Conflict of Interest Laws

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State of South Dakota – Executive Branch

This presentation provides an overview of South Dakota's conflict-of-interest laws governing contracts involving executive-branch officers and employees. These laws are designed to ensure fairness, transparency, and public trust in the state contracting process.

Revised: September 3, 2026

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Overview of South Dakota's Conflict of Interest Laws

- South Dakota law (SDCL 5-18A-17 through 5-18A-17.6) establishes restrictions to ensure fairness, transparency, and public trust in state contracting.
- These laws do not apply to every employee—they apply only to individuals whose duties intersect with the state contracting process.
- Covered individuals include those who recommend, approve, award, or administer contracts, as well as those who supervise employees performing any of those functions.

Conflict of Interest Laws

Who Is Covered by South Dakota's Conflict-of-Interest Laws

These laws apply to executive-branch officers and employees who:

- Recommend the approval or award of a state contract
- Approve or award a state contract
- Administer a state contract by making or influencing substantive decisions about its performance or enforcement
- Supervise individuals who recommend, approve, award, or administer contracts
- Are former state officers or employees, for one year after leaving state service, if they previously recommended, approved, awarded, or administered the contract

Conflict of Interest Law

What Covered Individuals Cannot Do

- Individuals who recommend, approve, award, or administer a state contract (and those who supervise them) may not:
  - Receive any prohibited benefit arising from a contract within the scope of their official duties.
  - Derive a benefit from such a contract for one year after leaving state service.
  - Enter into a contract with any state agency (other than an employment contract) for one year after leaving state service.

Contract Administration

- Administering a contract includes:
  - Making or influencing substantive decisions about how a contract is performed or enforced.
  - Exercising decision-making authority regarding the manner, method, or means of contract performance.
  - Determining or influencing whether to change contract terms, suspend performance, terminate the contract, or evaluate a contractor’s performance.
- Administering a contract does not include:
  - Routine clerical or ministerial tasks such as processing payments.
  - Communicating or relaying decisions made by others.
  - Performing administrative steps that do not involve substantive decision-making.

Deriving a Prohibited Benefit

- A state officer or employee, and the individual's spouse or anyone with whom they live and commingle assets, may ***not***:
  - Hold more than a five-percent ownership or financial interest in an entity that contracts with the State;
  - Receive salary, income, commission, or other compensation directly from a state contract or from the contracting entity;
  - Acquire property under a state contract; or
  - Serve on the board of a for-profit entity that receives income or property from a state contract.

These restrictions apply during state service and for one year after leaving state employment when the individual recommended, approved, awarded, or administered the contract.

When a Waiver May Be Granted

- A waiver may be granted to allow an officer or employee to enter into a contract with the State or to benefit from a state contract, but only when all of the following conditions are met:
  - The waiver request is submitted in writing using the official Request for Waiver form;
  - The relevant terms of the contract or transaction are provided;
  - The reviewing official examines the essential terms of the contract or transaction;
  - The reviewing official reviews the employee’s role in recommending, approving, awarding, or administering the contract; and
  - The reviewing official determines that the contract terms are fair, reasonable, and not contrary to the public interest.

Waivers: Awards Pre-July 1, 2015

Contracts Awarded Before July 1, 2015

- Individuals who derive a prohibited benefit from a state contract—whether the contract was awarded before or after July 1, 2015—must follow the waiver process if they recommended, approved, awarded, or administered the contract.
- 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.
- Older contracts are not exempt from conflict-of-interest laws. A waiver is required whenever current duties or past involvement create a prohibited conflict.

Waiver Process

Submission and Review

- A state officer or employee who believes a waiver may be required must submit a written Request for Waiver to the cabinet secretary or commissioner responsible for their agency (or former agency for past officers or employees).
- The reviewing official must act on the request within five working days of receiving the completed form.
- If the employee disagrees with the decision, they may submit a written appeal to the Governor’s Office.
- Employees with questions about whether a waiver is necessary should consult their supervisor before initiating the waiver process.

Waiver Process

Appeals

- If the employee disagrees with the cabinet 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 the disagreement.
- Appeals may be submitted by emailing or delivering the materials to the Bureau of Human Resources and Administration (BHRA), which transmits appeals to the Governor’s Office.
- The Governor will act on all appeals within five working days of receipt.
- All waiver request forms—whether granted, denied, or appealed—are public records maintained by BHRA.

Blanket Waiver

Small Transactions

- A blanket waiver applies to individual transactions of $200 or less.
- If a transaction otherwise falls under the conflict-of-interest laws but the total amount is $200 or below, a separate waiver request is not required.
- This exception is intended to simplify routine, low-value transactions.
- A pattern of repeated small-dollar transactions intended to circumvent conflict-of-interest requirements may trigger further review and potential disciplinary action.

Agency Specific Conflict Statutes

Agency Specific Conflict Statutes

Agency-Specific Conflict-of-Interest Requirements

- Some agencies may have conflict-of-interest statutes or regulations that are more specific or more restrictive than the general requirements in SDCL 5-18A-17 through 5-18A-17.6.
- Employees should consult their supervisors to determine whether any agency-specific rules apply.
- When both an agency-specific requirement and the statewide conflict-of-interest laws govern the same issue, the more restrictive standard applies.

Penalties for Noncompliance

- If a required waiver is not requested or not granted, the affected contract may be voided and the employee may be subject to 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 result in removal from position and potential criminal prosecution.
- A current or former officer or employee who knowingly fails to request a waiver when one is required may face removal from their position and/or criminal penalties.

Prohibited Conduct

- State officers and employees may not solicit or accept any gift, favor, reward, or promise of reward—including any promise of future employment—in exchange for recommending, influencing, or attempting to influence the award of a state contract.
- This prohibition is absolute and cannot be waived.

Waiver Decision Matrix

Conflict of Interest Waiver Decision Matrix

- The Conflict-of-Interest Waiver Decision Matrix is available on the Bureau of Human Resources and Administration (BHRA) website.
- The matrix helps current and former state officers and employees determine whether a conflict of interest exists and whether a waiver may be required.
- The matrix is a guidance tool—it is not determinative.
- Employees with questions about how the law applies to their situation or whether a waiver may be necessary should consult their supervisor.

State of South Dakota
Conflict of Interest Laws

Resources

- The Conflict-of-Interest Waiver Instructions & Form and the Conflict-of-Interest Waiver Decision Matrix are available on the Bureau of Human Resources and Administration (BHRA) website: https://www.sd.gov/bhra
- South Dakota's conflict-of-interest laws governing unlawful self-dealing, prohibited benefits, and waivers are found in SDCL 5-18A-17 through 5-18A-17.6.
- The South Dakota Codified Laws are available through the South Dakota Legislative Research Council at: https://sdlegislature.gov/Statutes

Disclaimer

- Employees who have questions about how the conflict-of-interest laws apply to their situation or whether a waiver may be necessary should consult their supervisor.
- This presentation is for general informational purposes only and is not intended as legal advice.
- Individuals who need legal advice specific to their circumstances should consult their agency legal advisor.