

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

595W0111

## HOUSE BILL NO. 1064

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. That § 3-16-7 be amended to read as follows:

5 3-16-7. No public officer of a county, municipality, school district, township, or other  
6 political subdivision who is authorized to sell or lease any property, or make any contract in the  
7 officer's official capacity may become voluntarily interested individually in any sale, lease, or  
8 contract, directly or indirectly with such entity. A violation of this section is a Class 2  
9 misdemeanor unless the act is exempted by law.

10 Section 2. That chapter 3-16 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12 The terms used in this Act mean:

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



- 1 (2) "State officer," a person who is elected or appointed to serve a state agency. The term  
2 does not include a member of the Legislature, a person who serves without  
3 compensation, or a person who is only paid per diem in accordance with § 4-7-10.4;
- 4 (3) "Governing body," the Executive Board of the Legislative Research Council, the  
5 Supreme Court, the Board of Regents, the Public Utilities Commission, each  
6 constitutional officer, or the Governor.

7 Section 3. That chapter 3-16 be amended by adding thereto a NEW SECTION to read as  
8 follows:

9 Unless authorized by section 5 of this Act:

- 10 (1) A state officer or employee whose responsibilities include approving, reviewing, or  
11 negotiating a contract on behalf of any state agency or supervising any employee who  
12 has these responsibilities may not be a party to or derive direct benefits from the  
13 contract;
- 14 (2) A state officer or employee may not solicit nor accept any gift, favor, reward, service,  
15 or promise of reward, including a promise of future employment, in exchange for  
16 recommending, influencing, or attempting to influence the award of or the terms of  
17 a contract by the state agency the officer or employee serves; and
- 18 (3) The prohibition in subdivision (1) extends for a period of one year after the last day  
19 in state office or employment if the potential benefit derived by the former state  
20 officer or employee is one hundred thousand dollars or more during that one-year  
21 period and the contract giving rise to the potential benefit was executed or amended  
22 no more than three years prior to the state officer or employee leaving state office or  
23 employment.

24 Any contract made in violation of this section is voidable at the discretion of the governing

1 body.

2 Section 4. That chapter 3-16 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 A state officer or employee derives a direct benefit from a contract if the state officer or  
5 employee, the officer's or employee's spouse, children, or parents, or other adults with whom  
6 the state officer or employee lives and commingles assets:

7 (1) Has more than five percent ownership or other interest in an entity that is a party to  
8 the contract;

9 (2) Derives income, compensation, or commission directly from the contract or from the  
10 entity that is a party to the contract;

11 (3) Acquires property under the contract;

12 (4) Serves on the board of directors of a for-profit entity that derives income or  
13 commission directly from the contract or acquires property under the contract; or

14 (5) Receives compensation exceeding one hundred thousand dollars in any calendar year  
15 during the term of the contract from the entity contracting with the state agency.

16 A state officer or employee does not derive a direct benefit from a contract based solely on  
17 the value associated with the officer's or employee's investments or holdings, or the investments  
18 or holdings of other adults with whom the state officer or employee lives and commingles  
19 assets, in an entity that is a party to the contract provided the officer or employee does not meet  
20 the requirement contained in subdivision (1) of this section.

21 A spouse, child, or parent of a state officer or employee, or an adult with whom the state  
22 officer or employee lives and commingles assets, does not derive income, compensation, or  
23 commission directly from the contract merely by virtue of being employed by the contracting  
24 party, if the compensation is less than one hundred thousand dollars annually.

1 Section 5. That chapter 3-16 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, reviewing, or negotiating a contract on behalf of a state agency or supervising any  
5 employee who has these responsibilities to be a party to or derive direct benefits from a contract  
6 if:

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

11 The authorization, which may not be unreasonably withheld by the governing body, shall  
12 be in writing. The governing body may adopt a written plan to manage any perceived, potential,  
13 or real conflicts of interest associated with the state officer's or employee's role in a contract or  
14 transaction.

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

19 Section 6. That chapter 3-16 be amended by adding thereto a NEW SECTION to read as  
20 follows:

21 A state officer or employee who knowingly violates the provisions of section 3 of this Act  
22 commits malfeasance in office and the state officer or employee may be removed from office  
23 or employment. Any benefit to a person or entity derived from the person's knowing violation  
24 of section 3 of this Act is subject to forfeiture.

1 Section 7. Nothing in this Act affects a specific conflict of interest prohibition that applies  
2 to specific employees.

3 Section 8. That § 5-18A-17 be repealed.

4 ~~5-18A-17. No state officer or employee who approves, awards, or administers a contract~~  
5 ~~involving the expenditure of public funds or the sale or lease of property, may have an interest~~  
6 ~~in a contract that is within the scope of the officer's or employee's official duties. This~~  
7 ~~prohibition includes any state officer or employee who, in his or her official capacity,~~  
8 ~~recommends the approval or award of the contract or who supervises a person who approves,~~  
9 ~~awards, or administers the contract. This prohibition does not include any state officer who~~  
10 ~~serves without compensation or who may be paid per diem pursuant to § 4-7-10.4. Any contract~~  
11 ~~made in violation of this section is void. Any state officer or employee who knowingly violates~~  
12 ~~this section is guilty of a Class 2 misdemeanor.~~