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AUDITOR GENERAL

To: Government Operations and Audit Committee (GOAC)

From: Tim Flannery, State Government Audit Manager

Date: September 25, 2018

Re: Rule making authority

At the request of the Government Operations and Audit Committee (GOAC), Legislative Audit has completed a review of the various authorities and other entities of the State and have identified those that are required to follow the administrative procedure and rules process identified in chapter 1-26 of South Dakota Codified Law (SDCL) and those that are not required to follow this chapter.

SDCL chapter 1-26 creates the Interim Rules Review Committee of the Legislature for the purpose reviewing proposed agency rules and making recommendations to the agencies regarding rules. No permanent rule may be filed until the Interim Rules Review Committee adopts a motion that the rule-making process is complete.

The following pages provide the results of research that was completed to determine which entities of the State are required to promulgate rules under the administrative procedure and rules process identified in SDCL 1-26 and which entities have been granted their own rule making ability by the Legislature.

**South Dakota Authorities and Other Entities
Rule Making Information
2018**

<u>Authority Name</u>	<u>Required to follow Administrative Procedure and Rules of SDCL 1-26?</u>	<u>Applicable Statutes</u>	<u>Applicable Administrative Rules</u>	<u>Entity has its own rule making authority?</u>	<u>Statute providing rule making authority</u>
Science & Technology Authority	Yes	SDCL 1-16H-16	None developed	N/A	N/A
Building Authority	Yes	SDCL 5-12-8.1(16)	ARSD 39:02	N/A	N/A
Educational Enhancement Funding Corporation	Yes	SDCL 5-12-51(8)	ARSD 39:02	N/A	N/A
Health & Educational Facilities Authority	No	SDCL 1-16A-29	N/A	Yes	SDCL 1-16A-29
Ellsworth Development Authority	No	SDCL 1-16J-7	N/A	Not specifically mentioned **	SDCL 1-16J
Housing Development Authority	Yes and No *	SDCL 1-26-1(8)(j) SDCL's 11-11-141 & 180	ARSD 20:09	Yes	SDCL 11-11-30, 141, & 180
Board of Regents	No	SDCL 13-49-19	N/A	Yes	SDCL 13-49-13 & 19
Finance Authority	Yes	SDCL 1-16B-14(4)	ARSD 68:01	N/A	N/A
Value Added Finance Authority	Yes	SDCL 1-16E-24	ARSD 68:02:02	N/A	N/A
Authority Captive Insurance Company	Yes	SDCL 58-46-32	None developed	N/A	N/A
Property & Casualty Captive Insurance Company	Yes	SDCL 58-46-32	None developed	N/A	N/A
Trust & Receivership Captive Insurance Company	Yes	SDCL 58-46-32	None developed	N/A	N/A

Legend:

N/A = Not applicable

* = Sixteen of the 25 chapters under ARSD Article 20:09 have been repealed. Nine chapters remain administrative rules.

** = the enabling legislation was silent as to rule making authority. The powers of the authority are found in SDCL 1-16J-7.