

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, APRIL 9, 2025, 10:00 A.M., CT**

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**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, APRIL 9, 2025, 10:00 A.M., CT**

**Board
Members:**

Jeff Erickson

Matt Judson

**Sharon
Casey**

Mike Luken

**Don
Kettering**

Tom Jones

Reed Kessler

Joy Nelson

Eric Yunag

**Kevin
Tetzlaff**

David Emery

**Craig
Christianson**

Brad Moore

Non-Voting

**Senator Tim
Reed**

**Representative
Erik Muckey**

Motion Sheet

(STAFF RECOMMENDATIONS)

Agenda

Motion to approve the agenda as presented.

Motion made by _____ and seconded by _____.

Minutes

Motion to approve the minutes of the meeting held March 13, 2025 and March 31, 2025, as presented.

Motion made by _____ and seconded by _____.

Conflicts of Interest Disclosures

Public Comments

Commissioners Comments

Certification and Attestations

Credit Committee recommends to the Board accepting the changes reflected on the Certifications and Attestations addendum, and further recommends the Board approve, acknowledge, and affirm the Certifications and Attestations to be a requirement of each loan, grant, or reinvestment payment application as of April 9, 2025.

Motion made by _____ and seconded by _____.

Donation of Monies

Credit Committee recommends to the Board accepting the \$7,164,868 that the GOED Loan Committee gifts to the REDI Fund for the purpose of making grants and loans for economic development from pursuant to South Dakota Codified Law 1-16G-7.

Motion made by _____ and seconded by _____.

REDI Rules

Credit Committee recommends to the Board approving entering the rulemaking procedures allowed by SDCL for the Board's promulgation of rules in Chapter 68:02 of Administrative Rules South Dakota.

Motion made by _____ and seconded by _____.

Executive Session

Motion to enter into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16G-11

Please note times:

Call To Order: _____

Executive
Session _____

Regular Session _____

Adjournment _____

Motion made by _____ and seconded by _____.

Chairman: The Chairman declared the board out of executive session at [a.m.].
Chairman: The BED entered into executive session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action was taken.

Motion to approve the chairman's report from executive session.

Motion made by _____ and seconded by _____.

Old Business

SWAT Properties, LLC

Motion to approve the changes as presented.

Motion made by _____ and seconded by _____.

New Business

Reinvestment Payment Program

Bel Brands USA

Motion to approve the Reinvestment Payment Program grant application to Bel Brands USA as recommended by staff.

Based on the representations and project description contained in the application for reinvestment payment, including but not limited to the representations concerning jobs created or retained and wages and benefits to be paid, a new or expanded facility reinvestment payment of \$2,566,012 but not to exceed 50% of the amount of the actual State Sales/Use Tax paid on eligible project costs not to exceed \$196,000,000, is approved for Bel Brands USA. The project as completed must be substantially similar to the project described in the application and must comply with the deadlines set out SDCL Ch. 1-16G and ARSD Ch. 68:02:07. The board has considered the factors set out in SDCL 1-16G-59 and ARSD 68:02:07:04 and the likelihood the project would not be located in South Dakota absent the reinvestment payment. Staff is authorized to issue a permit consistent with the application, this approval and the applicable provisions of SDCL Ch. 1-16G and ARSD Ch. 68:02:07.

Motion made by _____ and seconded by _____.

Big Stone Energy Storage Project, LLC

Motion to approve the Reinvestment Payment Program grant application to Big Stone Energy Storage Project, LLC as recommended by staff.

Based on the representations and project description contained in the application for reinvestment payment, including but not limited to the representations concerning jobs created or retained and wages and benefits to be paid, a new or expanded facility reinvestment payment of \$3,386,040 but not to exceed 50% of the amount of the actual State Sales/Use Tax paid on eligible project costs not to exceed \$209,700,000, is approved for Big Stone Energy Storage Project LLC. The project as completed must be substantially similar to the project described in the application and must comply with the deadlines set out SDCL Ch. 1-16G and ARSD Ch. 68:02:07. The board has considered the factors set out in SDCL 1-16G-59 and ARSD 68:02:07:04 and the likelihood the project would not be located in South Dakota absent the reinvestment payment. Staff is authorized to issue a permit consistent with the

application, this approval and the applicable provisions of SDCL Ch. 1-16G and ARSD Ch. 68:02:07.

Motion made by _____ and seconded by _____.

Dakota Line Energy, LLC

Motion to approve the Reinvestment Payment Program grant application to Dakota Line Energy, LLC as recommended by staff.

Based on the representations and project description contained in the application for reinvestment payment, including but not limited to the representations concerning jobs created or retained and wages and benefits to be paid, a new or expanded facility reinvestment payment of \$250,682 but not to exceed 50% of the amount of the actual State Sales/Use Tax paid on eligible project costs not to exceed \$13,400,105, is approved for Dakota Line Energy LLC. The project as completed must be substantially similar to the project described in the application and must comply with the deadlines set out SDCL Ch. 1-16G and ARSD Ch. 68:02:07. The board has considered the factors set out in SDCL 1-16G-59 and ARSD 68:02:07:04 and the likelihood the project would not be located in South Dakota absent the reinvestment payment. Staff is authorized to issue a permit consistent with the application, this approval and the applicable provisions of SDCL Ch. 1-16G and ARSD Ch. 68:02:07.

Motion made by _____ and seconded by _____.

Adjourn

Motion made by _____ and seconded by _____.

A

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
WEDNESDAY, APRIL 9, 2025, 10:00 A.M., CT**

The public may participate by the following:

Call In Number: (669) 900-9128 Meeting ID: 96677988449 Participant Id: # Passcode: 421401
www.zoom.com Meeting ID: 96677988449 Passcode: 421401

REGULAR SESSION AGENDA

10:00 A.M. Call to Order, Chairman Jeff Erickson

10:05 A.M. **Agenda**
RECOMMENDED ACTION: Motion to approve the agenda as provided or amended.

Minutes
RECOMMENDED ACTION: Motion to approve the minutes of March 13, 2025 and March 31, 2025, as presented.

Conflicts of Interest Disclosures

Public Comments

Commissioner's Comments

Certification and Attestations
RECOMMENDED ACTION: Motion to accept the changes reflected on the Certifications and Attestations addendum, and further recommends the Board approve, acknowledge, and affirm the Certifications and Attestations to be a requirement of each loan, grant, or reinvestment payment application as of April 9, 2025.

Donation of Monies
RECOMMENDED ACTION: Motion to accept the \$7,164,868 that the GOED Loan Committee gifts to the REDI Fund for the purpose of making grants and loans for economic development from pursuant to South Dakota Codified Law 1-16G-7.

REDI Rules
RECOMMENDED ACTION: Motion to approve entering the rulemaking procedures allowed by SDCL for the Board's promulgation of rules in Chapter 68:02 of Administrative Rules South Dakota.

10:30 A.M. **Executive Session**
RECOMMENDED ACTION: Motion to enter into executive session to discuss contractual matters, and to discuss commercial and financial information relating to loan and other assistance applicants. SDCL 1-16G-11

10:45 A.M.

Report from Executive Session

RECOMMENDED ACTION: Approve Chairman's report from Executive Session.

Other Motions

SWAT Properties, LLC

Reinvestment Payment Program

Bel Brands USA

Big Stone Energy Storage Project, LLC

Dakota Line Energy, LLC

Adjournment

Notice is further given to persons with disabilities that this meeting is being held in a physically accessible place. Please notify the above mentioned office within 48 hours of the public hearing if you have special needs for which this agency will make the necessary arrangements.

B

**BOARD OF ECONOMIC DEVELOPMENT
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
THURSDAY, MARCH 13, 2025, 10:00 A.M., CT**

Members Present

Chairman Jeff Erickson, Don Kettering, Sharon Casey, Tom Jones, Reed Kessler, Joy Nelson, Kevin Tetzlaff, David Emery and Craig Christianson

Staff Present

Commissioner Joe Fiala, Deputy Commissioner Jesse Fonkert, Ashley Moore, Jack Valentine, Stephanie Deyo, Lexxy Phillips, Nick Rabern, Nadine Agneau, Adam Molseed and Alex Kahnke

Other Staff Present

Shawn Hofer – BankWest, Inc.

Call to Order

Chairman Erickson called the meeting to order at 10:00 a.m.

Agenda

A motion was made by Joy Nelson and seconded by Don Kettering to approve the agenda as amended to remove Bel Brands USA.

Motion passed by a voice vote.

Minutes

A motion was made by Craig Christianson and seconded by Sharon Casey to approve the minutes of the meetings held February 12, 2025, February 24, 2025 and March 4, 2025, as presented.

Motion passed by a voice vote.

Conflicts Disclosure

Chairman Erickson opened the floor for board members to identify potential conflicts under SDCL Chapter 3-23. There were none from board members and no objection to proceeding with the agenda.

Public Comments – none

Executive Session

A motion was made by Reed Kessler and seconded by Tom Jones to enter into Executive Session at 10:08 a.m. to discuss contractual matters, and to discuss commercial and financial information relating to loan and other assistance applicants. SDCL 1-16G-11

Motion passed by a voice vote.

Executive Session Report

The Chairman declared the board out of Executive Session at 10:43 a.m. The Chairman reported that the Board of Economic Development entered into Executive Session to discuss contract matters, commercial and financial information relating to loan and other assistance to applicants. No action was taken.

A motion was made by Sharon Casey and seconded by Joy Nelson to approve the Chairman's report from Executive Session.
Motion passed by a voice vote.

Reviews

Grant Reviews

Local Infrastructure Improvement Program (City of Lake Norden, City of Lake Preston, City of North Sioux City, Corsica, Inc., City of Viborg and Lake Area Improvement Corporation) and Reinvestment Payment Program (Brookings Biogas, LLC, Dakota Renewable Hydrogen, LLC, Gevo Net Zero 1, LLC, Graco Minnesota, Inc. Kingsbury County Wind Fuel, LLC, Lakeside Biogas, LLC, Manitou Equipment America, LLC, Pacific Stainless Products, Inc. and Red Rock Real Estate, LLC)

A motion was made by David Emery and seconded by Craig Christianson to approve the grant reviews as recommended by staff and Grant Committee.
Motion passed by a voice vote.

B&B Hills, LLC

A motion was made by Craig Christianson and seconded by Tom Jones to approve the loan review and recommendation as presented.
Motion passed by a voice vote.

BJ's Food Center

A motion was made by Sharon Casey and seconded by Kevin Tetzlaff to approve the loan review and recommendation as presented.
Motion passed by a voice vote.

Old Business

Corsica, Inc.

A motion was made by Joy Nelson and seconded by David Emery to approve extending the LIIP grant agreement expiration date to September 30, 2025.
Motion passed by a voice vote.

Graco Minnesota, Inc.

A motion was made by Don Kettering and seconded by Kevin Tetzlaff to approve extending the RPP construction permit to March 1, 2026.
Motion passed by a voice vote.

Harris Machine Company

A motion was made by Tom Jones and seconded by Kevin Tetzlaff to approve a SD Works commitment extensions to March 12, 2026.
Motion passed by a voice vote.

Southern Sun, LLC

A motion was made by Don Kettering and seconded by Kevin Tetzlaff to approve a REDI and SD Works commitment extension to March 13, 2026.
Motion passed by a voice vote.

New Business

ESCO Manufacturing

A motion was made by Joy Nelson and seconded by Sharon Casey to approve a SD Works loan request from ESCO Manufacturing in the amount up to \$421,880. Secured by a 2nd lien

position on real estate, a UCC filing, personal guaranties from all principals with 10% or more ownership and a corporate guaranty.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion passed by a voice vote.

Hidewood Fiber, LLC

A motion was made by Don Kettering and seconded by Kevin Tetzlaff to approve a SD Works loan request from Hidewood Fiber, LLC in the amount up to \$250,000. Secured by a shared pro-rata first position UCC on chattel assets, pro-rata shared 2nd lien position on vehicles, a pro-rata shared second mortgage on additional real estate and the personal guaranties from all principals with 10% or more ownership.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion passed by a voice vote.

Kaylor Agriservices

A motion was made by Joy Nelson and seconded by Kevin Tetzlaff to approve a SD Works loan request from Kaylor Agriservices in the amount up to \$1,000,000. Secured by a 2nd lien position on real estate, machinery and equipment and personal guaranties from all principals with 10% or more ownership.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion passed by a voice vote.

Kaylor Agriservices

A motion was made by Don Kettering and seconded by Sharon Casey to approve a REDI loan request from Kaylor Agriservices in the amount up to \$1,000,000. Secured by a first lien position on structures and equipment, a shared second lien position in real estate and the personal guaranties from all principals with 10% or more ownership.

The loan is approved according to the terms and conditions of the commitment letter; all documents may be executed on behalf of the Board by the Commissioner of the Governor's Office of Economic Development or the Commissioner's designee.

Motion passed by a voice vote.

Local Infrastructure Improvement Program

Hamlin County

A motion was made by Kevin Tetzlaff and seconded by Craig Christianson to approve a Local Infrastructure Improvement grant award to Hamlin County in the amount of \$142,500 but not to exceed 26% of eligible project costs, to be granted in accordance with the board's Local Infrastructure Improvement Award Policy as recommended by staff and Grant Committee.

Motion passed by a voice vote.

Sioux Falls Development Foundation

A motion was made by Don Kettering and seconded by Sharon Casey to approve a Local Infrastructure Improvement grant award to Sioux Falls Development Foundation in the amount of \$447,769 but not to exceed 50% of eligible project costs, to be granted in accordance with the board's Local Infrastructure Improvement Award Policy as recommended by staff and Grant Committee.

Motion passed by a voice vote.

Adjourn

A motion was made by Joy Nelson and seconded by Kevin Tetzlaff to adjourn the meeting at 10:54 a.m.

Motion passed by a voice vote.

Matt Judson, Treasurer

CREDIT COMMITTEE
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD
MONDAY, MARCH 31, 2025, 11:00 A.M. CT

Members Present

Chairman Jeff Erickson, Don Kettering, Matt Judson and Craig Christianson

Staff Present

Jack Valentine, Ashley Moore, Nick Rabern, Lexxy Phillips, Nadine Agneau, Adam Molseed, Curtis Egan and Jake Salmen

Others Present

Mike Bietz and Shawn Hofer – BankWest, Inc.

Call to Order

Chairman Erickson called the meeting to order at 11:00 a.m.

Agenda

A motion was made by Don Kettering and seconded by Craig Christianson to approve the agenda as presented.

Motion passed by a voice vote.

Conflicts Disclosure

Conflicts Disclosure – Chairman Erickson opened the floor for committee members to identify potential conflicts under SDCL Chapter 3-23. There were none from committee members and no objection to proceeding with the agenda.

Public Comments

None

Certification and Attestations

Credit Committee recommends to the Board accepting the changes reflected on the Certifications and Attestations addendum, and further recommends the Board approve, acknowledge, and affirm the Certifications and Attestations to be a requirement of each loan, grant, or reinvestment payment application as of April 9, 2025.

A motion was made by Matt Judson and seconded by Craig Christianson.

Motion passed by a voice vote.

Donation of Monies

Credit Committee recommends to the Board accepting the \$7,164,868 that the GOED Loan Committee gifts to the REDI Fund for the purpose of making grants and loans for economic development from pursuant to South Dakota Codified Law 1-16G-7.

A motion was made by Don Kettering and seconded by Matt Judson.

Motion passed by a voice vote.

REDI Rules

Credit Committee recommends to the Board approving entering the rulemaking procedures allowed by SDCL for the Board's promulgation of rules in Chapter 68:02 of Administrative Rules South Dakota.

A motion was made by Craig Christianson and seconded by Matt Judson.

Motion passed by a voice vote.

Executive Session

A motion was made by Don Kettering and seconded by Matt Judson to enter into Executive Session at 11:15 a.m. to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. SDCL 1-16G-11.

Motion passed by a voice vote.

Executive Session Report

The Chairman declared the Credit Committee out of Executive Session at 11:29 a.m. The Chairman reported that the Board of Economic Development Credit Committee entered into Executive Session to discuss contract matters and commercial and financial information relating to loan and other assistance to applicants. No action was taken.

A motion was made by Don Kettering and seconded by Craig Christianson to approve the Chairman's report from executive session.

Motion passed by a voice vote.

Old Business

SWAT Properties, LLC

Credit Committee recommends to the board approving the changes as presented.

A motion was made by Craig Christianson and seconded by Don Kettering.

Motion passed by a voice vote.

Adjourn

A motion was made by Don Kettering and seconded by Matt Judson to adjourn the meeting at 11:31 a.m.

Motion passed by a voice vote.

Matt Judson, Treasurer

C

SOUTH DAKOTA

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Memorandum

Date: April 9, 2025
To: Board of Economic Development Credit Committee
From: Jack Valentine, GOED Finance & Fiscal Director
RE: REDI Policy & Rules

In an ongoing and current review of GOED and BED processes and policies, Staff observed South Dakota Codified Law 1-16G-68, titled **Prohibited commissions.**, to state:

No person who works for a project may be employed for a commission dependent in any manner upon the approval of any government grants, loans, or reinvestment payments that the person obtains for the project.

Source: SL 2013, ch 7, § 36, eff. Mar. 20, 2013.

Request:

With the assistance of GOED/BED legal counsel, Staff revised the Certifications page of the REDI and SD Works Application to address the above. The page is hereto forward referred to as the Certifications and Attestations page and is being presented with the request and understanding that it will be a required attachment or addendum to each loan, grant, or reinvestment payment application from the date of acceptance by the BED forward.

Recommendation:

Staff recommends accepting the changes reflected on the attached Certifications and Attestations addendum sheet, and further recommends the Board approve, acknowledge, and affirm the Certifications and Attestations to be a requirement of each loan, grant, or reinvestment payment application from this date forward.

Attachments:

- a. Revised Certifications and Attestations

CERTIFICATIONS and ATTESTATION

All information contained above and in schedules attached hereto are true and complete to the best knowledge and belief of the applicant. There is no intent to deceive or defraud the Board of Economic Development, the Economic Development Finance Authority or the South Dakota Development Corporation or any potential participant in any loans to finance this project.

The applicant recognizes that neither GOED nor any of the boards which it supports will process any application that is not complete. Incomplete applications will be returned to the applicant for completion.

Except for loan programs solely administered and under the control of GOED, GOED has no authority to commit financing or other financial assistance. Specifically, regardless of any assurance, guarantee, communication or representation to the contrary, GOED has no authority to make commitments for loans or other financial assistance from BED or EDFA.

The Governor's Office of Economic Development prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, marital or family status.

Pursuant to South Dakota Codified Law ("SDCL") 22-29-19, persons who knowingly make any materially false statement on or related to this application, or who willfully overvalues any land or other property offered as security for any loan sought by or related to this application is subject to prosecution. The maximum penalty for a violation of SDCL 22-29-19 is 2 years in the state penitentiary or a \$2000 fine, or both. By their execution of this Application, all persons signing this Application warrant and represent that they have read and understand the provisions of SDCL 22-29-19.

Pursuant to South Dakota Codified Law 1-16G-68, no person, as that term is defined in SDCL 1-16G-56(10), who works for a project, as that term is defined in SDCL 1-16G-56(11), may be employed for a commission or compensation that is dependent in any manner upon the approval of any government grants, loans, or reinvestment payments that the person obtains for the project. By their execution of the Application, all persons signing this Application warrant and represent they have read and understand the provisions of SDCL 1-16G-68 and attest that no person is employed by the company or for the project in connection with the project in violation of SDCL 1-16G-68.

Applicant Business: _____

Officer's Signature: _____

Officer's Name/Title: _____

Telephone Number: _____ Date: _____

D

SOUTH DAKOTA

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Memorandum

Date: April 9, 2025
To: Board of Economic Development Credit Committee
From: Jack Valentine, GOED Finance & Fiscal Director
RE: Donation of Monies to REDI Fund

In a directed review of the GOED, Economic Development Finance Authority, and Board of Economic Development loan portfolios, Staff was asked to identify amounts of inactive, sunset, and undeployable monies. Among these are funds which currently reside in the GOED MicroLOAN and GOED – Other portfolios. Both the MicroLOAN and the GOED – Other programs are no longer used as the programs have been supplanted by the South Dakota Works 2.0 SSBCI supported loan program. Thus, to put these monies to work as intended, the GOED Loan Committee, chaired by GOED Commissioner Fiala, has elected to donate these monies to the REDI Fund where they are deployable under the oversight and authority of the Board of Economic Development.

South Dakota Codified Law 1-16G-7. **Acceptance and expenditure of other funds by Board of Economic Development.**, states:

The Board of Economic Development may accept and expend for the purpose of §§ [1-16G-3](#) to [1-16G-11](#), inclusive, in addition to the amounts deposited in the revolving economic development and initiative fund, any funds obtained from federal sources, gifts, contributions, or any other source if such acceptance and expenditure is approved in accordance with § [4-8B-10](#).

Source: SL 1987, ch 98, § 16; SDCL [1-42-30](#).

Request:

Pursuant to South Dakota Codified Law 1-16G-7, Staff requests the Board accept the gift of:

- a. \$2,864,868.00 or the entire remaining cash balance residing in the MicroLOAN program which the GOED Loan Committee approved donating to the REDI Fund on March 25, 2025.
- b. \$4,300,000.00 or the entire remaining cash balance residing in the GOED – Other program which the GOED Loan Committee approved donating to the REDI Fund on March 25, 2025.

SDCL [1-16G-3](#). **Revolving economic development and initiative fund--Purpose.**, establishes that:

There is established in the state treasury a special revenue fund to be known as the revolving economic development and initiative fund for the purpose of making grants and loans for economic development.

Pursuant to SDCL 1-16G-3, Staff requests the Board's consideration and acceptance of the gift of these monies from which to make grants and loans in furtherance of economic development in South Dakota.

Recommendation:

Staff recommends the Board accept the \$7,164,868 that the GOED Loan Committee gifts to the REDI Fund for the purpose of making grants and loans for economic development from.

Attachments:

- a. GOED Loan Committee Meeting Minutes of March 25, 2025

**GOED Loan Committee
GOED Conference Room
Via Teleconference
711 E Wells Ave, Pierre, SD
Tuesday, March 25, 2025, 10:00 a.m. CT**

Members Present

Chairman Commissioner Joe Fiala, Deputy Commissioner Jesse Fonkert, Ann Gesick-Johnson, Adam Molseed, Lexie Warejcka, and Jack Valentine

Staff Present

Bradi Stampe

MicroLOAN

A motion was made by Jack Valentine and seconded by Adam Molseed to approve donating \$2,864,868.00 from the MicroLOAN program to the REDI Fund.

Motion passed unanimously by a voice vote of all present.

GOED - Other

A motion was made by Jack Valentine and seconded by Adam Molseed to approve donating \$4,300,000.00 from the GOED – Other program to the REDI Fund.

Motion passed unanimously by a voice vote of all present.

E

SOUTH DAKOTA

GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT

Memorandum

Date: April 9, 2025
To: Board of Economic Development Credit Committee
From: Jack Valentine, GOED Finance & Fiscal Director
RE: REDI Rules Promulgation

In an ongoing and current review of GOED and BED processes and policies, with the assistance of GOED/BED legal counsel, Staff observed there to be several instances where Administrative Rules of South Dakota require updates.

Request:

Staff requests the Board contemplate the rules and enter the promulgation of rules pursuant to South Dakota Codified Law ("SDCL") Chapter 26 as it regards SDCL 1-16G-5. –Rules --, which states in part,

“The Board of Economic Development may promulgate rules pursuant to chapter [1-26](#)”

Existing rules and proposed changes are reflected in the attachments for the Board’s consideration.

Recommendation:

Staff recommends entering the rulemaking procedures allowed by SDCL for the Board’s promulgation of rules in Chapter 68:02 of Administrative Rules South Dakota.

Attachments:

- a. ARSD Chapter 68:02 (with proposed revisions)

ARTICLE 68:02

BOARD OF ECONOMIC DEVELOPMENT

Chapter

<u>68:02:01</u>	REDI loans.
<u>68:02:02</u>	Value-added agriculture subfund.
<u>68:02:03</u>	Tourism enhancement program, Repealed.
<u>68:02:04</u>	Value-added tourism subfund, Repealed.
<u>68:02:05</u>	Capital investment entity loans, Repealed.
<u>68:02:06</u>	Entrepreneur support program, Repealed.
<u>68:02:07</u>	Reinvestment payment program.
<u>68:02:08</u>	Economic development partnership program.
<u>68:02:09</u>	Local infrastructure improvement program.
<u>68:02:10</u>	South Dakota jobs grant program.

CHAPTER 68:02:01

REDI LOANS

Section

[68:02:01:01](#) to 68:02:01:32 Repealed.

[68:02:01:33](#) Definitions.

[68:02:01:34](#) Eligibility requirements.

[68:02:01:35](#) Application requirements -- Screening.

[68:02:01:36](#) Loan amounts.

[68:02:01:37](#) Equity contribution.

[68:02:01:38](#) Use of loan proceeds.

[68:02:01:39](#) REDI loan as take-out financing.

[68:02:01:40](#) Factors for board action.

[68:02:01:41](#) Board action on applications.

[68:02:01:42](#) Acceptance and time restrictions of applicant.

[68:02:01:43](#) Review of financial status.

[68:02:01:44](#) Loan agreement -- Employment agreement -- Security.

[68:02:01:45](#) Borrower reporting requirements.

[68:02:01:46](#) Inspection by the board and retention of records.

[68:02:01:47](#) Additional notification requirements.

[68:02:01:48](#) Maturity and interest rate.

[68:02:01:49](#) Default.

[68:02:01:50](#) Delegation of administrative functions.

<u>68:02:01:51</u>	Official forms.
<u>68:02:01:52</u>	Conflicts of interest.
<u>68:02:01:53</u>	Confidentiality.
<u>68:02:01:54</u>	Repealed.
<u>68:02:01:55</u>	Banking Commission examination.
<u>68:02:01:56</u>	Credit committee -- Other committees.

68:02:01:01. Definitions. Repealed.

Source: 14 SDR 24, effective August 19, 1987; 21 SDR 44, effective July 4, 1994; 30 SDR 99, effective December 15, 2003; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:02. Eligibility requirements. Repealed.

Source: 14 SDR 24, effective August 19, 1987; 25 SDR 59, effective October 28, 1998; 30 SDR 99, effective December 15, 2003; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:03. Preapplication conference. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:04. Application requirements. Repealed.

Source: 14 SDR 24, effective August 19, 1987; 21 SDR 44, effective July 4, 1994; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:05. Loan amounts. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:06. Equity contribution. Repealed.

Source: 14 SDR 24, effective August 19, 1987; 21 SDR 44, effective July 4, 1994; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:07. Permissible uses of loan proceeds. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:08. Impermissible uses of loan proceeds. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:09. Interim financing. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:10. Factors for board action. Repealed.

Source: 14 SDR 24, effective August 19, 1987; 21 SDR 44, effective July 4, 1994; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:11. Board action on applications. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:12. Acceptance and time restrictions of applicant. Repealed.

Source: 14 SDR 24, effective August 19, 1987; 21 SDR 44, effective July 4, 1994; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:13. Lender agreement. Repealed.

Source: 14 SDR 24, effective August 19, 1987; 21 SDR 44, effective July 4, 1994; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:14. Regulated lender reporting requirements. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:15. Loan agreement. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:16. Borrower reporting requirements. Repealed.

Source: 14 SDR 24, effective August 19, 1987; 21 SDR 44, effective July 4, 1994; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:17. Inspection of the business by the board and retention of records. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:18. Additional notification requirements. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:19. Maturity and interest rate. Repealed.

Source: 14 SDR 24, effective August 19, 1987; 21 SDR 44, effective July 4, 1994; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:20. Review of financial status. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:21. Default on loan agreement. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:22. Enterprise zones. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:23. Delegation of administrative functions. Repealed.

Source: 14 SDR 24, effective August 19, 1987; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:24. Banking commission audit. Repealed.

Source: 21 SDR 44, effective July 4, 1994; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:25. Loans to RRLFs. Repealed.

Source: 30 SDR 99, effective December 15, 2003; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:26. RRLF application requirements. Repealed.

Source: 30 SDR 99, effective December 15, 2003; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:27. RRLF loan amount. Repealed.

Source: 30 SDR 99, effective December 15, 2003; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:28. RRLF loan maturity and interest rate. Repealed.

Source: 30 SDR 99, effective December 15, 2003; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:29. RRLF loan collateral. Repealed.

Source: 30 SDR 99, effective December 15, 2003; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:30. Impermissible uses of RRLF loan proceeds. Repealed.

Source: 30 SDR 99, effective December 15, 2003; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:31. RRLF borrower reporting requirements. Repealed.

Source: 30 SDR 99, effective December 15, 2003; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:32. Application of other rules to RRLF loans. Repealed.

Source: 30 SDR 99, effective December 15, 2003; repealed, 34 SDR 68, effective September 13, 2007.

68:02:01:33. Definitions. Terms used in this chapter mean:

(1) "Applicant," any natural person, for-profit entity, or non-profit entity that has completed a REDI fund loan application;

(2) "Board," the Board of Economic Development;

(3) "Borrower," an applicant who has been awarded a REDI fund loan;

(4) "Credit committee," a committee made up of members of the board appointed by the chair of the board with the powers described in § 68:02:01:56;

(5) "Equity," capital that has no guaranteed or mandatory return which must be invested in the project in any event and which has no definite timetable for repayment to the equity holder;

(6) "GOED," the Governor's Office of Economic Development;

(7) "Multifamily housing," housing containing two or more dwelling units, including in an apartment building, duplex, triplex, quadriplex, or townhomes. The term includes housing intended for lease or purchase by the occupant;

(8) "Preliminary design stage," that portion of the project associated with market research studies identifying the project scope and need, compilation of the business plan, written initial cost estimates, written site options and description, and obtaining the commitments of the lenders;

(9) "Primary jobs," jobs derived from businesses that bring new income into an area, stimulate other local businesses, or assist a community to diversify and stabilize its economy;

(10) "Project," except when the term is used in conjunction with multifamily housing, the new business; retention, relocation or expansion of an existing business; or other endeavor which will create or retain primary jobs. When the term is used in conjunction with multifamily housing, the term means new multifamily housing or the acquisition and refurbishment of existing multifamily housing;

(11) "REDI fund," the revolving economic development and initiative fund;

(12) "Total project costs," the direct costs associated with the purchase of land, necessary site development and improvements, construction or acquisition and remodeling of buildings and works necessary to the operation and protection of the project, purchase and installation of machinery and equipment, purchase or development of intellectual property rights, fees for services, approved in-kind contributions, adequate working capital financing, and any other cost approved by the board.

Source: 34 SDR 68, effective September 13, 2007; 39 SDR 16, effective August 6, 2012; 46 SDR 123, effective May 12, 2020.

General Authority: SDCL [1-16G-5](#), [1-16G-8](#).

Law Implemented: SDCL [1-16G-5](#), [1-16G-8](#).

68:02:01:34. Eligibility requirements. Any natural person or entity whose project will create or retain primary jobs is eligible to apply for a loan from the REDI fund. The creation or retention of primary jobs is not required for a project which consists solely of multifamily housing.

Source: 34 SDR 68, effective September 13, 2007; 46 SDR 123, effective May 12, 2020.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(6\)](#).

Law Implemented: SDCL [1-16G-5](#), [1-16G-8\(6\)](#).

68:02:01:35. Application requirements -- Screening. Application forms shall be provided by GOED and shall be completed and signed before an application is presented to the board. GOED shall screen all applications for completeness and eligibility upon receipt. No incomplete or ineligible applications may be presented to the board. Applications shall include the following information:

- (1) Applicant's name and address;
- (2) Names, addresses, résumés, and references of owners, investors, and management of the business;
- (3) Articles of incorporation and bylaws or other agreements that describe the legal operation or structure of the business;
- (4) Name and address of the owner or operator of the business during the term of the loan;
- (5) A business plan which contains, as applicable, information regarding the housing, products, or services to be offered by the applicant; job descriptions with attendant salary or wage information by job category; employee benefit package; educational requirements by job category; and methods of accounting, financing, marketing, sales, merchandising, and other disciplines proposed to be used for business growth and expansion;
- (6) Letters of commitment from all funding sources;
- (7) Up to three years of historical balance sheets, cash flow statements, and income statements or federal tax returns;
- (8) Pro forma balance sheets, cash flow statements, and income statements for the greater of three years or the term of the loan;
- (9) A statement of licensing requirements;

(10) A statement that addresses the effect of the business on the tax base of the area of the project and other positive and negative effects of the project on the area;

(11) Assurance of compliance with local zoning laws and building codes and that the necessary public utilities are available or will be available when needed by the project;

(12) Approximate construction date, construction completion date, and the date by which the project will be fully operational;

(13) Documentation that the preliminary design stage has been completed; and

(14) Any other information as requested by the board in order to make a sound loan decision.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL 1-16G-5, 1-16G-8(7).

Law Implemented: SDCL 1-16G-5, 1-16G-8(7).

68:02:01:36. Loan amounts. Unless waived by the affirmative vote of two-thirds of the members of the board present and voting, a loan made pursuant to this chapter may not exceed the original principal amount of \$3,000,000. Unless waived by the affirmative vote of two-thirds of the members of the board present and voting, a loan made pursuant to this chapter may not exceed 45 percent of the total project cost.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(10\)](#).

Law Implemented: SDCL 1-16G-5, 1-16G-8(10).

68:02:01:37. Equity contribution. The applicant shall provide an equity contribution of a minimum of 10 percent of the total project costs as determined by the board. The requirement may be waived by the affirmative vote of two-thirds vote of the members of the board present and voting if the equity contribution is not necessary to secure the interests of the board. In-kind contributions and completed work may be applied toward the equity contribution and total project costs if, in the judgment of the board, such in-kind contributions and completed work contribute substantially to the project. Costs associated with the preliminary design stage may not be considered as equity contribution except for board-approved intellectual property and innovative technology research and development expenses. The applicant shall provide proof of the existence or availability of the equity contribution.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(10\)](#).
Law Implemented: SDCL 1-16G-5, 1-16G-8(10).

68:02:01:38. Use of loan proceeds. Loan proceeds may be used for any portion of the total project costs. Except as otherwise provided in this chapter, loan proceeds may not be used for costs associated with the preliminary design stage. Loan proceeds may not be used to finance or refinance the cost of the preliminary design stage. Except for the refinancing of third party interim loans incurred for the project, loan proceeds may not be used to pay existing debt.

Source: 34 SDR 68, effective September 13, 2007.
General Authority: SDCL 1-16G-5, 1-16G-8(9).
Law Implemented: SDCL 1-16G-5, 1-16G-8(9).

68:02:01:39. REDI loan as take-out financing. Unless otherwise specifically provided in the resolution or motion approving the loan, the applicant shall use the loan to pay off interim financing incurred for the project.

Source: 34 SDR 68, effective September 13, 2007.
General Authority: SDCL 1-16G-5, 1-16G-8(9).
Law Implemented: SDCL 1-16G-5, 1-16G-8(9).

68:02:01:40. Factors for board action. When making a decision on an application, the board may, in addition to other factors necessary to make a prudent loan decision, consider the following:

- (1) Project impact factors:
 - (a) Economic impact of primary jobs created or retained;
 - (b) Net economic effect of increasing or stabilizing the economy on the community, area, and state;
 - (c) Competitive effect on existing businesses;
 - (d) Support of the public entities of the community and area;
 - (e) The amount of the owner's equity contributed to the project;
 - (f) The effect of the project on the environment, health, and safety of the people in the community, area, and state;
 - (g) Compatibility with economic development plans of the area and state;
 - (h) Type of business;

- (i) Payroll, pay structure, and employee benefit structure;
- (j) Number of jobs created or retained; and
- (k) In the case of multifamily housing, the impact of the project on the availability of workforce within the project area;

(2) Business feasibility factors:

(a) The potential success of the business and the potential for creating quality jobs and the growth of those jobs;

(b) The character, experience, management record, and background of the applicant;

(c) The capacity of the applicant to repay the loan. In determining the capacity of the applicant, the board shall consider the following:

(i) The amount of the loan;

(ii) The economic feasibility of the project;

(iii) The ability of the applicant to service the debt from cash flow of operations, capital, or collateral;

(iv) The financial status of the project, business plan, and applicant;

(v) The satisfaction of engineering, legal, and environmental regulations; and

(vi) The availability of necessary public utilities;

(d) The total capitalization of the project, which includes all capitalization subordinated to the REDI fund;

(e) The amount, terms, and conditions of the loan and their compatibility with the needs of the business and the REDI fund; and

(f) The availability of sufficient collateral to secure the interests of the REDI fund.

Source: 34 SDR 68, effective September 13, 2007; 46 SDR 123, effective May 12, 2020.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(8\)](#).

Law Implemented: SDCL [1-16G-5](#), [1-16G-8\(8\)](#).

68:02:01:41. Board action on applications. Within 30 days after GOED receives a complete application, the board shall either approve the application as requested, disapprove the application for modification, approve the application contingent on the realization of certain defined conditions, or disapprove the application. If the application is disapproved or disapproved for modification, the reasons shall be transmitted to the applicant in writing. The applicant whose application has been disapproved may submit another application that addresses the reason for disapproval. The board may extend the time for consideration of an application for up to 50 additional days by advising the applicant of the extension in writing.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL 1-16G-5, 1-16G-8(7).

Law Implemented: SDCL 1-16G-5, 1-16G-8(7).

68:02:01:42. Acceptance and time restrictions of applicant. The applicant must comply with any conditions required by the board before the application is approved. Within six months after the official loan approval by the board, the applicant must accept the approval in writing or the approval is void. Within six months after written acceptance, the applicant must commence the project. All loan proceeds must be disbursed within one year after approval by the board. The board or credit committee may extend the time for completion of the project and the final disbursement of loan proceeds if mitigating circumstances prevent completion of the project and the applicant has made a diligent effort so to do. The applicant shall submit any request for extension by the monthly loan application deadline prior to the expiration of the six-month period for completion of the project. The board or credit committee may establish the length of the extension period based on the mitigating circumstances.

Source: 34 SDR 68, effective September 13, 2007; 39 SDR 16, effective August 6, 2012.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)\(10\)](#).

Law Implemented: SDCL [1-16G-5](#), [1-16G-8\(7\)\(10\)](#).

68:02:01:43. Review of financial status. After the loan is approved but before the loan is closed, the board or GOED may conduct an overall review of the applicant's financial status. The review may include an analysis of all assets and liabilities and an analysis of the applicant's ability to repay the loan and comply with the loan covenants. The board may withdraw the commitment at any time if a material adverse change occurs.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)\(10\)](#).

Law Implemented: SDCL [1-16G-5](#), [1-16G-8\(7\)\(10\)](#).

68:02:01:44. Loan agreement -- Employment agreement -- Security. After the application for a loan is approved, the board and the borrower shall execute a loan agreement, employment agreement, and any other loan documents required by the board. The loan agreement shall contain the rights and responsibilities of the parties and the terms and conditions of the loan. The requirements to secure the loan shall be included in the loan agreement. The employment agreement shall establish the number of primary jobs to be created or retained and the damages payable by the borrower if those jobs are not created or retained. No employment agreement is required for a project consisting solely of multifamily housing.

A loan may be secured or unsecured. A secured loan may be secured by a lien on the interest of the borrower in real and personal property, whether tangible or intangible, as deemed necessary by the board to adequately collateralize the loan.

Source: 34 SDR 68, effective September 13, 2007; 46 SDR 123, effective May 12, 2020.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(10\)](#).

Law Implemented: SDCL [1-16G-5](#), [1-16G-8\(10\)](#).

68:02:01:45. Borrower reporting requirements. The borrower shall submit to the board annually the following information:

- (1) Employment report;
 - (2) Federal tax returns or periodic financial statements, or both, as requested by the board;
- and
- (3) Other information which the board or GOED deems necessary to determine the financial condition of the borrower and conformance to loan covenants.

The board may require that the financial statements be compiled, reviewed, or audited by an independent accountant at the borrower's expense.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL 1-16G-5, 1-16G-8(5).

Law Implemented: SDCL 1-16G-5, 1-16G-8(5).

68:02:01:46. Inspection by the board and retention of records. During the term of the loan, the board or GOED may inspect construction; inspect the borrower's operations, books, and records; and request the borrower to provide accounting records, payments, and invoices to ensure compliance with the terms of the loan agreement and the borrower's ongoing ability to repay the loan. The borrower shall retain accounting and tax records for the term of the loan or for a period of three years, whichever is longer.

The board may contract for project monitoring and servicing during the planning, construction, and operation of the project and the borrower's business.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL 1-16G-5, 1-16G-8(5).

Law Implemented: SDCL 1-16G-5, 1-16G-8(5).

68:02:01:47. Additional notification requirements. The borrower shall provide the board with written notice within 10 business days of any changes in top level management of the borrower's business; any changes in ownership of 10 percent or more of the business's stock, membership interests, or ownership interests; or of any plans for sale, public offering, or lease of the business. Any sale, public offering, or lease of the business requires the prior written approval of the board. If the notification and prior approval requirements of this section are not satisfied, the board may call the loan immediately due and payable.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL 1-16G-5, 1-16G-8(5).

Law Implemented: SDCL 1-16G-5, 1-16G-8(5).

68:02:01:48. Maturity and interest rate. Except in the case of a project consisting solely of multifamily housing, the maturity of the loan may not be more than five years from the date of loan closing, with payments amortized over not more than 20 years. Upon the affirmative vote of two-thirds of the members of the board present and voting, the board may at the time the loan is approved establish a longer maturity for the loan, but in no event may the original maturity date be more than 10 years from the date of loan closing. In the case of a project consisting solely of multifamily housing, the maturity of the loan may not be more than 30 years from the date of loan closing, with payments amortized over not more than 30 years.

The standard interest rate for REDI loans shall be established by the board from time-to-time and published on the GOED website. The board may deviate from the standard interest rate based on the economic impact of the project, nature and extent of collateral, risk, the amortization period of the loan, and other prudent lending criteria.

The board shall consider the following when establishing the standard interest rate:

- (1) State and national market interest rates;
- (2) State and national economic conditions;
- (3) The solvency and balance of the REDI fund; and
- (4) Other economic or business information necessary to fulfill the board mission to promote economic development in South Dakota.

The borrower is responsible for arranging other financing when the loan is due. If the borrower is unable to obtain financing at reasonable rates and upon reasonable terms, the borrower may apply before the loan due date for extension of the loan by the board at an interest rate and time period established by the board. The borrower shall submit any application for extension by the monthly loan application deadline prior to the loan maturity date.

Source: 34 SDR 68, effective September 13, 2007; 39 SDR 16, effective August 6, 2012; 46 SDR 123, effective May 12, 2020.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)\(10\)](#).
Law Implemented: SDCL [1-16G-5](#), [1-16G-8\(7\)\(10\)](#).

68:02:01:49. Default. If the borrower violates any of the terms of the loan agreement, the other loan documents, this chapter, or other applicable law, the board may declare the loan in default. Upon default, the board may do one or more of the following:

- (1) Declare the entire principal amount then outstanding and interest accrued thereon immediately due and payable
- (2) Increase the interest rate to the default rate established in the loan documents;
- (3) Take possession of the collateral;
- (4) Repair, maintain, and operate the collateral, or sell, lease, or otherwise dispose of the collateral to another person or entity; or
- (5) Take any other action considered appropriate by the board to protect the interest of the board and the REDI fund.

Source: 34 SDR 68, effective September 13, 2007.
General Authority: SDCL [1-16G-5](#), [1-16G-8\(10\)](#).
Law Implemented: SDCL [1-16G-1.1\(6\)](#), [1-16G-5](#), [1-16G-8\(10\)](#).

68:02:01:50. Delegation of administrative functions. The GOED shall perform the administrative functions of the creation, processing, and review of loan applications; the preparation and negotiation of loan agreements; the review of the financial status of an applicant; loan servicing; and other functions necessary to expedite and assist it in the performance of its duties. Notwithstanding any assurance, guarantee, communication, or representation made to the contrary, there is no commitment of the REDI fund without specific authorization by the board. Only the board may make an award from the REDI fund to an applicant.

Source: 34 SDR 68, effective September 13, 2007.
General Authority: SDCL [1-16G-5](#), [1-16G-8\(5\)\(7\)](#).
Law Implemented: SDCL [1-16G-5](#), [1-53-3](#), [1-53-4](#), [1-53-5](#).

68:02:01:51. Official forms. The board may from time-to-time establish official forms of loan documents, including a loan agreement, promissory note, mortgage, security agreement, employment agreement, and such other documents, certifications, and agreements as the board deems necessary and appropriate. GOED may consent on behalf of the board on a case-by-case basis to any non-substantive modification or to any modification necessary to conform the official forms to the terms of the loan as established by the board.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(10\)](#).

Law Implemented: SDCL 1-16G-5, 1-16G-8(10).

68:02:01:52. Conflicts of interest. No member of the board or GOED staff may participate in or vote upon a decision of the board relating to an application or loan servicing action relating to a borrower in which that individual has a direct personal or financial interest.

Source: 34 SDR 68, effective September 13, 2007.

General Authority: SDCL 1-16G-5, 1-16G-8(7).

Law Implemented: SDCL 1-16G-5, 1-16G-8(7).

68:02:01:53. Confidentiality. The board, any committee of the board, and the GOED shall, to the extent it constitutes or contains trade secrets or commercial or financial information relating to the operation of an applicant or borrower, maintain as confidential any document, materials, information, or data received or generated by the board, any committee of the board, or the GOED in connection with a proposed or pending application for a REDI loan or an existing REDI loan. If requested by the applicant, the fact that an application has been proposed or is pending shall be maintained as confidential until such time as the application is considered by the board for approval. Any meeting of the credit committee shall be conducted in accordance with SDCL chapter [1-25](#) and SDCL 1-16G-11.

Source: 34 SDR 68, effective September 13, 2007; 39 SDR 16, effective August 6, 2012.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)](#).

Law Implemented: SDCL [1-16G-5](#), [1-16G-11](#).

68:02:01:54. Pre-existing loans. Repealed.

Source: 34 SDR 68, effective September 13, 2007; 46 SDR 123, effective May 12, 2020.

68:02:01:55. Banking Commission examination. The board shall request the South Dakota Banking Commission to make an annual examination of the board's lending policies and procedures and the documentation and classification of loans in the REDI fund loan portfolio and all other loans administered by the board.

Source: 34 SDR 68, effective September 13, 2007; 39 SDR 16, effective August 6, 2012.

General Authority: SDCL [1-16G-5](#).

Law Implemented: SDCL [1-16G-5](#).

68:02:01:56. Credit committee -- Other committees. The chair shall appoint and may remove the members of the credit committee. The credit committee has the powers and duties described in this chapter and such other powers and duties as the board may delegate to it.

The board may establish other standing or ad hoc committees as the board deems appropriate. The chair shall appoint and may remove the members of committees established by the board.

Source: 39 SDR 16, effective August 6, 2012.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)](#).

Law Implemented: SDCL [1-16G-5](#).

CHAPTER 68:02:03

TOURISM ENHANCEMENT PROGRAM

(Repealed, 39 SDR 16, effective August 6, 2012)

CHAPTER 68:02:04

VALUE-ADDED TOURISM SUBFUND

(Repealed. 34 SDR 68, effective September 13, 2007)

CHAPTER 68:02:05

CAPITAL INVESTMENT ENTITY LOANS

(Repealed. 34 SDR 68, effective September 13, 2007)

CHAPTER 68:02:06

ENTREPRENEUR SUPPORT PROGRAM

(Repealed. 34 SDR 68, effective September 13, 2007)

CHAPTER 68:02:07

REINVESTMENT PAYMENT PROGRAM

Section

[68:02:07:01](#)

Definitions.

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68:02:07:03	Reinvestment payment.
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68:02:07:16	Conflicts of interest.

68:02:07:01. Definitions. Terms defined in SDCL [1-16G-56](#) have the same meaning in this chapter. In addition, terms used in this chapter mean:

(1) "Applicant," any person that has completed an application for a reinvestment payment from the reinvestment payment fund;

(2) "Reinvestment payment," a payment disbursed from the reinvestment payment fund in accordance with this chapter;

(3) "Reinvestment payment fund," a fund established in the state treasury for the purpose of making reinvestment payments pursuant to SDCL [1-16G-64](#).

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8](#), [1-16G-56](#), [1-16G-67](#).

68:02:07:02. Eligibility. If the project costs for a new and expanded facility exceed the amounts specified in SDCL [1-16G-57](#), a person may apply for a reinvestment payment pursuant to this chapter. The person shall:

- (1) Timely file an application with GOED as required by SDCL [1-16G-58](#);
- (2) Request the board take action to approve or deny its application for reinvestment payment pursuant to § 68:02:07:05;
- (3) Accept the board's approval and receive a permit from GOED pursuant to § 68:02:07:06;
- (4) Timely file an affidavit for reinvestment payment with GOED as required by § 68:02:07:10; and
- (5) Otherwise comply with the conditions, restrictions, and limitations imposed by this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(6\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(6\)](#), [1-16G-57](#), [1-16G-67](#).

68:02:07:03. Reinvestment payment. The board may approve a reinvestment payment pursuant to SDCL [1-16G-59](#) as it deems appropriate based on the criteria set forth in this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(9\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(9\)](#), [1-16G-67](#).

68:02:07:04. Criteria. When making a decision on an application, the board shall, in addition to the factors required by SDCL [1-16G-59](#), consider the following:

- (1) Economic impact of primary jobs created or retained by the project;
- (2) Net economic effects of increasing or stabilizing the economy on the community, area, and state;
- (3) Competitive effect of the project on existing businesses;

- (4) The effect of the project on the environment, health, and safety of the people in the community, area, and state;
- (5) Compatibility of the project with economic development plans of the area and state;
- (6) Type of project;
- (7) Infrastructure needed to support the project;
- (8) Impact of the project on the property tax base;
- (9) Projected payroll, pay structure, and employee benefit structure;
- (10) Number of jobs created or retained by the project;
- (11) The potential success of the project and the potential for creating quality jobs and the growth of those jobs; and
- (12) The character, experience, management record, and background of the applicant.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(8\)](#), [1-16G-59](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(8\)](#), [1-16G-59](#), [1-16G-67](#).

68:02:07:05. Board action on application. After GOED has received the completed application, the applicant may make a written request to GOED for the board to take action on the application. If requested by the applicant, the fact that an application has been proposed or is pending must be maintained as confidential until such time as the applicant makes a written request for the board to take action on the application. At the next regular meeting that is more than 15 days after the request to take action or within 60 days of the request, whichever is sooner, the board shall approve the application as requested, approve the application contingent on the realization of certain defined conditions, or disapprove the application. If the application is disapproved, the reasons shall be transmitted to the applicant in writing. An applicant whose application has been disapproved may submit another application that addresses the reason for disapproval. The board may extend the time for consideration of an application for up to 50 additional days by advising the applicant of the extension in writing. No action may be taken by the board on any application submitted to GOED until requested in writing by the applicant. Any official action on the application shall be taken in open session.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(7\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(7\)](#), [1-16G-57](#), [1-16G-67](#).

68:02:07:06. Acceptance and permit. Within 90 days of board approval of the application, the applicant shall accept the approval in writing or the approval is void. At the time of acceptance, the applicant shall either show it has complied with any conditional requirements imposed by the board, or agree in writing to comply with any such conditions prior to issuance of the reinvestment payment. Within 30 days after written acceptance is received, GOED shall issue a permit entitling

the applicant to submit an affidavit for reinvestment payment. If an application for modification is approved by the board after GOED has issued a permit to the applicant, GOED shall issue a modified permit consistent with the approved application for modification.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(7\)\(11\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(7\)\(11\)](#), [1-16G-60](#), [1-16G-67](#).

68:02:07:07. Conditions of reinvestment payment. At the time the board takes action on an application, the board may impose requirements relating to employment, including the number of jobs created and the wages and benefits paid. The board may also place conditions upon the board's approval to ensure the project as completed is substantially similar to the project described in the application and that the capital expenditures made in connection with the project are substantially similar to those described in the application. The applicant shall notify the GOED in writing within 30 days of the construction date to indicate the project has commenced.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(11\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(11\)](#), [1-16G-67](#).

68:02:07:08. Application for modification. If after receiving board approval of its application, a material change occurs in the information contained in the approved application, the applicant may apply to modify its approved application. The board may approve the application for modification as requested, disapprove the application for modification, approve the application for modification contingent on the realization of certain defined conditions, or disapprove the application for modification. If the application for modification is disapproved, the reasons shall be transmitted to the applicant in writing. An applicant whose application for modification has been disapproved may submit another application for modification that addresses the reason for disapproval.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(7\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(7\)](#), [1-16G-67](#).

68:02:07:09. Time restrictions on applicant. The construction date must be no later than six months after receiving a permit from GOED, however, the board may extend the time for the construction date at the time the board approves the application if the request has been made in

writing by the applicant, or at a later date if mitigating circumstances prevent the applicant from meeting the construction date deadline and the applicant has made diligent effort to meet the construction date deadline established pursuant to this section.

Any request for extension of the time to complete the project pursuant to SDCL [1-16G-62](#) must state the grounds for the requested extension and must be received by GOED within two years and nine months from the date of construction.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(7\)\(11\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(7\)\(11\)](#), [1-16G-62](#), [1-16G-67](#).

68:02:07:10. Affidavit for reinvestment payment. The affidavit required by SDCL [1-16G-61](#) shall be made in the form prescribed by the commissioner and shall include a statement that the project, as completed, substantially conforms to the project described in the original application or as modified pursuant to § 68:02:07:08. The affidavit shall be filed within the time allowed pursuant to SDCL 1-16G-62.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(7\)\(11\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(7\)\(11\)](#), [1-16G-61](#), [1-16G-67](#).

68:02:07:11. Payment. Within 90 days of receiving the completed affidavit for reinvestment payment and a determination by GOED that all terms and conditions imposed pursuant to this chapter have been met, GOED shall tender the reinvestment payment to the project owner or the project owner's assignee. If the project owner or assignee has granted a security interest in the expectation of receipt of the reinvestment payment, payment shall be made jointly-payable to the project owner or assignee and the holder of the security interest.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(9\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(9\)](#), [1-16G-63](#), [1-16G-67](#).

68:02:07:12. Delegation of administrative functions. The GOED shall perform the administrative functions of the creation, processing, and review of reinvestment payment applications; the creation, processing, and review of documentation necessary to evidence compliance with the terms and conditions of the reinvestment payment and the requirements of

this chapter; disbursement of reimbursement payments in accordance with conditions imposed pursuant to this chapter; and other tasks necessary to expedite and assist the board in the board's duties. Notwithstanding any assurance, guarantee, communication, or representation made to the contrary, there is no commitment of the reinvestment payment fund without specific authorization by the board. Only the board may approve a reinvestment payment from the reinvestment payment fund.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(5\)\(7\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(5\)\(7\)](#), [1-16G-67](#).

68:02:07:13. Access and reporting. An applicant shall grant GOED reasonable access to the project and to applicant's records, and provide such information, documentation and reports as GOED may require, for the purpose of determining compliance with the conditions of the reinvestment payment and of this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(5\)\(11\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(5\)\(11\)](#), [1-16G-61](#), [1-16G-67](#).

68:02:07:14. Default. Any of the following constitutes a default upon the condition of a reinvestment payment:

(1) If the person filing the affidavit for reinvestment payment knowingly makes any material false statement or report in the affidavit for reinvestment payment;

(2) Failure to adhere to the conditions of the reinvestment payment;

(3) Repeated failure by the applicant to provide access to the project or related documents or to provide the reports and other information required by this chapter; or

(4) Failure of the applicant to remain current on its tax obligations to the State of South Dakota. However, for the purposes of this section, the applicant is not deemed delinquent on its tax obligations to the State of South Dakota if the applicant is currently disputing its tax obligation in accordance with the appeal procedures provided by law.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(9\)\(11\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(9\)\(11\)](#), [1-16G-67](#).

68:02:07:15. Remedies. If there is a default pursuant to § 68:02:07:14 as determined by the board, within thirty days of written demand from the board, the project owner shall repay to GOED the reinvestment payment disbursed to the project owner. In addition to any other action considered appropriate by the board to protect the interest of the board and the reinvestment payment fund, the board may retain counsel and commence a civil action to recover any reinvestment payment proceeds that the project owner is required to repay.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-67](#).

Law Implemented: SDCL [1-16G-1.1\(5\)\(7\)](#), [1-16G-67](#).

68:02:07:16. Conflicts of interest. No member of the board or the GOED staff may participate in or vote upon a decision of the board concerning an application relating to a project in which that member has a direct personal or financial interest.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(7\)](#), [1-16G-67](#).

Law Implemented: SDCL [1-16G-8\(7\)](#), [1-16G-67](#).

CHAPTER 68:02:08

ECONOMIC DEVELOPMENT PARTNERSHIP PROGRAM

Section

- [68:02:08:01](#) Definitions.
- [68:02:08:02](#) Eligibility and permitted uses.
- [68:02:08:03](#) Application.
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68:02:08:05	Economic development partnership grant award.
68:02:08:06	Criteria.
68:02:08:07	Conditions of economic development partnership grant.
68:02:08:08	Payment.
68:02:08:09	Delegation of administrative functions.
68:02:08:10	Access and reporting.
68:02:08:11	Default.
68:02:08:12	Remedies.
68:02:08:13	Conflicts of interest.

68:02:08:01. Definitions. Terms used in this chapter mean:

(1) "Applicant," any nonprofit development corporation, tribal government, or any municipality, county, or other political subdivision of this state that has completed an application for an economic development partnership grant from the economic development partnership fund;

(2) "Board," the Board of Economic Development;

(3) "Commissioner," the commissioner of the Governor's Office of Economic Development;

(4) "GOED," the Governor's Office of Economic Development;

(5) "Economic development partnership grant," a grant disbursed from the economic development partnership fund in accordance with this chapter;

(6) "Economic development partnership fund," a fund established in the state treasury for the purpose of making grants in accordance with this chapter.

Source: 39 SDR 221, effective July 1, 2013; 42 SDR 57, effective October 26, 2015.

General Authority: SDCL [1-16G-8](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8](#), [1-16G-51](#), [1-16G-55](#).

68:02:08:02. Eligibility and permitted uses. Any nonprofit development corporation, tribal government, or any municipality, county, or other political subdivision of this state may apply for an economic development partnership grant pursuant to this chapter. Economic development partnership grants are awarded on a matching basis as determined by the board. Grant funds may be utilized for the purposes set forth in SDCL [1-16G-52](#). The applicant shall timely file an application with GOED as required by §§ 68:02:08:03 and 68:02:08:04 and otherwise comply with the requirements, conditions, restrictions, and limitations imposed by this chapter.

Source: 39 SDR 221, effective July 1, 2013; 42 SDR 57, effective October 26, 2015.

General Authority: SDCL [1-16G-8\(6\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(6\)](#), [1-16G-51](#), [1-16G-52](#), [1-16G-53](#), [1-16G-55](#).

68:02:08:03. Application. Each application shall be made on the form prescribed by the commissioner, be signed by a duly authorized representative of the applicant, and submitted to GOED. The application shall be executed under penalties of perjury.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(7\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(7\)](#), [1-16G-55](#).

68:02:08:04. Application periods. The board shall consider applications on a quarterly basis. Any application received by July 31st shall be considered by the board at the board's September meeting; any application received by October 31st shall be considered by the board at the board's December meeting; any application received by January 31st shall be considered by the board at the board's March meeting; and any application received by April 30th shall be considered by the board at the board's June meeting. If the board does not meet in any of the months designated by this section, the board shall consider any application at its next scheduled meeting.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(7\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(7\)](#), [1-16G-55](#).

68:02:08:05. Economic development partnership grant award. The board may award an economic development partnership grant as it deems appropriate based on the criteria set forth in this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(8\)\(9\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(8\)\(9\)](#), [1-16G-51](#), [1-16G-55](#).

68:02:08:06. Criteria. When making a decision on an application, the board shall consider the character, experience, management record, and background of the applicant and the likelihood the grant award will result in:

- (1) High quality employment opportunities;
- (2) Repopulation;
- (3) Stronger economies;
- (4) Housing development;
- (5) Business growth;
- (6) Support for entrepreneurship; or
- (7) Job creation, expansion, and retention.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(8\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(8\)](#), [1-16G-52](#), [1-16G-55](#).

68:02:08:07. Conditions of economic development partnership grant. The board may place conditions on any economic development partnership grant issued under this chapter in order to ensure substantial conformity with the representations contained in the application and the criteria described in § 68:02:08:06 under which the grant was awarded.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(11\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(11\)](#), [1-16G-55](#).

68:02:08:08. Payment. GOED shall tender payment of any economic development partnership grant awarded under this chapter within 30 days of the applicant providing the documentation required by GOED to establish it has complied with the terms and conditions imposed pursuant to this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(9\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(9\)](#), [1-16G-51](#), [1-16G-55](#).

68:02:08:09. Delegation of administrative functions. The GOED shall perform the administrative functions of the creation, processing, and review of economic development partnership applications; the creation, processing, and review of documentation necessary to evidence compliance with the terms and conditions of the economic development partnership grant and the requirements of this chapter; disbursement of economic development partnership grants in accordance with conditions imposed pursuant to this chapter; and other tasks necessary to expedite and assist the board in the board's duties. Notwithstanding any assurance, guarantee, communication, or representation made to the contrary, there is no commitment of the economic development partnership fund without specific authorization by the board. Only the board may approve an economic development partnership grant from the economic development partnership fund.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(5\)\(7\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(5\)\(7\)](#), [1-16G-51](#), [1-16G-55](#).

68:02:08:10. Access and reporting. An applicant shall grant GOED reasonable access to the applicant's records, and provide such information, documentation and reports as GOED may require, for the purpose of determining compliance with the conditions of the economic development partnership grant and of this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(5\)\(11\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(5\)\(11\)](#), [1-16G-51](#), [1-16G-55](#).

68:02:08:11. Default. Any of the following constitutes a default upon the conditions of an economic development partnership grant:

- (1) If the applicant knowingly makes any material false statement or report in the application;
- (2) Failure to secure the required matching funds for the economic development partnership grant;
- (3) Failure to adhere to the conditions of the economic development partnership grant; or
- (4) Repeated failure by the applicant to provide access to documents or to provide the reports and other information required by this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(9\)\(11\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(9\)\(11\)](#), [1-16G-51](#), [1-16G-55](#).

68:02:08:12. Remedies. If there is a default pursuant to § 68:02:08:11 as determined by the board, within thirty days of written demand from the board, the applicant shall repay to GOED the economic development partnership grant disbursed to the applicant. In addition to any other action considered appropriate by the board to protect the interest of the board and the economic development partnership fund, the board may retain counsel and commence a civil action to recover any economic development partnership grant proceeds that the applicant is required to repay.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(11\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-1.1\(5\)\(7\)](#), [1-16G-8\(11\)](#), [1-16G-51](#), [1-16G-55](#).

68:02:08:13. Conflicts of interest. No member of the board or the GOED staff may participate in or vote upon a decision of the board concerning an application in which that member has a direct personal or financial interest.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8\(7\)](#), [1-16G-55](#).

Law Implemented: SDCL [1-16G-8\(7\)](#), [1-16G-55](#).

CHAPTER 68:02:10

SOUTH DAKOTA JOBS GRANT PROGRAM

Section

[68:02:10:01](#) Definitions.

<u>68:02:10:02</u>	Eligibility.
<u>68:02:10:03</u>	Application
<u>68:02:10:04</u>	South Dakota Jobs grant.
<u>68:02:10:05</u>	Criteria.
<u>68:02:10:06</u>	Board action on application.
<u>68:02:10:07</u>	Acceptance.
<u>68:02:10:08</u>	Conditions of South Dakota Jobs grant.
<u>68:02:10:09</u>	Application for modification.
<u>68:02:10:10</u>	Time restrictions on applicant.
<u>68:02:10:11</u>	Affidavit for South Dakota Jobs grant.
<u>68:02:10:12</u>	Payment.
<u>68:02:10:13</u>	Delegation of administrative functions.
<u>68:02:10:14</u>	Access and reporting.
<u>68:02:10:15</u>	Default.
<u>68:02:10:16</u>	Remedies.
<u>68:02:10:17</u>	Conflicts of interest.

68:02:10:01. Definitions. Terms used in this chapter mean:

- (1) "Applicant," any person that has completed a REDI fund grant application;
- (2) "Board," the Board of Economic Development;
- (3) "Commissioner," the commissioner of the Governor's Office of Economic Development;

(4) "Completed the project" or "completion of the project," the first date when the project is operational;

(5) "Construction date," the first date earth is excavated or a contractor has initiated work for the purpose of constructing a new or expanded facility or the first date new equipment is located on the project site or existing equipment is removed from the project site for the purpose of equipment upgrades, whichever occurs first;

(6) "Equipment upgrades," the installation of new equipment or the replacement or improvement of existing equipment, which is subject to the sales use tax imposed by chapters 10-45 or 10-46 or contractor's excise tax imposed by SDCL chapter [10-46A](#) or 10-46B;

(7) "GOED," the Governor's Office of Economic Development;

(8) "New or expanded facility," a new building or structure, or the expansion, renovation, or retrofitting of an existing building or structure, which is subject to the contractor's excise tax imposed by SDCL chapter [10-46A](#) or 10-46B;

(9) "Person," any individual, firm, copartnership, joint venture, association, cooperative, nonprofit development corporation, limited liability company, limited liability partnership, corporation, estate, trust, business trust, receiver, or any group or combination acting as a unit;

(10) "Project," a new or expanded facility with a project cost which is less than twenty million dollars, or equipment upgrades with a project cost which is less than two million dollars. A project includes laboratory and testing facilities, manufacturing facilities, data centers, power generation facilities, power transmission facilities, agricultural processing facilities, wind energy facilities, and facilities defined by GOED as targeted industries. A project does not include a building or structure:

- (a) Used predominantly for the sale of products at retail, other than the sale of electricity at retail, to individual consumers;
- (b) Used predominantly for residential housing or transient lodging;
- (c) Used predominantly to provide health care services;
- (d) Used predominantly for the transportation or transmission of natural gas, oil, or crude oil by means of a pipeline; or
- (e) That is not subject to ad valorem real property taxation or equivalent taxes measured by gross receipts;

(11) "Project cost," the amount paid by the project owner in money, credits, property, or other consideration associated with a project, including without limitation, land, labor, material, furniture, equipment, fees, or fixtures;

(12) "REDI fund," the Revolving Economic Development and Initiative Fund created pursuant to SDCL [1-16G-3](#);

(13) "South Dakota Jobs subfund," that portion of the REDI fund funded pursuant to SDCL [1-16G-48\(5\)](#); and

(14) "South Dakota Jobs grant," a grant disbursed from the South Dakota Jobs subfund in accordance with this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-8](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8](#).

68:02:10:02. Eligibility. A person may apply for a South Dakota Jobs grant pursuant to this chapter for a project as defined in § 68:02:10:01(10). The person shall:

- (1) Timely file an application with GOED as required by § 68:02:10:03;
- (2) Request the board take action to approve or deny its application for South Dakota Jobs grant pursuant to § 68:02:10:06;
- (3) Accept the board's approval pursuant to § 68:02:10:07;
- (4) Timely file an affidavit for a South Dakota Jobs grant with GOED as required by § 68:02:10:11; and
- (5) Otherwise comply with the conditions, restrictions, and limitations imposed by this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(6\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(6\)](#).

68:02:10:03. Application. Any person commencing a project in South Dakota is eligible to apply for a South Dakota Jobs grant. Each application shall be made on the form prescribed by the commissioner, signed by the project owner, and submitted to GOED. The application must be submitted to GOED no later than ninety days after the construction date. The application shall be executed under penalties of perjury.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(7\)](#).

68:02:10:04. South Dakota Jobs grant. The board may approve South Dakota Jobs grant as it deems appropriate based on the criteria set forth in this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(9\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(9\)](#).

68:02:10:05. Criteria. When making a decision on an application, the board shall consider the following:

- (1) Likelihood the project would have occurred without the grant;
- (2) Economic impact of primary jobs created or retained by the project;
- (3) Net economic effects of increasing or stabilizing the economy on the community, area, and state;
- (4) Competitive effect of the project on existing businesses;
- (5) Support of the public entities of the community and area for the project;
- (6) The effect of the project on the environment, health, and safety of the people in the community, area, and state;
- (7) Compatibility of the project with economic development plans of the area and state;
- (8) Type of project;
- (9) Infrastructure needed to support the project;
- (10) Impact of the project on the property tax base;
- (11) Projected payroll, pay structure, and employee benefit structure;
- (12) Number of jobs created or retained by the project;
- (13) The potential success of the project and the potential for creating quality jobs and the growth of those jobs; and
- (14) The character, experience, management record, and background of the applicant.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(8\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(8\)](#).

68:02:10:06. Board action on application. After GOED has received the completed application, the applicant may make a written request to GOED for the board to take action on the application. If requested by the applicant, the fact that an application has been proposed or is pending shall be maintained as confidential until such time as the applicant makes a written request for the board to take action on the application. At the next regular meeting that is more than 15 days after the request to take action or within 60 days of the request, whichever is sooner, the board shall approve the application as requested, approve the application contingent on the realization of certain defined conditions, or disapprove the application. If the application is disapproved, the

reasons shall be transmitted to the applicant in writing. An applicant whose application has been disapproved may submit another application that addresses the reason for disapproval. The board may extend the time for consideration of an application for up to 50 additional days by advising the applicant of the extension in writing. No action may be taken by the board on any application submitted to GOED until requested in writing by the applicant. Any official action on the application shall be taken in open session.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(7\)](#).

68:02:10:07. Acceptance. Within 90 days of board approval of the application, the applicant must accept the approval in writing or the approval is void. At the time of acceptance, the applicant must either show it has complied with any requirements imposed by the board, or agree in writing to comply with any such conditions prior to payment of the South Dakota Jobs grant.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)\(11\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(7\)\(11\)](#).

68:02:10:08. Conditions of South Dakota Jobs grant. At the time it takes action on an application, the board may place conditions on any South Dakota Jobs grant approved under this chapter in order to ensure substantial conformity with the representations contained in the application and the criteria described in § 68:02:10:05 under which the grant was awarded.

The applicant shall notify the GOED in writing within 30 days of the construction date to indicate the project has commenced.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(11\)](#)

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(11\)](#).

68:02:10:09. Application for modification. If after receiving board approval of its application, a material change occurs in the information contained in the approved application, the applicant may apply to modify its approved application. The board may approve the application for modification as requested, disapprove the application for modification, approve the application

for modification contingent on the realization of certain defined conditions, or disapprove the application for modification. If the application for modification is disapproved, the reasons shall be transmitted to the applicant in writing. An applicant whose application for modification has been disapproved may submit another application for modification that addresses the reason for disapproval.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(7\)](#).

68:02:10:10. Time restrictions on applicant. The construction date must be no later than six months after receiving a permit from GOED, however, the board may extend the time for the construction date at the time the board approves the application if the request has been made in writing by the applicant, or at a later date if mitigating circumstances prevent the applicant from meeting the construction date deadline and the applicant has made diligent effort to meet the construction date deadline established pursuant to this section.

Unless an extension is granted at the sole discretion of the board, no project costs that occur after three years from the construction date may be included in the final project cost determination. Any request for extension of the time allowed pursuant to this chapter to complete the project must state the grounds for the requested extension and must be received by GOED within two years and nine months from the date of construction. In no event may project costs incurred more than four years from the date of construction be included in the final project cost determination.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)\(11\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(7\)\(11\)](#).

68:02:10:11. Affidavit for South Dakota Jobs grant. Within six months after the completion of the project, the applicant shall file an affidavit for a South Dakota Jobs grant with GOED. The affidavit for a South Dakota Jobs grant shall be on the form prescribed by the commissioner, shall include a statement that the project, as completed, substantially conforms to the project described in the original application or as modified pursuant to § 68:02:10:09, shall contain all other information required by the chapter, and be signed by the project owner. The affidavit for a South Dakota Jobs grant shall be executed under penalties of perjury.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)\(11\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(7\)\(11\)](#).

68:02:10:12. Payment. Within 90 days of receiving the completed affidavit for a South Dakota Jobs grant and a determination by GOED that all terms and conditions imposed pursuant to this chapter have been met, GOED shall tender the South Dakota Jobs grant to the project owner or the project owner's assignee. If the project owner or assignee has granted a security interest in the expectation of receipt of a South Dakota Jobs grant, payment shall be made jointly-payable to the project owner or assignee and the holder of the security interest. If GOED requests additional information or documentation from the project owner, the 90 day period shall begin to run from the date of receipt of the additional documents or information.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(9\)\(11\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(9\)\(11\)](#).

68:02:10:13. Delegation of administrative functions. The GOED shall perform the administrative functions of the creation, processing, and review of South Dakota Jobs grant applications; the creation, processing, and review of documentation necessary to evidence compliance with the terms and conditions of the South Dakota Jobs grant and the requirements of this chapter; disbursement of South Dakota Jobs grant and the requirements of this chapter; and other tasks necessary to expedite and assist the board in the board's duties. Notwithstanding any assurance, guarantee, communication, or representation made to the contrary, there is no commitment of the South Dakota Jobs subfund without specific authorization by the board. Only the board may approve a South Dakota Jobs grant from the South Dakota Jobs subfund.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(5\)\(7\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(5\)\(7\)](#).

68:02:10:14. Access and reporting. An applicant shall grant GOED reasonable access to the project and to applicant's records, and provide such information, documentation, and reports as GOED may require, for the purpose of determining compliance with the conditions of the reinvestment payment and of this chapter.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(5\)\(11\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(5\)\(11\)](#).

68:02:10:15. Default. Any of the following constitutes a default upon the conditions of a reinvestment payment:

(1) If the person filing the affidavit for a South Dakota Jobs grant knowingly makes any material false statement or report in the affidavit for a South Dakota Jobs grant;

(2) Failure to adhere to the conditions of the South Dakota Jobs grant;

(3) Repeated failure by the applicant to provide access to the project or related documents or to provide the reports and other information required by this chapter; or

(4) Failure of the applicant to remain current on its tax obligations to the State of South Dakota. However, for the purposes of this section, the applicant is not deemed delinquent on its tax obligations to the State of South Dakota if the applicant is currently disputing its tax obligation in accordance with the appeal procedures provided by law.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(9\)\(11\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(9\)\(11\)](#).

68:02:10:16. Remedies. If there is a default pursuant to § 68:02:10:15 as determined by the board, within thirty days of written demand from the board, the project owner shall repay to GOED the South Dakota Jobs grant disbursed to the project owner. In addition to any other action considered appropriate by the board to protect the interest of the board and the South Dakota Jobs subfund, the board may retain counsel and commence a civil action to recover any grant proceeds that the project owner is required to repay.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(11\)](#), [1-16G-16.1](#).

Law Implemented: SDCL [1-16G-1.1\(5\)\(7\)](#), 1-16G-3, [1-16G-5](#), [1-16G-8\(11\)](#), [1-16G-16.1](#).

68:02:10:17. Conflicts of interest. No member of the board or the GOED staff may participate in or vote upon a decision of the board concerning an application relating to a project in which that member has a direct personal or financial interest.

Source: 39 SDR 221, effective July 1, 2013.

General Authority: SDCL [1-16G-5](#), [1-16G-8\(7\)](#).

Law Implemented: SDCL 1-16G-3, [1-16G-5](#), [1-16G-8\(7\)](#).