



Department of Transportation
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MEMORANDUM

TO: Kelli Beck and Kari Kroll

FROM: Karla L. Engle

DATE: March 21, 2019

RE: March 28, 2019 Commission Meeting

The Department of Transportation asks the Transportation Commission to approve amendments to the following administrative rules:

- ARSD Article 70:12 – County highway and bridge improvement plan; and
- ARSD Chapter 70:13:01 – Local bridge improvement grant requirements.

Copies of the following documents are enclosed with this memo for the commission's consideration:

1. The proposed rules;
2. The Rules Presentation Format Form adopted by the Interim Rules Review Committee, listing the procedural steps that have been taken so far in the rule adoption process.

Written comments that are timely received will be provided to the commission at the meeting on March 28, 2019.

Thank you.

KLE
Enclosures

70:12:01:01. Definitions. Terms used in this article mean:

(1) "ADT," average daily traffic;

(2) "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;

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

(4) "Condition rating," the condition rating of a bridge as reported in the national bridge inventory;

~~(45)~~ "Culvert," any structure not classified as a bridge that provides an opening under the roadway;

~~(56)~~ "Department," the South Dakota Department of Transportation;

~~(7)~~ "National bridge inventory," a database of bridge information compiled by the Federal Highway Administration;

~~(68)~~ "Roadway classification," the process by which streets and highways are grouped into classes or systems according to the character of traffic service, functions or purposes they are intended to provide; and

~~(79)~~ "Secretary," the secretary of the South Dakota Department of Transportation; ~~and.~~

~~(8)~~ "Sufficiency rating," a method of evaluating bridge data to obtain a numeric value which is indicative of a bridge's sufficiency to remain in service. The numeric value is a percentage where 100 percent would represent a perfect bridge and zero percent would represent a completely failed bridge.

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

General Authority: SDCL 1-44-7.5.

Law Implemented: SDCL 1-44-7.5.

70:12:02:01. Eligibility for bridge improvement grant fund. To be eligible to ~~apply to the department~~ to receive a grant from the bridge improvement grant fund established by SDCL 32-11-38, a county shall submit to the department a county highway and bridge improvement plan and ~~annual~~ updates to that plan in accordance with the provisions of this chapter. The county shall include with the plan and each ~~annual~~ update, a written certification of adoption of the plan subscribed by the chairperson of the board of county commissioners. The format for a county highway and bridge improvement plan and ~~annual~~ updates shall substantially conform to the department's guidelines. The county may submit the highway and bridge improvement plan and ~~annual~~ updates to the department in an electronic format acceptable to the department or by hard copy.

Source: 42 SDR 52, effective October 13, 2015; 44 SDR 42, effective September 11, 2017.

General Authority: SDCL 1-44-7.5, 32-11-39.

Law Implemented: SDCL 1-44-7.5, 32-11-38, 32-11-39.

70:12:02:02. Inventory of roads. A county highway and bridge improvement plan shall include an inventory of all roads that are part of the county highway system and all secondary roads within the county as provided in SDCL 31-12-26, 31-12-48 and 31-12-46 including:

- (1) The roadway classification of each road;
- (2) The ADT of each road, if that information is available to the county;
- (3) The surface type, dirt, gravel, bituminous, or concrete, and surface width of each road;

(4) The surface thickness and base thickness of each road, if that information is available to the county;

(5) The year each road was constructed, the last year each road was improved, and the type of improvement, if that information is available to the county;

(6) The shoulder type and shoulder width of each road, if that information is available to the county; and

(7) The location and size of any culverts in each road, if that information is available to the county.

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

General Authority: SDCL 1-44-7.5.

Law Implemented: SDCL 1-44-7.5, 32-11-38.

70:12:02:03. Inventory of bridges. A county highway and bridge improvement plan shall include a county map showing the location of each bridge. The map shall be accompanied by an inventory of the bridges the county is responsible for under SDCL 31-14-2, including:

(1) The structure number, location, type, width and length of each bridge;

(2) The ~~sufficiency~~ condition rating of each bridge;

(3) Whether the bridge is posted for load capacity, and if so, what the posted limit is; and

(4) The year each bridge was built, the year last improved, and the type of improvement, if that information is available.

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

General Authority: SDCL 1-44-7.5.

Law Implemented: SDCL 1-44-7.5, 32-11-38.

70:12:02:05. Statement of financial resources. The county highway and bridge improvement plan shall include a statement identifying the annual sources of revenue available to the county for highway and bridge work and the projected revenue amounts from each source for the next five years. The source of funding may include funds that are being or have been applied for, but have not yet been received.

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

General Authority: SDCL 1-44-7.5.

Law Implemented: SDCL 1-44-7.5, 32-11-38.

70:12:02:06. Five-year project list. The county highway and bridge improvement plan or plan update shall include a list of the projects proposed to be undertaken by the county over the next five years ~~from the date of the plan or plan update~~. A bridge project shall appear on the project list to be eligible for a bridge improvement grant. Project information shall include:

- (1) The location of the project;
- (2) The type of project improvement;
- (3) Each source of available funding for the project;
- (4) The estimate of the cost of the project; and
- (5) The year the project is proposed to be built.

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

General Authority: SDCL 1-44-7.5, 32-11-39.

Law Implemented: SDCL 1-44-7.5, 32-11-38, 32-11-39

70:12:02:07. Current project status list. The ~~annual~~ update of a county highway and bridge improvement plan shall include the five-year project list from the previous ~~year's~~ county

highway and bridge improvement plan or update with a brief description of the status of each project, any revision of a project, and the cost estimate for each project.

Source: 42 SDR 52, effective October 13, 2015; 44 SDR 42, effective September 11, 2017.

General Authority: SDCL 1-44-7.5.

Law Implemented: SDCL 1-44-7.5, 32-11-38.

70:12:02:08. Time of submission of plan. To be eligible to ~~apply for and~~ receive a grant award from the bridge improvement grant fund established by SDCL 32-11-38, a county shall submit a county highway and bridge improvement plan or ~~annual~~ update to the secretary by October 15 of the calendar year preceding the grant application deadline.

Source: 42 SDR 52, effective October 13, 2015; 44 SDR 42, effective September 11, 2017.

General Authority: SDCL 1-44-7.5, 32-11-39.

Law Implemented: SDCL 1-44-7.5, 32-11-38, 32-11-39.

70:12:02:10. Revision of plan upon request of department. The department may reject a highway and bridge improvement plan or ~~annual~~ plan update that does not meet the requirements of this chapter. The department shall advise the county in writing of the necessary revisions needed to comply with those requirements.

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

General Authority: SDCL 1-44-7.5.

Law Implemented: SDCL 1-44-7.5, 32-11-38.

70:12:02:11. Review and acceptance of plan. Upon receipt of a county highway and bridge improvement plan or a plan update, the department shall review the plan or plan update

for compliance with the provisions of this chapter. The department shall accept a plan or plan update determined to be in compliance. The department shall send a written notification of acceptance to the county. A county whose plan or plan update has been accepted, and otherwise meets the requirements of law, is eligible to ~~apply for~~ receive a local bridge improvement grant in accordance with the provisions of SDCL 32-11-38.

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

General Authority: SDCL 1-44-7.5, 32-11-39.

Law Implemented: SDCL 1-44-7.5, 34-11-38, 32-11-39.

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~~ assessment of the structural components of a bridge pursuant to national bridge inspection ~~guidelines~~ standards;

(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 a county and determination of ability to let project to bid within six months of grant award LPA, any increase

in local financial obligations beyond the program requirements, and plans that are complete for preservation, rehabilitation and replacement projects;

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

(9) "National bridge inspection standards," national standards established by the United States Department of Transportation for the inspection and evaluation of bridges;

(911) "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;

(4012) "Procedures," comprehensive program procedures approved by the commission pursuant to 70:13:01:06;

(413) "User impact," factors considered to analyze ADT and the amount of traffic on the bridge and the detour length needed if the ~~for a bridge is~~ closed.

Source: 42 SDR 52, effective October 13, 2015; 43 SDR 57, effective October 17, 2016.

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 recommendations from the department based on an engineering analysis.

At least annually, the department shall propose comprehensive program procedures for commission approval. These procedures shall include, but are not limited to, application requirements, ~~project~~ minimum 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 bridge condition, user impact, and local participation. ~~Bridge condition factors 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. 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, any increase in local financial obligations beyond the program requirements, and plans that are complete 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.

Source: 42 SDR 52, effective October 13, 2015; 43 SDR 57, effective October 17, 2016.

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 developing the BIG application forms and ~~the creation,~~ processing, and review of reviewing BIG applications; ~~the creation,~~ processing, and review of reviewing documentation necessary to show compliance with the terms, conditions, and legal requirements of the BIG; ~~disbursement of~~ disbursing BIG funds in accordance with conditions imposed on the BIG; and other tasks necessary to expedite and assist the commission.

Source: 42 SDR 52, effective October 13, 2015; 43 SDR 57, effective October 17, 2016.

General Authority: SDCL 32-11-39.

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

70:13:01:10. Project requirements. For preservation, rehabilitation and replacement projects, the department shall review plans and provide letting authorization prior to bid letting. For ~~Preservation~~ preservation, rehabilitation, and replacement ~~projects~~ grants, all reimbursable expenses shall be incurred ~~under construction~~ within ~~three~~ four years from the date of notice of BIG award. For preliminary engineering grants, all reimbursable expenses shall be incurred within ~~two~~ three years from the date of notice of BIG award. The department may extend the deadline for any BIG, before or after the expiration of the deadline.

Source: 42 SDR 52, effective October 13, 2015; 43 SDR 57, effective October 17, 2016; 44 SDR 42, effective September 11, 2017.

General Authority: SDCL 32-11-39.

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

Interim Rules Review Committee Recommended Rules Presentation Format

When you submit the final draft to the Legislative Research Council (LRC) and the Rules Review Committee, please answer these questions to show that the SDCL § 1-26 rule-making process is complete. Use this format to organize your presentation to the Committee.

- Approval to proceed? Yes No Date February 27, 2019
- The date of your public hearing. Date March 28, 2019
- The date you submitted the proposed rules and the supporting documents to LRC and the Bureau of Finance and Management: Date February 28, 2019 (Note - This must be completed at least 20 days before your public hearing.)
 - any publication incorporated by reference;
 - the fiscal note;
 - the impact statement on small business; and
 - the notice of hearing.
- The date and the name of the newspapers where you published the notice of the public hearing.
 - Date March 4, 2019 Newspaper Rapid City Journal
 - Date March 4, 2019 Newspaper Aberdeen American News
 - Date March 4, 2019 Newspaper Sioux Falls Argus Leader
 - Date March 4, 2019 Newspaper Pierre Capital Journal
- Summarize how and when interested persons, if any, were contacted and how many were contacted. **On February 28, 2019, copies of the hearing notice and proposed rules were sent to the thirteen individuals who have requested mail notification of rule-making by the commission. On the same date, electronic copies of the hearing notice and proposed rules were sent to the individuals who have requested electronic notification of rule-making. The hearing notice, proposed rules, small business impact statement, and fiscal notes were also posted on the Open SD website for the State of South Dakota.**
- Provide the page numbers in the minutes where it mentions how the agency considered amendments, data, opinions, or arguments regarding the proposed rules, along with any changes and final action. _____
- If the rules are implementing a bill from last session, identify the bill number. _____
- The date you submitted the final rules and supporting documents to the LRC and the Rules Review Committee: Date _____ (Note - This must be received no later than 5 days before the Rules Review Committee meeting.)
 - the "Approval of Rules" - Form 11 (LRC only);
 - the style and form copy (LRC only);
 - the "Affidavit" of mailing - Form 12 (LRC only);
 - the final copy of the rules (Both);
 - the minutes of the hearing (Both);
 - the record of written comments (Both);

- the impact statement on small business – Form 14 (Committee only);
- the fiscal note – Form 5 (Committee only);
- the budgetary information required to increase a fee (Committee only); and
- the rules process outline (Both).