**South Dakota State Legislature Codified Laws**

**LEED Certification**

<https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=5-14-32>

<https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=5-14-33>

<https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=5-14-34>

<https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=5-14-35>

<https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=5-14-36>

**5-14-32.**   Definition of terms. Terms used in this section and §§ 5-14-33 to 5-14-38, inclusive, mean:

             (1)      "High-performance green building standard," a building that is designed and constructed in a manner that achieves at least:

             (a)      A silver standard rating under the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system in effect as of November 18, 2013;

             (b)      A two globe rating under the Green Building Initiative's Green Globes rating system as of July 31, 2013; or

             (c)      A comparable numeric rating under a sustainable building certification program recognized by the American National Standards Institute as an accredited standards developer;

             (2)      "New construction," any new building constructed by any state agency, department, or institution which has a cost of one million dollars or more or that includes ten thousand square feet or more of space;

             (3)      "Renovation" or "renovated," any alteration of a state building with a cost of one million dollars or more or that includes ten thousand square feet or more of the building;

             (4)      "State building project," new construction or renovation of a building, which has heating, ventilation, or air conditioning, by the Board of Regents or any state agency, department, or institution.  
  
Source: SL 2008, ch 30, § 1; SL 2010, ch 29, § 1; SL 2015, ch 50, § 1.

**5-14-33.**   State buildings to meet high-performance green building standard. Any state building projects as defined in § 5-14-32, shall meet or exceed a high-performance green building standard that was in effect when the project was registered with the rating system.

Source: SL 2008, ch 30, § 2; SL 2015, ch 50, § 2.

**5-14-34.**   Waiver of requirements. A waiver of the requirements of § 5-14-33 may be granted by the Office of the State Engineer if:

             (1)      The building will have minimal human occupancy;

             (2)      The increased costs of achieving a high-performance green building standard cannot be recouped from decreased operational costs within fifteen years;

             (3)      A building is on the national register of historic places and achieving a high-performance green building standard would result in noncompliance with standards for historic preservation as set forth in the secretary of the interior's Standards for the Treatment of Historic Properties in effect as of January 1, 2008;

             (4)      The square footage of the renovation project is less then fifty percent of the total square footage of the building being renovated. If the renovation project is being done in phases, the total square footage of all intended phases combined shall be used in making this calculation; or

             (5)      The Bureau of Administration determines that extenuating circumstances exist to make impractical high-performance green building standard certification.  
  
Source: SL 2008, ch 30, § 3.

**5-14-35.**   Initial determination of Bureau of Administration. No state building project may proceed to construction until the Bureau of Administration has determined that the project is satisfactorily designed to achieve or exceed a high-performance green building standard or that a waiver is granted pursuant §§ 5-14-32 to 5-14-38, inclusive.

Source: SL 2008, ch 30, § 4.

**5-14-36.**   Certification of achievement, waiver, or failure. Upon completion of a state building project, the Bureau of Administration shall certify:

             (1)      That the project achieved a high-performance green building standard;

             (2)      That a waiver was granted pursuant to §§ 5-14-32 to 5-14-38, inclusive; or

             (3)      That the project failed to comply with the provisions of §§ 5-14-32 to 5-14-38, inclusive.  
  
Source: SL 2008, ch 30, § 5.

**South Dakota State Legislature Administrative Rules**

**ARTICLE 10:09**

**HIGH PERFORMANCE BUILDING DESIGN AND CONSTRUCTION**

Chapter

10:09:01 Definitions.

10:09:02 State building project certifications.

10:09:03 Waivers.

10:09:04 Method for calculating the initial costs and the decreased operational costs related to achieving high-performance green building standards.

10:09:05 Additional requirements to obtain USGBC's LEED certification.

**CHAPTER 10:09:01**

**DEFINITIONS**

Section

10:09:01:01 Definitions.

**10:09:01:01.  Definitions.** Terms used in this article mean:

(1)  "A/E," the architect or engineer of record;

(2)  "Baseline," minimum of all building construction industry standards or recommended practices;

(3)  "Basis of design," the information necessary to accomplish the owner's project requirements, including: system descriptions; indoor environmental quality criteria; design assumptions; and references to applicable codes, standards, regulations, and guidelines;

(4)  "Building certificate," the building project certificate issued by the rating system administrator;

(5)  "Building certification document," all documentation verifying building project certification;

(6)  "Building contractor," the contractor hired in accordance with SDCL chapter 5-18;

(7)  "Commissioning team," includes those people responsible for working together to carry out the commissioning process;

(8)  "Construction document phase," the phase of the A/E's services in which the A/E prepares plans and specifications and final bidding documents for submission to the owner for the owner's approval;

(9)  "Design development phase," the phase of the A/E's services in which the A/E prepares from the approved schematic design studies the design development documents including: detailed material types, locations of windows and doors, and the construction cost estimate, for submission to the owner for the owner's approval;

(10)  "High performance building standard checklist," a document approved by the rating system administrator and the OSE showing at a minimum each point or criteria to be evaluated, its status, and an explanation of the A/E's reasoning for choosing or dismissing the point;

(11)  "OSE," The Office of the State Engineer within the Bureau of Administration;

(12)  "Owner," owner of a state building project to include the Board of Regents, any state agency, department, or institution;

(13)  "Owner's project requirements," a written document that details the ideas, concepts, and criteria determined by the owner to be important to the success of the project;

(14)  "Programming phase," the phase of the A/E's services in which the scope of the work and building project programming are defined;

(15)  "Schematic design phase," the phase of the A/E's services which includes: drawings of the site plans, floor plans, images, overall dimensions, and a construction estimate for submission to the owner for the owner's approval;

(16)  "Simple payback," measurement of the elapsed time between initial investment and the amount of time required for positive cash flows to equal the total investment costs;

(17)  "Rating system administrator," the organization responsible for the development and administration of the rating system.

**Source:** 34 SDR 323, effective July 3, 2008; 41 SDR 218, effective June 30, 2015.

**General Authority:** SDCL 5-14-38.

**Law Implemented:** SDCL 5-14-38.

**CHAPTER 10:09:02**

**STATE BUILDING CERTIFICATIONS**

Section

10:09:02:01 State building project certifications.

**10:09:02:01.  State building project certifications.** The following steps must be taken to certify a project as a high performance building:

(1)  The OSE shall designate the high performance building standard to be used on the project;

(2)  The owner shall submit the owner's project requirements to the OSE and A/E during the programming phase;

(3)  The A/E, at the request of the OSE shall complete and present an approved high performance building standard checklist to the owner and OSE;

(4)  The A/E shall submit the initial basis of design to the owner and OSE no later than the completion of the schematic design phase;

(5)  The A/E shall submit an OSE approved energy model to the owner before completion of the design development phase verifying the required energy optimization performance credits are achievable;

(6)  The owner, OSE, A/E, commissioning team, and building contractor shall complete all the procedural requirements designated in the standard in the time frame required;

(7)  A copy of the original building certification document must be submitted to the OSE within 90 days of certification;

(8)  OSE shall keep the building certification document on file for the lifetime of the building; and

(9)  A copy of the building certificate may be kept on file by the owner.

**Source:** 34 SDR 323, effective July 3, 2008; 41 SDR 218, effective June 30, 2015.

**General Authority:** SDCL 5-14-38.

**Law Implemented:** SDCL 5-14-38.

**CHAPTER 10:09:03**

**WAIVERS**

Section

10:09:03:01 Terms and conditions for granting waivers.

10:09:03:02 Procedures for granting waivers.

**10:09:03:01.  Terms and conditions for granting waivers.** OSE may waive high performance building standard certification for any of the following circumstances:

(1)  Twenty or fewer persons will permanently occupy the building in a 24 hour period;

(2)  A 15-year payback cannot be met as defined in § 10:09:04:01;

(3)  If the building is listed on the national register of historic places and reasonable justification is given to indicate that achieving a high-performance green building standard will significantly impair the original architectural intent of the building;

(4)  Less than fifty percent of the total square footage of the building is planned to be renovated within a three-year period; or

(5)  Extenuating circumstances may include:

(a)  Special use building projects;

(b)  Temporary use state building projects; and

(c)  Other circumstances that may prohibit high performance building construction or to be contrary to the best interest of the State of South Dakota.

**Source:** 34 SDR 323, effective July 3, 2008; 41 SDR 218, effective June 30, 2015.

**General Authority:** SDCL 5-14-38.

**Law Implemented:** SDCL 5-14-34, 5-14-38.

**10:09:03:02.  Procedures for granting waivers.** An agency may request a waiver by submitting a written request to the OSE prior to the construction documents phase of the project. OSE will provide a written response to the waiver request within 30 days of receipt. The written waiver request must include:

(1)  Justification why a high performance building standard cannot be met; and

(2)  Steps the owner will take to meet as many energy points as possible under the rating system; and

(3)  If the request is based on the inability to recoup costs in 15 years, the calculations as defined in § 10:09:04:01; or

(4)  If the square footage of the renovation project is less than fifty percent of the total square footage of the building being renovated, a three year building use plan.

**Source:** 34 SDR 323, effective July 3, 2008.

**General Authority:** SDCL 5-14-38.

**Law Implemented:** SDCL 5-14-38.

**CHAPTER 10:09:04**

**METHOD FOR CALCULATING THE INITIAL COSTS AND THE DECREASED OPERATIONAL COSTS RELATED TO ACHIEVING HIGH-PERFORMANCE GREEN BUILDING STANDARDS**

Section

10:09:04:01 Method for calculating the initial costs and the decreased operational costs related to achieving high-performance green building standards.

**10:09:04:01.  Method for calculating the initial costs and the decreased operational costs related to achieving high-performance green building standards.** In determining the financial model to be used, the following criteria must be met:

(1)  The financial model must provide a cost comparison between the baseline costs and the additional costs to implement the high performance building standard; and

(2)  The financial model must either:

(a)  Include a simple payback analysis that should include at a minimum: energy savings, water efficiency, waste management savings, material cost savings, and operational and maintenance savings; or

(b)  Include an alternate payback analysis approved by the OSE.

**Source:** 34 SDR 323, effective July 3, 2008.

**General Authority:** SDCL 5-14-38.

**Law Implemented:** SDCL 5-14-38.

**CHAPTER 10:09:05**

**ADDITIONAL REQUIREMENTS TO OBTAIN USGBC'S**

**LEED CERTIFICATION**

Section

10:09:05:01 Required LEED Credits.

10:09:05:02 Ineligible LEED Credits.

**10:09:05:01.  Required LEED Credits.** If the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) is used as the high performance green building standard for the building project, the following credits must be achieved for building certification:

(1)  A minimum of one point is required in the energy and atmosphere credit optimize energy performance category; and

(2)  All available points are required in the energy and atmosphere credit enhanced commissioning.

**Source:** 41 SDR 218, effective June 30, 2015.

**General Authority:** SDCL 5-14-38.

**Law Implemented:** SDCL 5-14-36, 5-14-38.

**10:09:05:02.  Ineligible LEED Credits.** If the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) is used as the high performance green building standard for the building project, the following credits may not be included for building certification, unless specifically authorized as provided:

(1)  Energy and atmosphere credit green power and carbon offsets;

(2)  Location and transportation credit green vehicles;

(3)  Materials and resources credit building product disclosure and optimization -- Material ingredients; and

(4)  Location and transportation credit bicycle facilities unless written approval is granted by the OSE because the credit is intrinsic to the building project programming. Such approval may be granted only before completion of the schematic design phase.

**Source:** 41 SDR 218, effective June 30, 2015.

**General Authority:** SDCL 5-14-38.

**Law Implemented:** SDCL 5-14-38.