

# Conflict of Interest Laws

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- HB 1064 passed during the 2015 Legislative Session which outlines new laws associated with conflict of interests for state employees and officers in the area of contracts.
- These laws do not affect everyone.

# Conflict of Interest Laws

- Specifically, these laws apply to state officers and employees who:
  - Approve, award or administer a contract;
  - Recommend the approval or award of a contract;
  - Supervise persons who approve, award or administer a contract;
  - Former state officers and employees for a period of 1 year after they leave state employment.

# Conflict of Interest Law

- Persons listed on the previous slide cannot:
  - Receive a benefit from a contract that is within that person's scope of duties while in office.
  - Derive a benefit from a contract for a period of one year after they leave office.
  - Enter into a contract with any state agency, except an employment contract for a period of one year after they leave office.

# Contract Administration

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- Administering a contract includes:
  - Decision making or substantive influence on decision making concerning the manner, method or means of a contract's performance or enforcement.
  
- Administering a contract does not include:
  - Performing clerical tasks such as posting payments or communicating decisions made by others.

# Derive a Benefit

- A state officer or employee or *the officer's or employee's spouse, or other persons with whom the person lives and commingles or combines assets cannot:*
  - Have more than a five percent ownership or other interest in an entity that is a party to the contract;
  - Take income, compensation or commission directly from the contract or entity that is a party to the contract;
  - Acquire property under the contract; or
  - Serve on the board of a for-profit entity that derives income or commission directly from the contract or acquires property under the contract.

# Waiver Process

- A waiver allowing the state officer or employee to contract with state government or benefit from a contract with a state agency may be granted if:
  - A waiver is requested in writing. The form can be found in Conflict of Interest Waiver Instructions and Form document posted at BHR's website;
  - The relevant terms of the contract or transaction are provided in writing;
  - The officer reviewing the waiver has reviewed the essential terms of the contract or transaction;
  - The officer reviewing the waiver has reviewed the requesting party's role on the contract or transaction; and
  - The terms of the contract are fair, reasonable and not contrary to the public interest.

# Waiver Process

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- Persons who on or after July 1, 2015, derive a benefit from a state contract in which they played a role prior to July 1, 2015, should go through the waiver process.
- The law applies to those who administer contracts on or after July 1, 2015, even if the contract was awarded prior to July 1, 2015.

# Waiver Process

- The state officer or employee requesting a waiver must provide the waiver request to the cabinet secretary or commissioner with responsibility for the person's agency (or the former agency for former officers and employees).
- The secretary or commissioner is to act on the request within five working days of receipt.
- If the state officer or employee disagrees with the secretary's or commissioner's decision, the state officer or employee can submit a written appeal to the Governor's Office.

# Waiver Process

- Submit appeal by hand delivering or emailing the request form, the secretary's or commissioner's decision and a short statement of your reason for disagreeing with the decision to Mallori Barnett, Bureau of Human Resources, 500 East Capitol Avenue, Pierre, SD 57501-5070, [Mallori.Barnett@state.sd.us](mailto:Mallori.Barnett@state.sd.us).
- The Governor will act on all appeals within five working days of receipt.
- The request for waiver form will be filed with the Bureau of Human Resources and is a public record.

# Blanket Waiver

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- Effective July 1, 2015, the Governor granted a blanket waiver for all transactions of \$200.00 or less.
  - Therefore, it is not necessary to seek a waiver for otherwise covered transactions, as long as the amount is \$200.00 or less.

# Agency Specific Conflict Statutes

- There may be more specific conflict of interest statutes or regulations that are agency specific.
- Employees are encouraged to ask supervisors as to the existence of any such regulations.

# Penalties for Noncompliance

- If a waiver is necessary but is not sought or granted, the contract that was involved may be voided and the state officer or employee may be subject to disciplinary action.
- If the contract was the result of a quid pro quo, or promise for something such as a cash payment or promise of future employment, the current or former officer or employee may be removed from office and/or be subject to criminal prosecution.
- If the current or former state officer or employee failed to seek and obtain a waiver knowing one was likely required, the person could be removed from his or her office or position, and/or be subject to criminal prosecution.

# Penalties for Noncompliance

- 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 Requests

- To assist present or past state officers or employees to determine whether it is necessary to seek a waiver, the person can answer questions in the Conflict of Interest Waiver Decision Matrix posted on the Bureau of Human Resources website at <https://bhr.sd.gov/policies-forms/>.
- The matrix serves as guide and not determinative of whether a conflict exists.

# Resources

- Conflict of Interest Waiver Instructions and Form are available on the BHR website at <https://bhr.sd.gov/policies-forms/>.
- The law governing self-dealing, conflicts of interest, and waivers will be found at SDCL Section 5-18A-17 to SDCL 5-18A-17.6.
- Beginning July 1, 2015, the statutes will be available on the Legislative Research Council website at [http://legis.sd.gov/Statutes/Codified\\_Laws/default.aspx](http://legis.sd.gov/Statutes/Codified_Laws/default.aspx).

# Disclaimer

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- For questions about the applicability of the law and the process for requesting a waiver, contact Bureau of Human Resources at 605.773.3148 or [Mallori.Barnett@state.sd.us](mailto:Mallori.Barnett@state.sd.us).
- This presentation is not intended as legal advice.
- For legal advice specific to your situation, you will need to contact an attorney.