CONFLICT WAIVER
INSTRUCTIONS AND FORM
Revised: June 24, 2026

SDCL 5-18A-17 to 5-18A-17.6

INTRODUCTION

State law prohibits certain current and former state officers and employees from entering into or benefiting from contracts in which they have had a role or influence. These restrictions apply to individuals who recommend, approve, award, or administer state contracts, as well as to those who supervise employees performing those functions. Although these requirements do not affect every state employee, they do apply to anyone whose duties intersect with the state contracting process.

These instructions are designed to help current and former executive-branch officers and employees determine whether a conflict of interest exists, or may exist, under South Dakota Codified Laws 5-18A-17 through 5-18A-17.6. They also explain how to request a waiver when appropriate, and outline the responsibilities of the officials who review those requests.

Because these laws apply to all state officers and employees, individuals working in agencies or instrumentalities outside the Governor's direct authority should consult their supervisors for agency-specific processes and requirements.

SUMMARY OF THE LAW

South Dakota law restricts certain current and former state officers and employees from entering into or benefiting from contracts when they have had a role in recommending, approving, awarding, or administering those contracts. These restrictions also apply to individuals who supervise employees engaged in those contracting functions.

The prohibitions apply broadly to those who:

- Approve, award, or administer a contract;
- Recommend the approval or award of a contract; or
- Supervise individuals who perform any of these duties.

"Administering a contract" includes making or influencing substantive decisions about how a contract is performed or enforced. Routine clerical tasks, such as processing payments or relaying decisions, are not considered contract administration.

The law's restrictions apply not only to current officers and employees but also continue for one year after an individual leaves state service. During that time, a former officer or employee who recommended, approved, awarded, or administered a contract may not enter into a contract with a state agency (other than an employment contract) or derive a benefit from a contract they were involved with. These same prohibitions also apply to their supervisors.

The law also prohibits a covered individual, or their spouse or anyone with whom they live and commingle assets, from deriving a benefit from a contract. Prohibited benefits include:

- Holding more than a five-percent ownership or financial interest in the contracting party;

- Receiving salary, commission, or compensation directly from the contract or from the contracting party;

- Acquiring property under the contract; or

- Serving on the board of a for-profit entity that gains income or property from the contract.

Together, these standards are intended to ensure fairness, transparency, and public trust in the state contracting process.

EXAMPLES OF TRANSACTIONS PROHIBITED ABSENT A WAIVER

The following examples illustrate situations in which a current or former state officer or employee (along with their supervisors) would be prohibited from entering into or benefiting from a contract unless a waiver is granted under SDCL 5-18A-17 through 5-18A-17.6.

1. *Direct Contracting With a State Agency*. A current employee of the Department of Game, Fish and Parks who has authority related to department contracts wants to enter into a seasonal contract to mow state-managed properties. Because this would be a direct contract with the agency in which the employee has contracting authority, the employee must request a waiver before proceeding.

2. *Benefits Arising From a Contract One Helped Recommend or Approve*. A Governor's Office of Economic Development (GOED) finance employee reviews a loan application and recommends approval; the GOED Commissioner awards the loan. The recommending employee, anyone who monitors the borrower's performance, their supervisors (including the Commissioner and the Governor), and their spouses or household members who commingle assets are all prohibited from holding an interest in or benefiting from that loan. Examples of prohibited benefits include:

    - Working for the borrower while still employed by the state or within one year after leaving state service; and

    - Serving on the board of a for-profit entity that benefits from the loan.

3. *Working for a Contractor After Participating in the Contract Award*. A staff engineer at the Office of the State Engineer (OSE) reviews bids for a new Bureau of Human Resources and Administration (BHRA) construction project, recommends an award, and supervises the project. The BHRA Commissioner ultimately awards the contract. The staff engineer, the State Engineer, the BHRA Commissioner, relevant supervisors, and their spouses or household members may not benefit from the contract—for example, by working for the awarded construction company—unless they first obtain a waiver.

4. *Committee Recommendations Leading to a Contract Award*. A Department of Social Services (DSS) committee composed of staff from various divisions evaluates proposals and recommends a vendor for a contract. The division director awards the contract. Committee members who made the recommendation, the director who awarded the contract, their supervisors, and the cabinet secretary are prohibited from benefiting from the contract. Examples of prohibited benefits include:

    - Ownership of more than five percent of the contractor;
    - A spouse earning commissions from the contractor.

    Supervisors of those who merely make recommendations (but have no approving/awarding authority) are not covered.

5. *Post-Employment Restrictions*. A Department of Transportation (DOT) employee recommends the award of a signage contract on June 15. The employee retires shortly thereafter. Within one year of retirement, the former employee may not accept employment with the awarded contractor unless a waiver is obtained, because they would be deriving a benefit from a contract they helped recommend.

SMALL TRANSACTIONS

Effective July 1, 2015, the Governor issued a blanket waiver for individual transactions of $200 or less. This means that if a transaction otherwise covered by the conflict-of-interest law totals $200 or below, a waiver request is not required.

However, employees should be aware that small-dollar purchases, including purchasing card transactions, are subject to periodic review. A pattern or series of transactions that appears designed to avoid the conflict-of-interest rules may trigger further inquiry and could result in disciplinary action if found to be inappropriate.

This exception is intended to simplify routine, low-value transactions, not to circumvent the law. Employees should exercise judgment and seek guidance when unsure whether a waiver is necessary.

CONTRACTS AWARDED PRIOR TO JULY 1, 2015

Individuals who, on or after July 1, 2015, derive a benefit from a state contract in which they played a role before that date must still follow the waiver process. Likewise, the conflict-of-interest requirements apply to anyone who administers a contract on or after July 1, 2015, even if the contract itself was originally awarded prior to that date.

In other words, older contracts are not grandfathered in. If an employee's current role or ongoing involvement with a pre-2015 contract creates a potential conflict under current law, a waiver is required.

AGENCY-SPECIFIC CONFLICTS STATUTES

Some agencies may be governed by conflict-of-interest statutes or regulations that are more specific or more restrictive than the general provisions outlined in SDCL 5-18A-17 through 5-18A-17.6. Employees should consult their supervisors to determine whether any such agency-specific requirements apply.

If both the general statewide rules and an agency-specific statute address the same issue and differ in their requirements, the more restrictive standard will apply.

PENALTIES FOR NON-COMPLIANCE

Failure to obtain a required waiver may result in significant consequences for both the state officer or employee and the underlying contract. If a waiver is required but not sought or granted, the affected contract may be voided, and the individual involved may face disciplinary action.

More serious violations, such as entering into a contract based on a quid pro quo or a promise of something of value, including cash or prospective employment, may lead to removal from office and potential criminal prosecution.

In addition, if a current or former officer or employee knowingly fails to request a waiver when one is likely required, they may also be subject to removal from their position and/or criminal penalties. These enforcement provisions underscore the importance of timely identifying potential conflicts and following the waiver process when necessary.

WAIVERS

A waiver may be granted to allow a state officer or employee to enter into a contract with the State or to benefit from a contract, but only under specific conditions. To be approved, the waiver request must:

1. Be submitted in writing;

2. Include the relevant terms of the contract or transaction;

3. Show that the reviewing official has examined the essential terms of the contract or transaction;

4. Show that the reviewing official has reviewed the requesting party's role in the contract or transaction; and

5. Demonstrate that the contract terms are fair, reasonable, and not contrary to the public interest.

Waivers are intended to ensure transparency while recognizing that some transactions may be permissible when properly reviewed. Each request must stand on its own merits, and approval is never automatic. The decision-maker is responsible for ensuring the transaction presents no risk of self-dealing and serves the public interest.

PROCESS TO OBTAIN A WAIVER

State officers and employees who believe a conflict may exist must submit a written request for a waiver using the "Request for Waiver" form included with these instructions. The request must be submitted to the cabinet secretary or commissioner responsible for the employee's agency (or former agency for past officers or employees). The reviewing official may schedule a meeting to discuss the contract, the employee's role, and why granting the waiver would not be contrary to the public interest. The official must act on the request within five working days of receiving it. If no action is taken within five days, the employee should contact Mary Weischedel at the Bureau of Human Resources and Administration (BHRA) by sending an email to mary.weischedel@state.sd.us.

If the employee disagrees with the secretary's or commissioner's decision, they may file a written appeal with the Office of the Governor. Appeals must include the waiver request form, the agency decision, and a brief statement explaining the basis for disagreement. Appeals may be submitted to through the Bureau of Human Resources and Administration by email to mary.weischedel@state.sd.us or mailed to the Bureau of Human Resources and Administration, ATTN: Compliance Officer, 500 East Capitol Avenue, Pierre, SD 57501-5070. The Governor will act on all appeals within five working days of receipt.

Employees must be diligent. The failure of an official to act on a waiver request does not mean the waiver is granted. The waiver request form becomes a public record and will be retained by BHRA. Each year, BHRA compiles all waivers granted in the previous year and submits them to the Legislature's Government Operations and Audit Committee. Employees with questions about how the law applies to their situation or whether a waiver is necessary should consult their supervisor.

USEFUL LINKS

The statutes governing unlawful self-dealing, conflicts of interest, and waivers are found in SDCL 5-18A-17 through 5-18A-17.6. Beginning July 1, 2015, these laws have been available on the South Dakota Legislative Research Council's website. A direct link to the South Dakota Codified Laws is provided below:

http://legis.sd.gov/Statutes/Codified_Laws/default.aspx

Employees should review these statutes to understand the legal requirements related to conflicts of interest and to ensure compliance with all applicable provisions.

INSTRUCTIONS FOR STATE OFFICERS AND EMPLOYEES SEEKING WAIVER

If you believe a potential conflict of interest may exist, you should promptly complete and submit the Request for Waiver form. In your submission, briefly describe:

- Your relationship to the contract or transaction at issue, and

- Why you believe the situation may fall under the conflict-of-interest law, including any way in which you, your spouse, or anyone with whom you live and commingle assets (such as a partner, roommate, or adult child) might benefit from the contract.

You should also provide a concise explanation of why granting a waiver would not be contrary to the public interest. For example, you may describe whether the contract was competitively bid, whether multiple individuals or committees were involved in the decision-making process, or whether the terms align with comparable contracts.

Please note that the Request for Waiver form is a public document and will be open to public inspection. Your supervisor may ask additional questions to determine whether any prohibited benefits exist, whether a quid pro quo is implicated, or whether a waiver would serve the public interest. Follow-up questions may include details regarding compensation, your role in the contracting process, or any relationships with the contracting party.

INSTRUCTIONS FOR OFFICIAL ACTING ON REQUEST

Upon receiving a written Request for Waiver, the reviewing official must promptly evaluate it and, when appropriate, schedule an interview with the employee. Interviews are strongly encouraged for all but the most straightforward requests.

In the interest of fairness and as directed by the Governor, you must act on every waiver request within five business days of receiving the written form. If the form is incomplete, you must address any gaps or questions during the interview. The review deadline may not be extended due to missing information.

You may delegate this responsibility to a deputy secretary or commissioner in your absence. Employees have been instructed to contact the Bureau of Human Resources and Administration (BHRA) if action is not taken within the required five-day period.

For any request that is not purely routine, you should ask detailed, probing questions to determine:

- The employee's role in recommending, approving, awarding, or administering the contract;
- The employee's relationship with the contracting party or principals involved;
- Whether the employee or household members hold past, current, or anticipated employment or financial interests with the contractor;
- Whether the contract terms are fair, reasonable, and consistent with comparable contracts;
- Whether the contract was awarded through a meaningful competitive process; and
- Whether any circumstances suggest a potential quid pro quo or conflict with the public interest.

You should take notes during the interview, but these notes must be kept separately and must not be attached to the Request for Waiver form.

Your decision must be recorded directly on the form, and the form must be signed. If the employee appeals your decision to the Office of the Governor, you may be asked to explain the basis for your decision.

REQUEST FOR WAIVER
SDCL 5-18A-17 to 5-18A-17.6

THIS IS A PUBLIC DOCUMENT

Date: ____
Employee Name: ____
Employee Signature: ____________________________________
Agency: ____
Position No.: ____
Title: ____

Explain your potential conflict of interest:

Describe your role in the award, administration, or supervision of a contract with an outside party, or your current or anticipated business transaction with a state agency (other than an employment contract):

Explain why you believe a waiver should be granted:

For Agency / BHRA Use Only
Date received by official acting on request: ____________________________________
Signature of official acting on request: ____
Name of official acting on request (please print): ________________________________
Date of interview: ________________________
Date acted upon: ________________________
Waiver granted? Yes ☐ No ☐
If waiver is conditional, indicate here: Yes ☐ No ☐
(If yes, list conditions on a separate sheet and attach to this document.)
Appeal requested? Yes ☐ No ☐
Appeal received in Governor's Office: __________________________
Date appeal acted upon: __________________________
Waiver granted on appeal? Yes ☐ No ☐
Received by BHRA: ____