to own, maintain, and govern the use of a bridge;

(9) "Preliminary Engineering," evaluation of topography and legal survey, possible repair and replacement options, and hydraulic analyses, and the determination of the structure type, size, and location;

(10) "Procedures," comprehensive program procedures approved by the commission pursuant to 70:13:01:06;

~~(9)~~ (11) "User impact," factors considered to analyze ADT and detour length for a bridge.

Source: 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

70:13:01:02. Eligibility and compliance. Any LPA of this state may apply for a BIG pursuant to this chapter for the purposes described in SDCL 32-11-38. To be eligible to apply to the department and to receive a grant from the BIG fund, a county shall have a wheel tax and a department approved county highway and bridge improvement plan as specified in chapter 70:12:02.

The LPA shall file the application with the department as required by §§70:13:01:03 and 70:13:01:04 and shall comply with the procedures, requirements, conditions, restrictions, and limitations ~~imposed by~~ referred to in this chapter.

Source: 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

70:13:01:03. Application. Each application shall be ~~made~~ submitted on the forms provided by the department~~, be signed by an authorized representative of~~ and must be accompanied by a resolution from the governing body ~~making application, and be submitted to the department~~ of the LPA. The resolution shall authorize the application and any funding commitments made by the LPA. ~~The application shall be executed under penalties of perjury.~~

Source: 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

70:13:01:04. Application and approval periods. The commission shall consider applications ~~annually~~ by April 30 of each year. ~~The commission may consider applications more frequently.~~ A LPA shall ~~file any~~ submit ~~annual~~ applications ~~by the close of business on~~ no later than January ~~31, 2016, and by January~~ 2 of each ~~subsequent~~ year~~.~~, except that after January 2, 2017, applications for preliminary engineering grants shall be submitted no later than August 1 ~~The commission shall consider and act upon applications by April 30~~ of each year.

Source: 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

70:13:01:06. Criteria. When considering an application, the commission shall receive ~~a~~ recommendations from the department based on an engineering analysis.

~~For preservation work or any engineering study considered necessary by the department, the commission may use the department's recommendation as a criteria for award.~~

On or before July 1 of each year, the department shall propose comprehensive program procedures for commission approval. These procedures shall include, but are not limited to, application requirements, project qualifications, objective scoring criteria, and project development and construction management procedures. The qualification criteria shall include, but are not limited to, the sufficiency rating and structural deficiency of the bridge. Factors to be considered in the scoring criteria shall include ~~For bridge rehabilitation or replacement, the department shall use an objective scoring procedure as developed by the department. The scoring is based on~~ bridge condition, user impact, and local participation. ~~The scoring is based on a 100 point system. The bridges receiving the most points will receive the department's recommendation for approval.~~ Bridge condition factors ~~will~~ shall include whether the bridge is posted for load capacity, the sufficiency rating, the substructure condition, the superstructure condition, the box culvert condition, and whether the bridge is fracture critical or scour critical~~, and if it is an emergency~~. The user impact factors include the amount of traffic the bridge carries and the detour length needed if the bridge is closed. The local participation factors may include points for the amount of wheel tax, and whether the ~~project~~ plans are complete ~~and ready to be let to bids~~ for preservation, rehabilitation and replacement projects.

The department shall report its scoring calculations to the commission. The department shall also make recommendations regarding project feasibility and constructability and whether the proposed project addresses the deficiencies of the bridge. The department may add bonus points for any increase in local financial obligations beyond the program requirements. ~~The department may adjust the points assigned to each factor annually to achieve a fair and balanced system so that one demographic area of the state does not receive a disproportionate share of the grant funds.~~

Source: 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

70:13:01:07. Conditions of bridge improvement grants. The department may recommend and the commission may place ~~a~~ conditions on any BIG ~~issued under this chapter to ensure substantial conformity with the representations contained in the application and criteria described in § 70:13:01:06 under which the grant was awarded~~ award.

Source: 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

70:13:01:08. ~~Financial~~ Project agreement. The department shall enter into a ~~financial~~ project agreement with the LPA that details eligible expenses, conditions, and responsibilities for any BIG ~~awarded under this chapter~~.

Source: 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

70:13:01:09. Delegation of administrative functions. The department shall perform the administrative functions of the creation, processing, and review of BIG applications; the creation, processing, and review of documentation necessary to show compliance with the terms, ~~and~~ conditions, and legal requirements of the BIG ~~and the requirements of this chapter~~; disbursement of BIG funds in accordance with conditions imposed ~~pursuant to this chapter~~ on the BIG; and other tasks necessary to expedite and assist the commission. ~~Only the commission has the authority to approve a BIG project application.~~

Source: 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

70:13:01:10. Project ~~fund availability~~ requirements. For preservation, rehabilitation ~~or~~ and replacement projects, the department shall review plans and provide letting authorization prior

to bid letting. Preservation, rehabilitation, and replacement projects shall be ~~let to bids~~ under construction within ~~four~~ three years from the date of ~~commission approval of the project~~ notice of BIG award. For preliminary engineering grants, all reimbursable expenses shall be incurred within two years from the date of notice of BIG award. The department may ~~grant time extensions,~~ extend the deadline for any BIG, before or after the expiration of the deadline. Any LPA's request for a ~~time~~ deadline extension shall be made prior to the ~~four year expiration date to be considered~~ deadline.

Source: 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

70:13:01:12. BIG Default. The commission may determine an LPA to be in default under the BIG conditions or requirements. The department will notify an LPA at least fifteen calendar days prior to the commission's consideration of default by the LPA, and the LPA will be afforded an opportunity to address the commission. The commission may consider any of the following to be a default under the conditions or requirements of a ~~local~~ BIG:

(1) If the LPA knowingly makes any material false statement or report ~~in the application~~;

(2) Failure of the LPA to adhere to conditions of the BIG;

(3) Failure of the LPA to provide the department access to documents, reports, or other information required by this chapter; ~~or~~

(4) If funds are not used by the LPA for the ~~bridge~~ project specified in the application~~.~~; or

(5) Failure of the LPA to comply with the deadlines set under § 70:13:01:10.

Source: 42 SDR 52, effective October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

70:13:01:13. Remedies. If the commission determines ~~that~~ a LPA ~~has~~ is in defaul~~ted~~ pursuant to § 70:13:01:12, the department shall provide written notice of the default to the LPA. The LPA shall repay~~, within forty five days of the receipt of the written notice,~~ all the BIG funds disbursed ~~for the BIG and all costs incurred~~ by the department for that ~~project~~ grant.

Source: 42 SDR 52, effective, October 13, 2015.

General Authority: SDCL 32-11-39.

Law Implemented: SDCL 32-11-38, 32-11-39.

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