



March 16, 2021

Ms. Samantha Koldenhoven  
South Dakota Retirement System  
P.O. Box 1098  
Pierre, SD 57501-1098

Dear Ms. Koldenhoven:

The Legislative Research Council (LRC) received proposed rules from the South Dakota Retirement System (SDRS) Board of Trustees on March 11, 2021. 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 recommended corrections.

Please find attached:

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

In addition to the recommended corrections to form, style, and clarity included in the proposed rules, the LRC identifies the following issues regarding legality:

- The notice of hearing (Form 6) does not indicate, as required by SDCL 1-26-4.1, the legally correct deadline by which material from the public must be received in order to be considered at the public hearing. The notice indicates a deadline of March 30, 2021, for a public hearing to be held on April 1, 2021. SDCL 1-26-4(6) specifies that the deadline for material to be considered by a "part-time citizen board, commission, committee, or task force" such as the SDRS Board is "at least seventy-two hours before the public hearing," which "does not include the day of the public hearing."
- The notice of hearing does not indicate "how amendments . . . may be presented" as required by SDCL 1-26-4.1. The notice instead only specifies how "data, opinions, and arguments may be presented," as required per SDCL 1-26-4.1, but not amendments.
- Proposed §§ 20:16:17:38, 20:16:17:39, 20:16:18:38, 20:16:18:39, 20:16:19:40, 20:16:19:41, and 62:01:08:03 incorporate, by reference, portions of the Internal Revenue Code or IRS regulation. These provisions are incorporated without an effective date for the federal statute or regulation specified. Accordingly, there is a risk that these proposed rule sections will be made unenforceable as an unconstitutional delegation of state rulemaking authority to the federal government, insofar as the federal government's future amendments to these incorporated provisions automatically change the substance of the state rules the provisions are to be imbedded in. *See Indep. Cmty. Bankers Ass'n of S.D., Inc. v. State ex rel. Meierhenry*, 346 N.W.2d 737, 744 (S.D. 1984); *State v. Johnson*, 84 S.D. 556, 557, 173 N.W.2d 894, 895 (1970) (per curiam); *see also* ADMINISTRATIVE RULES DRAFTING MANUAL 6, available at <https://mylrc.sdlegislature.gov/api/Documents/72140.pdf>.
- Regarding proposed §§ 62:01:03:02.01 and 62:03:05:06, portions of the current rules were not properly copied into the packet served on LRC—specifically, citations to SDCL sections. It is critical that any such changes are properly depicted by using the current rules, particularly changes to something as important as statutory citations.



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Under SDCL 1-26-4(4), SDRS is required to adopt the recommended corrections, subject to an appeal to the Interim Rules Review Committee for the Committee's final determination.

Please reach out with any questions or to work out any issues regarding this cover letter or any of its attachments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justin J. Goetz". The signature is stylized and cursive.

Justin J. Goetz  
Code Counsel  
JJG  
Enclosures

CC: Travis Almond, Executive Director, South Dakota Retirement System