

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

955X0352

HOUSE BILL NO. 1214

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



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

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

An authority, board, or commission member does not derive a direct benefit from a contract based solely on the value associated with the authority, board, or commission member's investments or holdings, or the investments or holdings of other persons the authority, board, or commission member lives with and commingles assets.

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

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

- (1) The authority, board, or commission member has provided full written disclosure to the authority, board, or commission;
- (2) The authority, board, or commission has reviewed the essential terms of the transaction or contract and the authority, board, or commission member's role in the contract or transaction; and
- (3) The transaction and the terms of the contract are fair, reasonable, and not contrary to

1 the public interest.

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

5 The authorization shall be in writing. Any authorization given pursuant to this section is a
6 public record. Each authorization shall be filed with the auditor-general. The auditor-general
7 shall compile the authorizations and present them annually for review by the Government
8 Operations and Audit Committee.

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

10 Within the one-year period prohibiting any contract with an elected or appointed authority,
11 board, or commission, the authority, board, or commission may approve a former authority,
12 board, or commission member to contract with the elected or appointed authority, board, or
13 commission if the authority, board, or commission determines that the transaction and the terms
14 of the contract are fair, reasonable, and are in the best interests of the public. The authorization
15 shall be in writing.

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

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

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

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

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

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

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

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

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

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

A local service agency, school district, cooperative education service unit, education service agency, nonprofit education service agency, or jointly governed education service entity may

1 authorize a board member, fiscal agent, officer, or executive to have an interest in a contract or
2 derive a direct benefit from a contract if:

- 3 (1) The person has provided full written disclosure to the agency, district, or unit
4 governing board;
- 5 (2) The governing board has reviewed the essential terms of the transaction or contract
6 and the person's role in the contract or transaction; and
- 7 (3) The transaction or the terms of the contract are fair, reasonable, and not contrary to
8 the public interest.

9 No member of a local service agency, school district, cooperative education service unit,
10 education service agency, nonprofit education service agency, or jointly governed education
11 service entity may participate in or vote upon a decision 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 relating to a matter in which the
14 member has an interest or derives a direct benefit.

15 The authorization shall be in writing. Any authorization given pursuant to this section is a
16 public record. Each authorization shall be filed with the auditor-general. The auditor-general
17 shall compile the authorizations and present them annually for review by the Government
18 Operations and Audit Committee.

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

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

unit, education service agency, nonprofit education service agency, or jointly governed education service entity.

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

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

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

1 (21) State Investment Council.

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

3 Any entity established pursuant to § 13-3-76 to 13-3-81 not subject to an audit requirement
4 under § 13-5-33.2 shall be audited annually. Each audit required under state law shall be done
5 to confirm compliance with sections 3 and 8 of this Act according to guidelines established by
6 the auditor-general.