

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

955X0352

HOUSE STATE AFFAIRS

ENGROSSED NO. **HB 1214** - 02/10/2016

Introduced by: Representatives Mickelson, Cronin, Dryden, Haugaard, Hawley, Hunt, Jensen (Alex), Johns, Langer, Schoenfish, Stevens, Tulson, and Westra and Senators Peters, Haverly, Omdahl, Otten (Ernie), Sutton, Tidemann, and White

1 FOR AN ACT ENTITLED, An Act to regulate conflicts of interest for authority, board, or
2 commission members.

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

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 No elected or appointed member of a state authority, board, or commission may have an
6 interest in any contract or derive a direct benefit from any contract with the state which is within
7 the jurisdiction or relates to the subject matter of the state authority, board or commission or
8 with a political subdivision of the state if the political subdivision administers or executes
9 similar subject matter programs as the state authority, board or commission, nor may the
10 member have an interest in any contract or derive a direct benefit from any contract for one year
11 after the end of the member's term on the authority, board, or commission except as provided
12 in section 3 and section 4 of this Act.

13 Section 2. That the code be amended by adding a NEW SECTION to read:

14 An elected or appointed member of an authority, board, or commission derives a direct



1 benefit from a contract if the state authority, board, or commission member, the authority, board,
2 or commission member's spouse, or any other persons the authority, board, or commission
3 member lives with and commingles assets:

- 4 (1) Has more than a five percent ownership or other interest in an entity that is a party
5 to the contract;
- 6 (2) Derives income, compensation, or commission directly from the contract or from the
7 entity that is a party to the contract;
- 8 (3) Acquires property under the contract; or
- 9 (4) Serves on the board of directors of an entity that derives income or commission
10 directly from the contract or acquires property under the contract.

11 An authority, board, or commission member does not derive a direct benefit from a contract
12 based solely on the value associated with the authority, board, or commission member's
13 investments or holdings, or the investments or holdings of other persons the authority, board,
14 or commission member lives with and commingles assets. A member of an authority, board, or
15 commission does not have an interest in a contract nor does the member receive a direct benefit
16 by participating in a vote or a decision where the member's only interest is the effect of an act
17 of general application.

18 Section 3. That the code be amended by adding a NEW SECTION to read:

19 Any elected or appointed authority, board, or commission may authorize an authority, board,
20 or commission member to have an interest in a contract or to derive a direct benefit from a
21 contract if:

- 22 (1) The authority, board, or commission member has provided full written disclosure to
23 the authority, board, or commission;
- 24 (2) The authority, board, or commission has reviewed the essential terms of the

1 transaction or contract and the authority, board, or commission member's role in the
2 contract or transaction; and

3 (3) The transaction and the terms of the contract are fair, reasonable, and not contrary to
4 the public interest.

5 No member of a state authority, board, or commission may participate in or vote upon a
6 decision of the state authority, board, or commission relating to a matter in which the member
7 has an interest or derives a direct benefit.

8 The authorization shall be in writing. Any authorization given pursuant to this section is a
9 public record. Each authorization shall be filed with the auditor-general. The auditor-general
10 shall compile the authorizations and present them annually for review by the Government
11 Operations and Audit Committee. A member of an authority, board, or commission may comply
12 with this section if: the authority, board, or commission puts on its regular meeting agenda an
13 inquiry for conflicts disclosure prior to the consideration of any substantive matters; the member
14 publicly discloses his or her interest in a contract, direct benefits, or other conflict with any
15 matter on the agenda; the member is excused from discussion and consideration of the matter;
16 the board determines the matter underlying the conflict is fair, reasonable, and not contrary to
17 the public interest; and the disclosure is included in the minutes which are publicly available.

18 Section 4. That the code be amended by adding a NEW SECTION to read:

19 Within the one-year period prohibiting any contract with an elected or appointed authority,
20 board, or commission, the authority, board, or commission may approve a former authority,
21 board, or commission member to contract with the elected or appointed authority, board, or
22 commission if the authority, board, or commission determines that the transaction and the terms
23 of the contract are fair, reasonable, and are in the best interests of the public. The authorization
24 shall be in writing.

1 Any approval given pursuant to this section is a public record. Each approval shall be filed
2 with the auditor-general. The auditor-general shall compile the approvals and present them
3 annually for review by the Government Operations and Audit Committee.

4 Section 5. That the code be amended by adding a NEW SECTION to read:

5 Any elected or appointed authority, board, or commission member who knowingly violates
6 sections 1 to 4, inclusive, of this Act, shall be removed from the authority, board, or commission
7 and is guilty of a Class 1 misdemeanor. Any benefit to the authority, board, or commission
8 member in violation of sections 1 and 2 of this Act is subject to forfeiture and any contract made
9 in violation of this Act is voidable by the authority, board, or commission.

10 Section 6. That the code be amended by adding a NEW SECTION to read:

11 No board member, fiscal agent, officer, or executive of a local service agency, school
12 district, cooperative education service unit, education service agency, nonprofit education
13 service agency, or jointly governed education service entity that receives money from or through
14 the state may have an interest in a contract nor receive a direct benefit from a contract that the
15 local service agency, school district, cooperative education service unit, education service
16 agency, nonprofit education service agency, or jointly governed education service entity is a
17 party to the contract except as provided in section 8 of this Act.

18 Section 7. That the code be amended by adding a NEW SECTION to read:

19 A person described in section 6 of this Act derives a direct benefit from a contract if the
20 person, the person's spouse, or other persons the person lives with and commingles assets:

- 21 (1) Has more than a five percent ownership or other interest in an entity that is a party
22 to the contract;
- 23 (2) Derives income, compensation, or commission directly from the contract or from the
24 entity that is a party to the contract;

1 (3) Acquires property under the contract; or

2 (4) Serves on the board of directors of an entity that derives income directly from the
3 contract or acquires property under the contract.

4 A person does not derive a direct benefit from a contract based solely on the value
5 associated with the person's investments or holdings, or the investments or holdings of other
6 persons the state officer or employee lives with and commingles assets.

7 Section 8. That the code be amended by adding a NEW SECTION to read:

8 A local service agency, school district, cooperative education service unit, education service
9 agency, nonprofit education service agency, or jointly governed education service entity may
10 authorize a board member, fiscal agent, officer, or executive to have an interest in a contract or
11 derive a direct benefit from a contract if:

12 (1) The person has provided full written disclosure to the agency, district, or unit
13 governing board;

14 (2) The governing board has reviewed the essential terms of the transaction or contract
15 and the person's role in the contract or transaction; and

16 (3) The transaction or the terms of the contract are fair, reasonable, and not contrary to
17 the public interest.

18 No member of a local service agency, school district, cooperative education service unit,
19 education service agency, nonprofit education service agency, or jointly governed education
20 service entity may participate in or vote upon a decision of a local service agency, school
21 district, cooperative education service unit, education service agency, nonprofit education
22 service agency, or jointly governed education service entity relating to a matter in which the
23 member has an interest or derives a direct benefit.

24 The authorization shall be in writing. Any authorization given pursuant to this section is a

1 public record. Each authorization shall be filed with the auditor-general. The auditor-general
2 shall compile the authorizations and present them annually for review by the Government
3 Operations and Audit Committee. A board member, fiscal agent, officer, or executive of a local
4 service agency, school district, cooperative education service unit, education service agency,
5 nonprofit education service agency, or jointly governed education service entity may comply
6 with this section if: the local service agency, school district, cooperative education service unit,
7 education service agency, nonprofit education service agency, or jointly governed education
8 service entity puts on its regular meeting agenda an inquiry for conflicts disclosure prior to the
9 consideration of any substantive matters; the person subject to this Act publicly discloses his
10 or her interest in a contract, direct benefit, or other conflict with any matter on the agenda; the
11 person is excused from discussion and consideration of such matters; the board determines the
12 matter underlying the conflict is fair, reasonable, and not contrary to the public interest; and the
13 disclosure is included in the minutes which are publicly available.

14 Section 9. That the code be amended by adding a NEW SECTION to read:

15 Any person who knowingly violates sections 6 to 8, inclusive, of this Act shall be removed
16 from office or employment and is guilty of a Class 1 misdemeanor. Any benefit to a person
17 derived from the person's knowing violation of sections 6 to 8, inclusive, of this Act is subject
18 to forfeiture. Any contract made in violation of sections 6 to 8, inclusive, of this Act is voidable
19 by the governing body of the local service agency, school district, cooperative education service
20 unit, education service agency, nonprofit education service agency, or jointly governed
21 education service entity.

22 Section 10. That the code be amended by adding a NEW SECTION to read:

23 The following authorities, boards, or commissions are subject to this Act:

24 (1) South Dakota Building Authority;

- 1 (2) Board of Economic Development;
- 2 (3) South Dakota Housing Development Authority;
- 3 (4) South Dakota Health and Education Facilities Authority;
- 4 (5) Science and Technology Authority Board of Directors;
- 5 (6) South Dakota Ellsworth Development Authority;
- 6 (7) South Dakota Commission on Gaming;
- 7 (8) South Dakota Lottery Commission;
- 8 (9) State Brand Board;
- 9 (10) Game, Fish and Parks Commission;
- 10 (11) Banking Commission;
- 11 (12) Board of Trustees of the South Dakota Retirement System;
- 12 (13) Aeronautics Commission;
- 13 (14) South Dakota State Railroad Board;
- 14 (15) Transportation Commission;
- 15 (16) South Dakota Board of Education;
- 16 (17) Board of Regents;
- 17 (18) Board of Pardons and Paroles;
- 18 (19) Board of Minerals and Environment;
- 19 (20) Board of Water and Natural Resources;
- 20 (21) State Investment Council;
- 21 (22) South Dakota Railroad Authority; and
- 22 (23) Board of Water Management.

23 Section 11. That the code be amended by adding a NEW SECTION to read:

24 Any entity established pursuant to § 13-3-76 to 13-3-81 not subject to an audit requirement

1 under § 13-5-33.2 shall be audited annually. Each audit required under state law shall be done
2 to confirm compliance with sections 3 and 8 of this Act according to guidelines established by
3 the auditor-general.