

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

937Y0317

HOUSE BILL NO. 1076

Introduced by: Representatives Soli, Bartling, Hawley, Mickelson, Peterson (Kent), Qualm,
and Wismer and Senators Greenfield (Brock), Frerichs, Heinert, and Sutton

1 FOR AN ACT ENTITLED, An Act to create a State Government Accountability Board.

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

3 Section 1. That the code be amended by adding a NEW SECTION to read:

4 There is hereby created a State Government Accountability Board to be composed of six
5 members to be appointed as follows:

6 (1) One member appointed by the Speaker of the House of Representatives;

7 (2) One member appointed by the minority leader in the House of Representatives;

8 (3) One member appointed by the President Pro Tempore in the Senate;

9 (4) One member appointed by the minority leader in the Senate; and

10 (5) Two members appointed by the Governor, not of the same political party.

11 All appointees are subject to confirmation by the Senate. The term for a board member is five
12 years and a board member may only be removed for good cause. Good cause to remove a
13 member is conduct such as: malfeasance or misfeasance in office, neglect of duty, corrupt
14 conduct, gross incompetency, or gross partisanship. A vacancy in the board's membership shall
15 be filled by the appointing authority within thirty days of the event causing the vacancy. If a



1 vacancy occurs before a term expires, the new member shall serve for the remaining portion of
2 the unexpired term. If the Senate is not in session at the time the appointment is made, the
3 appointee may serve until the Senate has the opportunity to consider the appointment. The per
4 diem and expenses of the board is the same as the per diem and expenses for members of
5 interim committees of the Legislature.

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

7 The initial appointments for the members of the board are temporary and staggered
8 according to the following terms:

- 9 (1) Five years for the members appointed from the Senate;
10 (2) Three years for the members appointed from the House of Representatives; and
11 (3) One year for one of the members appointed by the Governor and five years for the
12 other member appointed by the Governor.

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

14 The State Government Accountability Board may review and investigate:

- 15 (1) Any contract, grant, or loan with any public entity that provides the authority to any
16 other entity to expend public funds;
17 (2) Documents filed under chapter 3-23 or alleged violations relating to conflicts of
18 interest;
19 (3) Allegations of a direct or indirect interest in a contract in violation of the constitution
20 or law;
21 (4) Allegations of malfeasance in office by a constitutional officer, public official, or
22 public employee;
23 (5) Misappropriation of public funds;
24 (6) Use of false instruments to obtain public funds;

1 (7) Theft or embezzlement of public funds;

2 (8) Bribery; or

3 (9) Use of public money not authorized by law in violation of the constitution.

4 The board may establish its own procedures, issue subpoenas, administer oaths, and take
5 sworn testimony.

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

7 Any person acting in good faith may:

8 (1) Furnish information relating to suspected, anticipated, or completed violations of a
9 corrupt act relating to any subdivision in section 3 of this Act;

10 (2) File a report with the board, or

11 (3) File a complaint with the board alleging a violation of section 3 of this Act.

12 The information, reports, or complaints and the investigative records and files of the board
13 are confidential and not a public record according to chapter 1-27 until the board votes to
14 conduct a contested case hearing.

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

16 A person acting in good faith is immune from civil liability for furnishing information, filing
17 a report, or making a complaint. If a civil action is commenced against a person for damages
18 related to furnishing information, filing a report, or making a complaint and the court determines
19 that the person acted in good faith, the person may recover costs or disbursements under chapter
20 15-17 including reasonable attorney's fees. However, if the court determines that the person
21 furnishing information, filing a report, or making a complaint did not act in good faith, the
22 person who commenced the civil action may recover costs or disbursements under chapter
23 15-17, including reasonable attorney's fees, from the person who did not act in good faith.

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

1 If a majority of the members of the board vote that there is probable cause to believe that
2 a constitutional officer, public official, or public employee has violated a law or duty relating
3 to any corrupt act identified in any subdivision of section 3 of this Act, the board shall conduct
4 a contested case hearing according to chapter 1-26 to afford the accused person the opportunity
5 to respond to the allegation.

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

7 At the conclusion of the contested case hearing before the board, if the board determines by
8 a majority vote of the board that a violation has occurred, the board may refer the violation of
9 law to a local states attorney or the attorney general for criminal prosecution, or may refer the
10 violation to the local states attorney or the attorney general with instructions to initiate a civil
11 action to recover any public money wrongfully paid. If the attorney general does not commence
12 a criminal prosecution or a civil action for the violation of the law within forty-five days of the
13 referral, the attorney general shall report to the board the disposition of the case.

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

15 If the board refuses to investigate or act upon a report or complaint alleging a violation of
16 any subdivision in section 3 of this Act without good cause, any citizen and taxpayer residing
17 within the state may commence an action or proceeding to remedy a corrupt violation of any
18 provision of this Act.

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

20 The board shall annually report to the people, the Governor, and the Legislature on its
21 activities. The report shall include a summary of any allegations of violations of section 3 of this
22 Act, reports filed, complaints, and hearings conducted by the board. The Board may redact
23 certain information in a report when the information is not subject to disclosure under §§ 1-27-
24 1.5 or the information would be an unreasonable invasion of personal privacy such as when an

1 allegation is found by the board to be without merit.

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

3 The State Government Accountability Board is attached to the Office of the Attorney
4 General for administrative and budgetary support. In order to review and investigate any alleged
5 violation of the subdivisions listed in section 3 of the Act, the board may employ staff as it
6 deems necessary. The extraordinary litigation fund established in § 1-14-3.1 may be used for
7 legal and investigative expenses authorized by the board related to prosecuting violations of the
8 Act.