

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

595W0111

HOUSE JUDICIARY ENGROSSED NO. **HB 1064**
02/18/2015

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Mickelson, Cronin, Dryden, and Hunhoff (Jean) and Senators Tidemann, Curd, Heineman (Phyllis), and Peters

1 FOR AN ACT ENTITLED, An Act to prohibit unlawful self-dealing by state officers and
2 employees.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. A state officer or employee may not solicit nor accept any gift, favor, reward,
5 service, or promise of reward, including a promise of future employment, in exchange for
6 recommending, influencing, or attempting to influence the award of or the terms of a contract
7 by the state agency the officer or employee serves.

8 Section 2. That § 5-18A-17 be amended to read as follows:

9 5-18A-17. No state officer or employee who approves, awards, or administers a contract
10 ~~involving the expenditure of public funds or the sale or lease of property~~ on behalf of a state
11 agency, may have an interest in a contract or derive a direct benefit from a contract that is within
12 the scope of the officer's or employee's official duties, nor for a one-year period following the
13 end of their employment or position as a state officer may the officer or employee derive a direct
14 benefit as a result of such contract except as provided in section 4 of this Act. In addition, no



1 such officer or employee may enter into any contract other than a contract of employment with
2 any state agency for a period of one year following their leaving office or employment except
3 as provided in section 5 of this Act. This prohibition includes any state officer or employee who,
4 in his or her official capacity, recommends the approval or award of the contract or who
5 supervises a person who approves, awards, or administers the contract. This prohibition does
6 not include any state officer who serves without compensation or who may be paid per diem
7 pursuant to § 4-7-10.4. ~~Any contract made in violation of this section is void. Any state officer~~
8 ~~or employee who knowingly violates this section is guilty of a Class 2 misdemeanor.~~

9 Section 3. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
10 follows:

11 A state officer or employee derives a direct benefit from a contract if the state officer or
12 employee, the officer's or employee's spouse, or other persons with whom the state officer or
13 employee lives and commingles assets:

- 14 (1) Has more than a five percent ownership or other interest in an entity that is a party
15 to the contract;
- 16 (2) Derives income, compensation, or commission directly from the contract or from the
17 entity that is a party to the contract;
- 18 (3) Acquires property under the contract; or
- 19 (4) Serves on the board of directors of a for-profit entity that derives income or
20 commission directly from the contract or acquires property under the contract.

21 A state officer or employee does not derive a direct benefit from a contract based solely on
22 the value associated with the officer's or employee's investments or holdings, or the investments
23 or holdings of other persons with whom the state officer or employee lives and commingles
24 assets.

1 Section 4. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
2 follows:

3 A governing body may authorize an officer or employee whose responsibilities include
4 approving, awarding, or administering a contract on behalf of a state agency or supervising any
5 employee who has these responsibilities to be a party to or derive a direct benefit from a contract
6 if:

- 7 (1) The officer or employee has provided full written disclosure to the governing body;
- 8 (2) The governing body has reviewed the essential terms of the transaction or contract
9 and the state officer's or employee's role in the contract or transaction; and
- 10 (3) The transaction and the terms of the contract are fair, reasonable, and not contrary to
11 the public interest.

12 The authorization shall be in writing. Any authorization given pursuant to this section is a
13 public record. Each authorization shall be filed with the commissioner of the Bureau of Human
14 Resources, who shall compile the authorizations and present them annually for review by the
15 Government Operations and Audit Committee.

16 Section 5. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
17 follows:

18 Within the one-year period prohibiting any contract with a state agency, the governing body
19 of the state agency may approve a former officer or employee to contract with any state agency
20 if the governing body determines that the transaction and the terms of the contract are fair,
21 reasonable, and are in the best interests of the public. The authorization shall be in writing.

22 Any approval given pursuant to this section is a public record. Each approval shall be filed
23 with the commissioner of the Bureau of Human Resources, who shall compile the approvals and
24 present them annually for review by the Government Operations and Audit Committee.

1 Section 6. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
2 follows:

3 A state officer or employee who knowingly violates the provisions of section 1 or section
4 2 of this Act commits malfeasance in office. The state officer or employee shall be removed
5 from office or employment and such person is guilty of a Class 1 misdemeanor. Any benefit to
6 a person or entity derived from the person's knowing violation of section 1 or section 2 of this
7 Act is subject to forfeiture. Any contract made in violation of section 1 or section 2 of this Act
8 is voidable by the governing body.

9 Section 7. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Nothing in this Act affects a specific conflict of interest prohibition that applies to specific
12 employees.

13 Section 8. That chapter 5-18A be amended by adding thereto a NEW SECTION to read as
14 follows:

15 The terms used in this Act mean:

16 (1) "State agency," each board, commission, committee, council, department, division,
17 office, task force, or agency of state government. The term, state agency, does not
18 include any authority created by the Legislature or executive order;

19 (2) "State officer," a person who is elected or appointed to serve a state agency. The term
20 does not include a member of the Legislature, a person who serves without
21 compensation, or a person who is only paid per diem in accordance with § 4-7-10.4;

22 (3) "Governing body," the Executive Board of the Legislative Research Council, the
23 Supreme Court, the Board of Regents, the Public Utilities Commission, each
24 constitutional officer, the Board of Trustees of the South Dakota Retirement System,

1 the State Investment Council, or the Governor;

2 (4) "Administer a contract," decision making or substantive influence on the decision

3 making concerning the manner, method, or means of a contract's performance or

4 enforcement such as the ability to terminate, suspend, change terms, or evaluate the

5 counter-party's performance under the contract. The term does not include review and

6 approval of contract documents for matters of style and form or conformity with

7 authorizing legislation or rule, mere clerical tasks such as posting, making, or

8 reconciling payments or accounts under the contract, collecting or reporting fiscal

9 data or other information in relation to the contract's performance, or relaying

10 substantive decisions made by another person or body as to the manner, method, or

11 means of a contract's performance or enforcement.