

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

455J0376

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 59** - 01/23/2004

Introduced by: The Committee on State Affairs at the request of the Office of the Attorney
General

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding public records kept
2 by state agencies.

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

4 Section 1. That § 1-27-28 be amended to read as follows:

5 1-27-28. Terms used in §§ 1-27-29 to 1-27-32, inclusive, mean:

6 (1) "Private entity," any person or entity that is not a public entity as defined by
7 subdivision 3-21-1(2);

8 (2) "State agency," ~~each~~ any association, authority, board, commission, committee,
9 council, department, division, ~~state office,~~ officer, task force, ~~and their officers,~~ legal
10 ~~representatives, consultants, or other agents~~ or other agent of the state vested with the
11 authority to exercise any portion of the state's sovereignty. The term does not include
12 the Legislature, the Unified Judicial System, the Public Utilities Commission, the
13 Department of Environment and Natural Resources, any law enforcement agency, or
14 any unit of local government, or joint venture comprised of local governments;

15 (3) "Financial investigation, examination, or audit," any examination conducted by a



1 state agency of a private entity's proprietary information or trade secret information;

2 (4) "Proprietary information," information on pricing, costs, revenue, taxes, market
3 share, customers, and personnel held by private entities and used for that private
4 entity's business purposes;

5 (5) "Trade secret," information, including a formula, pattern, compilation, program,
6 device, method, technique or process, that:

7 (a) Derives independent economic value, actual or potential, from not being
8 generally known to, and not being readily ascertainable by proper means by,
9 other persons who can obtain economic value from its disclosure or use; and

10 (b) Is the subject of efforts that are reasonable under the circumstances to
11 maintain its secrecy.

12 Information includes a formula, pattern, compilation, program, device, method,
13 technique, process, proprietary, trade secret, formula, marketing plans, and strategic
14 planning information.

15 Section 2. That § 1-27-29 be amended to read as follows:

16 1-27-29. ~~A No state agency which is authorized by law to investigate, examine~~ may disclose
17 that it is conducting a financial investigation, examination, or audit the papers, books, records,
18 financial condition, or other information held by or concerning of a private entity may not
19 disclose that it is conducting such an investigation, examination, or audit while the financial
20 investigation, examination, or audit is ongoing, except as provided by §§ 1-27-28 to 1-27-32,
21 inclusive § 1-27-31.

22 Section 3. That § 1-27-30 be amended to read as follows:

23 1-27-30. All proprietary or trade secret information obtained by a state agency from or
24 concerning the a private entity by the state agency as a result of such an investigation,

1 ~~examination, or audit~~ is confidential, except as provided by §§ ~~1-27-28 to 1-27-32, inclusive~~
2 § 1-27-31.

3 Section 4. That § 1-27-31 be amended to read as follows:

4 1-27-31. A state agency may ~~not~~ disclose that it is ~~investigating, examining, or auditing~~
5 conducting a financial investigation, examination, or audit of a private entity; and ~~may only~~
6 disclose the information obtained from such an investigation, examination, or audit as follows:

- 7 (1) To the private entity being investigated, examined, or audited;
- 8 (2) To those persons whom the private entity has authorized in writing to receive such
9 information;
- 10 (3) To the officers, employees, or legal representatives of any other state agency which
11 requests the information in writing for the purpose of investigating and enforcing
12 civil or criminal matters. The written request will specify the particular information
13 desired and the purpose for which the information is requested;
- 14 (4) To any administrative or judicial body if the information is directly related to the
15 resolution of an issue in the proceeding, or pursuant to an administrative or judicial
16 order. However, no person may use a subpoena, discovery, or other applicable
17 statutes to obtain such information;
- 18 (5) To another state pursuant to an agreement between the State of South Dakota and the
19 other state, but only if the other state agrees to keep the information confidential as
20 set forth in §§ 1-27-28 to 1-27-32, inclusive;
- 21 (6) To the attorney general, state's attorney, or any state, federal, or local law
22 enforcement officer;
- 23 (7) To a federal agency pursuant to the provisions of federal law;
- 24 (8) To the extent necessary to submit any final reports or filings which are otherwise

1 required by law to be prepared or filed;

2 (9) ~~For investigations to protect the natural resources of the state; or~~

3 (10) To comply with federal law, rules, or program delegation requirements; or

4 (11) To the extent necessary to protect the health or welfare of the citizens of this state or
5 nation pursuant to a court order obtained under the same process as orders issued
6 pursuant to § 15-6-65(b).

7 Section 5. That § 1-27-32 be amended to read as follows:

8 1-27-32. Disclosure of information made confidential by §§ 1-27-28 to 1-27-32, inclusive,
9 except as provided in § 1-27-31, is a ~~Class 6 felony~~ Class 1 misdemeanor.

10 Section 6. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The provisions of this chapter do not supersede more specific provisions regarding public
13 access or confidentiality elsewhere in state or federal law.