

SPEAKER JON HANSEN, CHAIR | PRESIDENT PRO TEMPORE CHRIS KARR, VICE CHAIR
JOHN McCULLOUGH, DIRECTOR | JUSTIN GOETZ, CODE COUNSEL

500 EAST CAPITOL AVENUE, PIERRE, SD 57501 | 605-773-3251 | SDLEGISLATURE.GOV



June 20, 2025

Mr. Chas Olson
South Dakota Housing Development Authority
3060 E. Elizabeth St.
PO Box 1237
Pierre, SD 57501

Dear Mr. Olson:

The Legislative Research Council (LRC) received proposed rules from the South Dakota Housing Development Authority on June 6, 2025. In accordance with SDCL 1-26-6.5, the LRC reviewed the proposed rules for form, style, clarity, and legality, and now returns them with recommendations.

Please find enclosed:

- Proposed Rules Review Checklists;
- The proposed rules with recommended form, style, clarity, and minor legality edits;
- Directions for Submitting the Final Draft of the Rules; and
- The Interim Rules Review Committee Rules Presentation Format.

Under SDCL 1-26-4(4), the Commission is required to adopt LRC recommendations, subject to an appeal to the Interim Rules Review Committee for the Committee's final determination. Note, however, that LRC reserves the right to withdraw recommendations if they are resolved via discussion with Commission staff.

Please do not hesitate to contact me if you have any questions or to discuss and possibly resolve any of the recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Justin J. Goetz". The signature is stylized with a large, sweeping "J" and "G".

Justin J. Goetz
Code Counsel
Enclosures

CC: Bill Even, Commissioner, Governor's Office of Economic Development

**Legislative Research Council
Proposed Rules Research Review Checklist**

Date Proposed Rules Received by LRC: _____

Date Public Hearing Scheduled: _____

Proposed Rules Reviewed by: _____

Fiscal Note Reviewed by: _____

"No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter." (SDCL 1-26-6.8)

Staff:

Please review the proposed rules and supporting documents and submit them with this completed checklist to the Code Counsel within ten business days from the date the proposed rules are received by the LRC.

KEY			
ENTRY:	"[Initials]"	"N/A"	"[Initials]*)"
MEANING:	Reviewed by	Not applicable	Edit Recommended or Issue
1. Verify the rules packet includes (SDCL 1-26-4(2)):			
a. The proposed rules:			
i. Any incorporated material:			
b. Notice of hearing (Form 6):			
2. Verify all documents have correct citations to the proposed rules provided in the packet.			
3. Verify the appropriate departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer approved the rules process to proceed. (SDCL 1-26-4(1))			
4. If the Department of Social Services is promulgating rules that are mandated by federal statute or regulation, use the DSS Federal Regulations Checklist.			
5. Review proposed rules for:			
a. Form, style, and clarity in accordance with the Administrative Rules Drafting Manual (including all existing language, not just amended language).			
i. Verify the most recent rule is used. (Manual , pg. 5)			
ii. Verify all cross-references in text are current. (Manual , pg. 6)			
iii. Verify all affected sections are included. For repealed sections, verify all affected sections are amended. (Manual , pg. 6)			
iv. Verify any renumbering of rules is consistent with Administrative Rules Drafting Manual. (Manual , pg. 7)			

b. Legality, including:

- i. Verify the General Authority statute provides rule-making authority (i.e., “. . . shall/may promulgate rules to . . .”). ([Manual](#), pg. 8) _____
- ii. Verify the Law Implemented statute identifies the policy intended to be implemented. ([Manual](#), pg. 8) _____
- iii. If the proposed rule incorporates material by reference, verify the rule describes the exact section or portion of the material. ([SDCL 1-26-6.6](#); [Manual](#), pg. 11) _____

For incorporated material that is not CFR, USC, Fed. Reg., Stat.:
 - 1. Verify the proposed rule includes a reference note identifying the publication by title, date of publication, author, version/edition and where and at what cost the publication may be obtained. _____
 - 2. Verify there is a statement attached to the material that includes the agency’s name, the section number of the rule that incorporates the material, and the date the proposed rule was served on the LRC. _____
- iv. Verify the proposed rule does not incorporate or reiterate any statutory language other than definitions, and that the agency is not publishing or distributing statutory material. ([SDCL 1-26-6.1](#)) _____
- v. Verify the proposed rule does not restrict any right or privilege to carry or possess a concealed pistol under SDCL chapter 23-7. ([SDCL 1-26-6.10](#)) _____
- vi. Verify the agency does not delegate authority to a private association. (S.D. Const. art. III, §§ [23](#)(9), [26](#)) _____
- vii. Verify the rule does not allow the agency to circumvent the SDCL ch. 1-26 rulemaking process (e.g., authorizing it to make its own rules). (See SDCL [1-26-4](#), [1-26-6.5](#), [1-26-6.6](#), [1-26-38](#)(2)) _____
- viii. Verify the rule does not contain the agency’s internal processes or policy (e.g., personnel policies) or other matter that is not defined as a rule per [SDCL 1-26-1](#)(8). _____
- ix. Verify the rule does not incorporate a future rule or regulation, or incorporate future amendments to an existing rule or regulation, of another state or the federal government. ([State v. Johnson](#), 84 S.D. 556, 173 N.W.2d 894 (1970)) _____
- x. Verify only the rules being changed are included in the packet and that chapter indexes are updated as needed. ([Manual](#), pg. 8) _____

6. Review Notice of Public Hearing ([SDCL 1-26-4.1](#)):

- a. Verify the LRC received the proposed rules at least 20 days prior to the scheduled public hearing. _____

- b. Verify the notice contains a narrative description of the effect of the proposed rule. _____
 - c. Verify the notice contains the reason for adopting the proposed rule. _____
 - d. Verify the notice contains the location, date, and time (Central or Mountain) of the hearing. _____
 - e. Verify the notice contains information about how amendments, data, opinions, and arguments may be presented. _____
 - f. Verify the notice contains a deadline for submission of comments. _____
 - i. If the authority promulgating the rule is a secretary, commissioner, or officer, ensure the deadline is ten days after the public hearing. ([SDCL 1-26-4](#)(6)) _____
 - ii. If the authority promulgating the rule is a part-time citizen board, Commission, committee, or task force, ensure the deadline is at least 72 hours before the public hearing (not including hearing day). ([SDCL 1-26-4](#)(6)). _____
 - g. Verify the notice contains information for how the public may obtain copies of the proposed rules. _____
7. For any proposed rule regarding professional or regulatory examination or licensing that is to be published in pamphlet form, review the pamphlet for style, form, and clarity in accordance with the Administrative Rules Drafting Manual. ([SDCL 1-26-11](#)) _____

Reviewed by Code Counsel on _____

**Legislative Research Council
Proposed Rules Fiscal Note Review Checklist**

Date Proposed Rules Received by LRC: _____

Date Public Hearing Scheduled: _____

Proposed Rules Reviewed by: _____

Fiscal Note Reviewed by: _____

"No agency rule may be enforced by the courts of this state until it has been adopted in conformance with the procedures set forth in this chapter." (SDCL 1-26-6.8)

Staff:

Please review the proposed rules and supporting documents and submit them with this completed checklist to the Code Counsel within ten business days from the date the proposed rules are received by the LRC.

KEY

ENTRY:	"[Initials]"	"N/A"	"[Initials]**"
MEANING:	Reviewed by	Not applicable	Edit Recommended or Issue

1. Verify the rules packet includes ([SDCL 1-26-4\(2\)](#)):

- a. Fiscal note (Form 5): _____
- b. Small business impact statement (Form 14): _____
- c. Housing Cost Impact Statement (Form 16), if applicable: _____

2. Indicate whether the proposed rules:

- a. Increase a fee, in which case, initial. If initialed, the agency must submit a completed Form 17 with the final packet provided to the Interim Rules Review Committee and LRC, pursuant to SDCL 1-26-4(8). ([SDCL 1-26-4.8](#)) _____
- b. Increase a fee of a professional or occupational licensing board or commission for which no maximum fee is established in statute, in which case, initial. If the fee increases by more than 20%, note the issue. ([SDCL 1-26-6.9](#)) _____

3. Review the Fiscal Note ([SDCL 1-26-4.2](#)):

- a. Verify the Fiscal Note states whether the proposed rule will have any effect on the revenues, expenditures, or fiscal liability of the state, agencies, and subdivisions: _____
 - i. If there is an effect, verify the Fiscal Note includes an explanation of how the effect was computed? _____
 - ii. If there is an effect on subdivisions, is that effect described? _____

4. Review Small Business Impact Statement ([SDCL 1-26-2.1](#)):

- a. Verify if the rule change has any small business impact based on readily available info: _____
 - i. If only INDIRECT, verify that a brief description of the impact is included. _____
 - ii. If DIRECT, review 4.b through 4.h:
- b. Verify the Impact Statement includes a narrative explanation in plain, easy-to-read language. _____
- c. Verify the narrative explanation discusses the effect of the proposed rule on small business, including the basis for the rule's enactment and why the rule is needed. _____
- d. Verify the narrative explanation includes an identification and estimated number of small businesses subject to the proposed rule. _____
- e. Verify the Impact Statement includes the projected reporting and record-keeping required for compliance with the proposed rule. _____
- f. Verify the Impact Statement includes the types of professional skills necessary for preparation of required reports or records. _____
- g. Verify the Impact Statement includes a statement of the probable effect on impacted small business. _____
- h. Verify the Impact Statement includes a description of any less intrusive or less costly alternative methods of achieving the proposed rule's purpose. _____

5. Review Housing Cost Impact Statement ([SDCL 1-26-2.3](#)), if applicable:

- a. Verify that the agency has indicated what building sectors will be impacted by the rule change. _____
- b. Verify a description of and explanation of necessity for each each standard and requirement is included. _____
- c. Verify the statement includes the average estimated cost of each standard and requirement. _____
- d. Verify that contact and estimate information is included for three licensed contractors or building trades professionals. _____

Reviewed by Code Counsel on _____

CHAPTER 20:09:26

HOUSING INFRASTRUCTURE FINANCING PROGRAM

Section

- 20:09:26:01 Definitions.
- 20:09:26:02 Eligibility for housing infrastructure funding.
- 20:09:26:03 Ineligible housing infrastructure projects.
- 20:09:26:04 ~~Application~~ Housing infrastructure application form.
- 20:09:26:05 Consideration of housing infrastructure funding applicants.
- 20:09:26:06 Criteria for housing infrastructure funding.
- 20:09:26:07 Consultation.
- 20:09:26:08 Approval of housing infrastructure project by local governing body.
- 20:09:26:09 Location of housing infrastructure projects.
- 20:09:26:10 ~~Funding~~ Housing infrastructure funding limitations.
- 20:09:26:11 Use of housing infrastructure funding.
- 20:09:26:12 Total housing infrastructure project cost.
- 20:09:26:13 ~~Applications~~ Housing infrastructure project applications for ARPA funding.
- 20:09:26:14 Approval of housing infrastructure funding -- Conditional commitment --
Written agreement.
- 20:09:26:15 Modification of ~~authority financing terms~~ housing infrastructure funding.
- 20:09:26:16 Maturity and interest rate of housing infrastructure project loan.
- 20:09:26:17 Time restrictions on housing infrastructure funding applicant.
- 20:09:26:18 Payment and performance bonding for housing infrastructure projects -- Letter
of credit.
- 20:09:26:19 Disbursements of housing infrastructure funding.

Commented [A1]: Remove space here. "If text that begins a section is to be deleted and new text added immediately thereafter, overstrike the space that follows the deleted text and add an underscored space at the end of the added text."
ARSD Drafting Manual pg. 6.

20:09:26:20 Access and documents.

20:09:26:21 Waiver.

20:09:26:22 School district funding application form.

20:09:26:23 Criteria for school district funding.

20:09:26:24 School district funding approval -- Written agreement.

20:09:26:01. Definitions. Terms used in this chapter mean:

(1) "Authority," the South Dakota Housing Development Authority;

(2) "Board," the board of commissioners of the authority;

(3) "Housing infrastructure fund," a fund authorized pursuant to SDCL chapter 11-15 and administered by the authority for the purpose of making loans and grants for housing infrastructure projects and making loans to a school district adjoining a federal military installation;

(4) "Housing infrastructure ~~program~~ funding," a grant, a loan, or both a grant and a loan, from the housing infrastructure fund for a housing infrastructure project;

(5) "Housing infrastructure project," the installation, replacement, upgrade, or improvement of public infrastructure for the support of a single-family or multi-family housing project;

(6) "Indian tribe," as defined in SDCL 2-14-2;

(7) "Political subdivision," any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, local government entity, or agency of the state of South Dakota that is created or appointed by statute, ordinance, or resolution and is authorized to exercise any sovereign power derived from state law;

(8) "Public infrastructure," as defined in SDCL 11-15-1;

(9) "School district funding," a loan from the housing infrastructure fund for a school district as described in SDCL 11-15-8 project;

(10) "School district project," the construction or expansion of a school building, as defined in SDCL 34-44-2, in a school district as described in SDCL 11-15-8;

~~(9)~~ (11) "Total project cost," the total cost of a housing infrastructure project; and

~~(10)~~ (12) "Written agreement," the contract between the applicant and the authority setting forth the terms and conditions of the housing infrastructure project and the housing infrastructure ~~program~~ funding or the school district funding.

Commented [A2]: Consider alphabetizing lists.

Commented [A3]: "State of South Dakota" should be replaced with "this state." ARSD Drafting Manual pg. 24.

Commented [A4]: Consider either defining "applicant" or using an indefinite article here.

Source: 49 SDR 125, effective July 3, 2023; 51 SDR 12, effective August 12, 2024.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive, 11-15-8.

20:09:26:02. Eligibility for housing infrastructure funding. To be eligible for housing

infrastructure ~~program~~ funding, ~~the~~ applicant must:

(1) Be a for-profit entity, nonprofit entity, Indian tribe, housing authority, local economic development corporation, political subdivision ~~of the state of South Dakota, or an agency of that~~ ~~political subdivision or an~~ Indian tribe;

(2) Submit an application for housing infrastructure ~~program~~ funding to the authority; and
(3) Comply with the requirements, conditions, restrictions, and limitations imposed by this chapter and SDCL chapter 11-15.

Commented [A5]: Consider using indefinite article when first introducing a noun.

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Commented [A6]: Some of these entities are already included in the definition of "political subdivision" as set forth in subdivision 20:09:26:01(7).

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Source: 49 SDR 125, effective July 3, 2023; 51 SDR 12, effective August 12, 2024.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:03. Ineligible housing infrastructure projects. A housing infrastructure project not requesting funding from the American Rescue Plan Act of 2021, Pub. L. No. 117-2, ~~as in effect on 135 Stat. 4 (December 29, 2022)~~, is not eligible for housing infrastructure ~~program~~ funding if construction on the housing infrastructure project began before February 1, 2023.

Commented [A7]: Retain this comma.

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Commented [A8]: The form for citations to Public Laws can be found on pg. 18 of the ARSD Drafting Manual.

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Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:04. Application - ~~Housing infrastructure application~~ form. The authority shall prescribe the application form for housing infrastructure ~~program~~ funding and shall publish the form on the ~~authority's~~ authority's website. The form must require the applicant to provide the information and documentation necessary for the authority to evaluate the proposed housing infrastructure project based on the criteria established in § 20:09:26:06. ~~A submitted application must include a market study demonstrating the need for the proposed housing infrastructure project, preliminary engineering plans approved by an engineer licensed in South Dakota, this state, and an affidavit from the engineer stating that the total project cost is reasonable based on current market conditions and that the components included in the total project cost are necessary and allowable under this chapter and SDCL chapter 11-15. The market study may not be dated more than three years prior to the date of the application.~~

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

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Commented [A10]: Clarity - Consider employing subdivisions to break down this section to make it clearer, as well as to permit the Authority to pinpoint particular aspects of an application that may be missing:

“...must include:

- 1) A market study demonstrating the need for the proposed housing infrastructure project;
- 2) Preliminary engineering plans approved by an engineer licensed in this state; and
- 3) An affidavit from the engineer stating that:
 - (a) The total project cost is reasonable based on current market conditions; and
 - (b) The components included in the total project cost are necessary and allowable under this chapter and SDCL chapter 11-15.

The market study may not be....”

(Please note the autoformatting has turned the “(1), (2), etc.” ordinals into “1),” etc. The former is the proper styling.)

20:09:26:05. Consideration of housing infrastructure funding applications. The authority shall consider a complete application for housing infrastructure ~~program~~ funding in the order in which ~~the~~ applications are received by the authority. The authority is not required to consider an incomplete application.

Commented [A11]: "If the text is to be deleted, overstrike the single space before the deleted text." ARSD Drafting Manual pg. 6.

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Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:06. Criteria for housing infrastructure funding. The authority shall evaluate an application for housing infrastructure ~~program~~ funding based on the following criteria:

(1) The need for the proposed housing infrastructure project as demonstrated by a market study;

(2) The impact of the housing infrastructure project on the availability of housing in the local area;

(3) The existence of ongoing or proposed housing infrastructure projects in the community;

(4) The experience, management record, capacity, and financial status of the applicant, as applicable;

(5) The amount of housing infrastructure ~~program~~ funding requested by the applicant;

(6) The financial feasibility of the housing infrastructure project;

(7) The ~~applicant's~~ applicant's control of the site of the housing infrastructure project and the readiness of the applicant to proceed with construction;

(8) Whether ~~the applicant and~~ the proposed housing infrastructure project ~~comply~~ complies with applicable design standards, ordinances, regulations, and law;

(9) The suitability of the location of the housing infrastructure project for residential purposes;

(10) The input provided by the local governing body and community stakeholders;

(11) The availability of an adequate water supply, water treatment facilities, and wastewater treatment facilities to support the public infrastructure; and

(12) Other factors relevant to the authority in making a sound decision to award housing infrastructure ~~program~~ funding to applicants.

If the applicant applies for grant funding, the authority must also evaluate the application to determine what impact the grant will have in reducing purchase prices for homebuyers or rental costs to tenants in the local area.

Commented [A12]: Clarity - If "adequate" is also meant to modify water treatment facilities and wastewater treatment facilities, consider rephrasing the sentence as follows: "The availability of an adequate water supply and adequate water and wastewater treatment facilities...."

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:08. Approval of housing infrastructure project by local governing body. An applicant shall submit with the application for housing infrastructure funding a resolution of the applicable political subdivision or Indian tribe stating:

- (1) The political subdivision or Indian tribe has approved the proposed housing infrastructure project;
- (2) The project satisfies the requirements of the political subdivision or Indian tribe;
- (3) The political subdivision or Indian tribe shall own, maintain, or provide the public infrastructure to be developed in the project; and
- (4) The political subdivision or Indian tribe has the capacity to support the public infrastructure to be developed in the project.

Source: 49 SDR 125, effective July 3, 2023; 51 SDR 12, effective August 12, 2024.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:09. Location of housing infrastructure projects. An eligible housing infrastructure project that is to be owned or maintained by a municipality must be located within the ~~municipality's~~ municipality's corporate limits, unless there is a plan to annex into the ~~municipality's~~ municipality's corporate limits the real estate where the public infrastructure is located. The authority may require the applicant to return housing infrastructure ~~program~~ funding if the annexation does not occur before the later of:

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(1) The date on which the applicant commences construction of the housing infrastructure project; or

(2) The date on which the applicant and the authority enter into the written agreement.

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:10. ~~Funding Housing infrastructure funding limitations.~~ The amount of housing

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infrastructure ~~program~~ funding that the authority may award to an eligible applicant is limited, based on the documented number of eligible housing units that the proposed public infrastructure supports, as follows:

- (1) Up to ten thousand dollars per multifamily rental housing unit; and
- (2) Up to twenty-five thousand dollars per single family lot.

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:11. Use of housing infrastructure funding. Housing infrastructure ~~program~~

funding may not be used to finance:

- (1) The acquisition of real property that is not developed as public infrastructure;
- (2) The construction of any permanent physical structure or building other than public infrastructure; or
- (3) Any debt of the applicant.

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:12. Total housing infrastructure project cost. The total project cost of a housing infrastructure project may include the direct costs associated with:

- (1) The purchase of real property to be developed as public infrastructure and housing;
- (2) Necessary site development and improvements;
- (3) Construction or acquisition of temporary structures and works necessary for the operation and protection of the housing infrastructure project;
- (4) Fees for services;
- (5) Approved in-kind contributions; or
- (6) Any other cost approved by the board.

The total project cost may not include any costs associated with the construction of any permanent physical structure or building other than public infrastructure or any costs associated with the acquisition of real property not developed for housing.

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:13. Applications ~~**Housing infrastructure project applications**~~ **for ARPA**
funding. An applicant for housing infrastructure funding may only apply for funds from the
American Rescue Plan Act of 2021, Pub. L. No. 117-2 ~~as in effect on 135 Stat. 4 (December 29,~~
2022) (ARPA), if the housing infrastructure project is eligible for funding under ARPA and related
federal regulations, and if the applicant and the housing infrastructure project comply with all
applicable federal laws and regulations.

Commented [A13]: Why is “ARPA” referenced in this section, but not in § 20:09:26:01 or 20:09:26:03? “Acronyms and initialisms are not encouraged in the drafting of rules.” ARSD Drafting Manual pg. 13.

Commented [A14]: Retain this comma.

Commented [A15]: Refer to ARSD Drafting Manual pg. 18 for examples of citations to federal authority.

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Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:14. Approval of housing infrastructure funding -- Conditional commitment --

Written agreement. The board shall approve or deny an application for housing infrastructure funding based on the criteria established in § 20:09:26:06. If an application is approved by the board, the authority must issue a conditional commitment to the applicant setting forth the amount of the housing infrastructure ~~program~~ funding, the terms and conditions of the award, and any additional documents and information to be provided by the applicant. The applicant ~~shall~~ must enter into a written agreement with the authority stating the terms and conditions of the housing infrastructure ~~program~~ funding. If the applicant fails to enter into a written agreement with the authority by the deadline stated in the conditional commitment, the authority may either grant an extension or revoke the conditional commitment.

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:15. Modification of ~~authority financing terms~~ housing infrastructure funding.

The authority may amend the amount of the housing infrastructure ~~program~~ funding at any time before closing, based on the final itemization of the total project cost. The executive director of the authority may approve and authorize an increase in the housing infrastructure ~~program~~ funding, in an amount not to exceed five percent of the initial amount, if the executive director finds the increase is justified by an increase in costs applicable to the public infrastructure and is necessary or desirable for the successful construction and operation of the public infrastructure.

Commented [A16]: Use commas "to set apart phrases, clauses, or other expressions." ARSD Drafting Manual pg. 17.

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Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to ~~44-5-5~~ 11-15-5, inclusive.

20:09:26:16. Maturity and interest rate of housing infrastructure project loan. The maturity of a housing infrastructure project loan may not be more than ten years from the date of loan closing, with payments amortized over not more than twenty-five years. The authority shall establish the standard interest rate for loans from time-to-time and publish the rate on the ~~authority's~~ authority's website. The interest rate may not exceed the applicable federal rate published by the Internal Revenue Service pursuant to 26 U.S.C. § 1274(d), ~~in effect on~~ (May 11, 2023), as of the date of the ~~board's~~ board's approval of an application.

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Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:17. Time restrictions on housing infrastructure funding applicant. The

authority may require ~~the~~ applicant to return housing infrastructure ~~program~~ funding if the applicant fails to commence construction on the housing infrastructure project within nine months of the date of the written agreement. The authority may agree to an extended construction commencement date as a term of the written agreement.

Commented [A17]: Consider using indefinite article here.

The authority may require the applicant to return housing infrastructure ~~program~~ funding that has not been expended by the applicant within two years of the date of the written agreement.

The executive director of the authority may authorize an extension of up to six months to the established construction commencement date, or the date by which funding must be expended, if the executive director finds that mitigating circumstances prevent the applicant from meeting the deadline and the applicant has made a diligent effort to meet the deadline.

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Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:18. Payment and performance bonding for housing infrastructure projects --

Letter of credit. An applicant for housing infrastructure funding shall ensure compliance with the requirements of the applicable political subdivision or Indian tribe for contractor bonding. If the political subdivision or Indian tribe does not have contractor bonding requirements, the contractor, before commencing any work, must furnish surety in an amount not less than the contract price to the applicant, for the faithful performance of the contract, with the additional obligation that the contractor promptly pay all persons supplying the contractor with labor or material in the **prosecution** of the work provided for in the contract.

Commented [A18]: Perhaps “performance” or “execution”?

Commented [A19R18]: Style - ARSD DM, pg. 13 (“If a rule is being addressed to the public generally, the rule should be written in plain language, to the extent possible.”).

In lieu of a payment and performance bond, the applicant may obtain a letter of credit in the amount of the housing infrastructure ~~program~~ funding. The letter of credit must:

- (1) List the authority as the named beneficiary;
- (2) Be irrevocable and unconditional; and
- (3) Be issued by a federally insured financial institution.

Source: 49 SDR 125, effective July 3, 2023; 51 SDR 12, effective August 12, 2024.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:19. Disbursements of housing infrastructure funding. In order to receive a periodic disbursement of housing infrastructure ~~program~~ funding, **the** applicant must:

Commented [A20]: Consider using indefinite article here.

- (1) Enter into a written agreement;
- (2) Remain in compliance with the written agreement and applicable law; and
- (3) Provide any **documents** required by the authority.

Commented [A21]: Perhaps “documentation”?

The authority may not periodically disburse to the applicant an amount of housing infrastructure ~~program~~ funding, cumulative with prior disbursements, that exceeds one-third of the accumulated total project cost of the housing infrastructure project to date. The authority may not disburse the final ten percent of the total amount of the housing infrastructure ~~program~~ funding awarded to the applicant until after the housing infrastructure project is complete and the applicant has submitted to the authority lien waivers for all work performed and all other documentation required by the authority.

Commented [A22R21]: Clarity - “Documentation” is used in the final sentence. They are slightly different--a document being a discrete record and “documentation” is material used to provide information or evidence, or the process of creating documents/records (Oxford Dictionaries Online). Recommend consistency, regardless.

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

20:09:26:20. Access and documents. An applicant shall grant the authority reasonable access to the housing infrastructure project, or school district project site and to the applicant's records. An applicant shall provide any information or documents required by the authority from time to time, time-to-time, for the purpose of verifying compliance with applicable law and the terms and conditions of the written agreement.

Source: 49 SDR 125, effective July 3, 2023.

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-1 to 11-15-5, inclusive.

Commented [A23]: Clarity - Previously, the thought was that making "project site" generic would indicate its application to both housing infrastructure and school district projects. However, why make it just the implication, when it can be express? This might be particularly helpful given that this section is one of the few existing that apply to both project types and is not located next to or in the range of sections of rule dedicated to school district projects.

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Commented [A24]: This seems overly broad. Perhaps "records related to the project"?

Commented [A25]: Perhaps "documentation"?

Commented [A26R25]: Clarity - See the comment discussion in the section immediately above.

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20:09:26:22. School district funding application form. ~~As~~ The authority shall prescribe the application form for school district funding and shall publish the form on the authority's website. The form must require the applicant to provide the information and documentation necessary for the authority to evaluate the proposed school district project based on the criteria established in § 20:09:26:23.

Commented [A27]: Style - Since "authority" is defined above, shouldn't the definite article be used here?

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-2, 11-15-8.

20:09:26:23. Criteria for school district funding. The authority shall evaluate an application for school district funding based on the following criteria:

- (1) Whether the application applicant is a school district as described in SDCL 11-15-8;
- (2) The applicant's control of the school district project and the readiness of the applicant to proceed with the construction; and
- (3) Whether the proposed school district project complies with applicable design standards, ordinances, regulations, and law.

Commented [A28]: Clarity - Alternatively, this could read "Whether the application is for a school district...." but given the thrust of SDCL 11-15-8, it appears statutorily the applicant is envisioned to be a school district, which would make the revision to the left superior. See SDCL 11-15-8 ("[T]he authority may make a loan . . . to a school district....").

Commented [A29]: Perhaps "... with construction of the proposed school district project"?

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-2, 11-15-8.

20:09:26:24. School district funding approval – Written agreement. The board shall approve or deny an application based on the criteria established in § 20:09:26:23. If ~~an~~ the application is approved by the board ~~and the applicant elects to proceed~~, the ~~applicant parties~~ must enter into a written agreement ~~with the authority stating the amount, terms, and conditions of for the~~ school district funding. The applicant shall also provide any additional ~~documents~~ requested by the authority in connection with the ~~written agreement or the~~ school district funding ~~loan~~.

Source:

General Authority: SDCL 11-15-6.

Law Implemented: SDCL 11-15-2, 11-15-8.

Commented [A30]: Unlike in § 20:09:26:14, there is no conditional commitment mentioned here. Currently, this reads as though the board's acceptance of an application imposes a requirement on the applicant to enter into a written agreement, perhaps even involuntarily. Consider adding language indicating that the applicant may elect to proceed with the loan process upon the board's acceptance of the application.

Commented [A31]: This is redundant based on the definition of "written agreement."

Commented [A32]: Perhaps "documentation"?

Commented [A33]: The term "loan" is redundant here because "school district funding" is already defined as "a loan from the housing infrastructure fund for a school district."

DIRECTIONS FOR SUBMITTING THE FINAL DRAFT

Rules Review Meeting Schedule for the 2025 Interim: The Interim Rules Review Committee will meet April 8, May 6, June 10, July 15, August 19, September 9, and October 7. Meeting notices will be posted on the LRC website and at the Capitol.

A. Committee: The following materials must be served on the Committee at least seven calendar days before the committee meeting via first-class mail, e-mail, or both:

1. Form 12 – Affidavit and all its referenced documents (for final rules, please three-hole punch and number by page the final rules):
 - a. Form 10 – Minutes of Public Hearing;
 - b. A record of written comments;
 - c. Form 14 – Small Business Impact Statement;
 - d. Form 5 – Fiscal Note;
 - e. For any rules that increase a fee, per SDCL 1-26-4.8, a completed Form 17;
 - f. For any rules prescribing new standards or requirements for building or remodeling a residential structure based on a model code, the Form 16 – Housing Cost Impact Statement; and
 - g. The final rules as adopted;
2. Form 15 – Rules Presentation Format;
3. First draft of proposed rules containing LRC recommendations for style, form, clarity, and legality; and
4. Letter from the LRC to the agency.

B. Legislative Research Council: The following materials must be submitted to the LRC at least seven calendar days before the committee meeting:

1. Final draft of adopted rules, double-spaced and containing only amended, repealed, or adopted rules, and showing overstrikes and underscores;
2. Original Form 11; and
3. Copies of:
 - a. Form 10 – Minutes of Public Hearing
 - b. A record of written comments;
 - c. Form 12 – Affidavit of Service;
 - d. Form 15 - Rules Presentation Format; and
 - e. Form 17 – Agency Financial Resources, if applicable.

C. Office of the Secretary of State: Following Committee hearing, each agency must complete and sign all documents before filing:

1. Form 13 - Certificate of rule completion;
2. Final draft of the adopted rules; and
3. Form 11 (per Secretary's request).

FORM 15

Rules Presentation Format

Department/Board/Commission Name _____

Please complete these questions to show that the SDCL 1-26 rule-making process is complete.

Use this format to organize your presentation to the Committee.

- Approval to proceed? Yes _____ No _____ Date _____
- Date of public hearing _____
- Date proposed rules and supporting documents submitted to the LRC and the Bureau of Finance and Management _____
 - any publication incorporated by reference;
 - the fiscal note;
 - the impact statement on small business; and
 - the notice of hearing.
- Date and name of newspapers in which the notice of public hearing was published:
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____
 - Date _____ Newspaper _____
- Summary of how, when, and number of interested persons, if any, were contacted.

- Page numbers in the minutes where the agency considered amendments, data, opinions, or arguments regarding the proposed rules, along with any changes and final action.

- For any rule implementing a bill from a preceding session, the number of the bill:

- Date final rules and supporting documents submitted to the LRC and the Committee
