

ARTICLE 68:01

ECONOMIC DEVELOPMENT FINANCE AUTHORITY

Chapter

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CHAPTER 68:01:01

GENERAL PROVISIONS

Section

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68:01:01:01. Definitions. Words used in this article mean:

(1) "Account" ~~or "accounts,"~~ one or more of the trust accounts created pursuant to a series supplemental resolution;

~~—(2) "Act," SDCL 1-16B;~~

~~(3)~~(2) "Authority," the South Dakota Economic Development Finance Authority;

~~(4)~~(3) "Borrower," an enterprise as defined in SDCL ~~1-16B-6~~ 1-16B-1 that enters into a loan agreement with the authority;

~~(5)~~(4) "Capitalized interest," interest on a series of bonds expected to be paid from a portion of the proceeds of the bonds;

~~(6)~~(5) "Collateral," for a particular loan, one or more of the following:

(a) The project;

(b) Any other real or personal property that may be made subject to a security instrument;

~~(c) A guaranty of a loan by any person or business entity;~~

~~(d)~~ An assignment of leases and rents of a project;

~~(e)~~(d) A letter of credit or surety obligation; and

~~(f)~~(e) Any other ~~collateral or security~~ property which may be provided to secure the loan;

~~(7)~~(6) "Completed" or "completion," the filing by the borrower with the trustee of the certificate of completion of a project;

~~(8)~~(7) "Costs of issuance," all items of expense payable or reimbursable directly or indirectly by the authority and related to the authorization, sale, and issuance of bonds including printing and photocopying costs; filing and recording fees; initial fees and charges of the trustee; initial capital reserve fund premiums, if any; initial costs of providing any credit enhancement; legal fees and charges; professional consultants' fees; costs of credit ratings; fees and charges for the execution, transportation, and safekeeping of bonds; underwriter's discount or placement fees and expenses, including filing or registration fees under applicable securities laws; costs and expenses of refunding; and other costs, charges, and fees in connection with the original issuance of bonds;

~~(9)~~(8) "Credit enhancement," one of the following:

- (a) A guarantee provided by any person or business entity;
- (b) Governmental insurance;
- (c) Letters of credit; or
- (d) Surety obligations issued to secure the prompt payment of debt service on a series of bonds;

~~(10)~~(9) "Letter of credit," an irrevocable ~~letter of credit~~ instrument issued in favor of the trustee or the authority for the account of a borrower by a commercial bank, savings and loan association, a United States branch or agency of a foreign bank, or another corporation organized under the laws of one of the states of the United States;

~~(11)~~(10) "Loan," an agreement made by the authority to a borrower to finance costs of a project;

~~(12)~~ "Loan repayment," ~~the scheduled payments of principal and interest on a loan payable by a borrower pursuant to the provisions of a loan agreement;~~

~~(13)~~(11) "Loan reserve account," the account designated to hold the required loan reserve of a particular series of bonds, created pursuant to the series supplemental resolution;

~~—— (14) "Mortgage," a mortgage and security agreement and a uniform commercial code financing statement, in a form acceptable to the authority, granting a security interest in, or a lien on, the property comprising a project and any other property as the authority determines;~~

~~(15)~~(12) "Program," the authority's South Dakota economic development loan program implemented under ~~the act~~ SDCL chapter 1-16B and this article;

~~(16)~~(13) "Project," ~~an economic~~ a development project as defined by SDCL ~~1-16B-3~~ 1-16B-1, ~~including that involves~~ the acquisition or improvement of land; the acquisition, construction, rehabilitation, removal, or improvement of buildings; or the acquisition and installation of fixtures useful in connection with an enterprise owned or leased by a borrower and located or to be located in the state;

~~(17)~~(14) "Series of bonds," a designated series of bonds authorized by a series supplemental resolution;

~~(18)~~(15) "Series supplemental resolution," a resolution adopted by the board authorizing the issuance of a single series of bonds; and

~~(19)~~(16) "Surety obligation," a municipal bond insurance policy or unconditional surety bond or similar obligation which may be drawn upon by the trustee for the payment of the principal on, and the redemption price of, any series of bonds.

Source: 13 SDR 134, effective March 31, 1987; 21 SDR 14, effective August 3, 1994.

General Authority: SDCL ~~1-16B-14(4)~~ 1-16B-70.

Law Implemented: SDCL 1-16B-14(4); 1-16B-14(7), 1-16B-15.

68:01:01:02. Permissible uses of loan proceeds. ~~The proceeds of a loan may be used to refund state or municipal obligations or obligations issued on behalf of a state agency, instrumentality, or political subdivision, the proceeds of which were applied to finance eligible project costs~~ Repealed.

Source: 13 SDR 134, effective March 31, 1987; 21 SDR 14, effective August 3, 1994.

General Authority: ~~SDCL 1-16B-14(4).~~

Law Implemented: ~~SDCL 1-16B-14(4).~~

68:01:01:03. Loan reserve account requirement. For any series of bonds for which a loan reserve account is required, the borrower must deposit in the loan reserve account ~~the amount~~, as of the date of calculation, ~~as follows~~ one of the following amounts, as applicable:

(1) ~~The~~ If the series of bonds is issued on a tax-exempt basis, an amount that is equal to 10
ten percent of the original principal amount of the series of bonds or the lesser amount required
under 26 U.S.C. § 148(d)(1) ~~of the Internal Revenue Code of 1986~~ (December 31, 2024), to
preserve the tax-exempt status of interest on the series of bonds;

(2) If the series of bonds is issued on a taxable basis, the maximum debt service, assuming
no acceleration of maturity, for the bond year; or

(3) An amount as determined by the authority.

Source: 13 SDR 134, effective March 31, 1987; 21 SDR 14, effective August 3, 1994.

General Authority: SDCL ~~1-16B-14(4)~~ 1-16B-70.

Law Implemented: SDCL ~~1-16B-14(4)~~ 1-16B-14(7), 1-16B-15, 1-16B-18.

68:01:01:04. Project costs inclusions and exclusions. Project costs include the aggregate amount of costs authorized by the authority to be incurred for a project and financed or to be financed by a loan, but exclude any costs of issuance and any amounts deposited or to be deposited in a loan reserve account or capitalized interest account. Project costs may include cost of issuance, if the authority does not create a cost of issuance account in the series supplemental resolution, and the payment of interest due on a loan that corresponds to the payment of interest due on the series of bonds ~~which~~ that financed the loan, accruing before the completion of the project.

Source: 13 SDR 134, effective March 31, 1987.

General Authority: SDCL ~~1-16B-14(4)~~ 1-16B-70.

Law Implemented: SDCL ~~1-16B-14(4)~~ 1-16B-14(7), 1-16B-15, 1-16B-18.

68:01:01:05. Additional loan requirements. Loan requirements in addition to those specified in ~~the act~~ SDCL chapter 1-16B are as follows:

(1) The amount of the loan, net of the amount required to be deposited in the loan reserve account, may not exceed the lesser of the project costs, plus costs of issuance and capitalized interest, or the sum of the following: ~~80~~ eighty percent of the appraised fair market value of the project upon completion, less the outstanding principal amount of any prior mortgage ~~which~~ that is not to be discharged with proceeds of bonds of the series, ~~50~~ fifty percent of the appraised fair market value of any equipment provided as security, and ~~100~~ one hundred percent of the stated amount of any letters of credit or surety obligations;

(2) To the extent project costs exceed the amount of the loan to be deposited in the loan account, other than to pay costs of issuance, the borrower must provide equity by making a cash contribution or providing a letter of credit, a surety obligation, additional collateral, or some other assurance of completion of the project and payment of project costs;

(3) The borrower ~~must~~ shall provide title insurance in an amount equal to the loan less the amount deposited in the loan reserve account;

(4) The borrower ~~must~~ shall provide evidence satisfactory to the authority that the project can be completed in a timely fashion;

(5) The maximum term of the loan may not exceed ~~80~~ eighty percent of the useful life of the project, ~~20~~ twenty years, or the final stated maturity of the series of bonds financing the loan, whichever is less;

(6) The borrower ~~must~~ shall demonstrate to the satisfaction of the authority a capacity to make ~~the loan repayments~~ the scheduled payments of principal and interest on the loan pursuant to the provisions of a loan agreement;

(7) The borrower ~~must~~ shall demonstrate an adequate source of working capital based on projections;

(8) A guaranty in favor of the authority must be executed by persons having a ~~20~~ twenty-percent-ownership interest in the borrower unless shares of the borrower are traded on a stock exchange or by any corporate guarantor;

(9) The borrower ~~must~~ shall supply financial statements, ~~which may be audited or unaudited,~~ for each of the three full fiscal years prior to the date of issuance of the series of bonds and interim financial statements when available; and

(10) Facilities ~~which~~ that are not owner-occupied must be leased to meet debt service. The borrower ~~must~~ shall provide assignments of leases ~~and~~ and of rent payments to the authority by the date of issuance of any bonds. The terms and conditions of ~~any such~~ the leasehold estate securing a loan are subject to approval of the authority.

Source: 13 SDR 134, effective March 31, 1987; 21 SDR 14, effective August 3, 1994.

General Authority: SDCL ~~1-16B-14(4)~~ 1-16B-70.

Law Implemented: SDCL ~~1-16B-14(4)~~, ~~1-16B-37~~ 1-16B-14(7), 1-16B-15, 1-16B-18.

68:01:01:06. Priority of funds available. ~~Funds are available for eligible projects on a first come, first serve basis for those applicants who meet all the requirements of the loan program~~
Repealed.

Source: 13 SDR 134, effective March 31, 1987.

General Authority: ~~SDCL 1-16B-14(4).~~

Law Implemented: ~~SDCL 1-16B-14(4).~~