# 2021 South Dakota Legislature

# House Bill 1089

*Introduced by:* ***Representative*** *Howard*

**An Act to authorize the disclosure of protection and security expenditures for public officials.**

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

**Section 1.** That § 1-25-2 be AMENDED.

**1-25-2. Executive or closed meetings--Purposes--Authorization--Violation as misdemeanor.**

Executive or closed meetings may be held for the sole purposes of:

(1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term, employee, does not include any independent contractor;

(2) Discussing the expulsion, suspension, discipline, assignment of or the educational program of a student or the eligibility of a student to participate in interscholastic activities provided by the South Dakota High School Activities Association;

(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;

(4) Preparing for contract negotiations or negotiating with employees or employee representatives;

(5) Discussing marketing or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, when public discussion may be harmful to the competitive position of the business; or

(6) Discussing information listed in ~~subdivisions 1-27-1.5(8) and 1-27-1.5(17)~~ <u>subdivision 1-27-1.5(16) and § 1-27-1.24</u>.

However, any official action concerning such matters shall be made at an open official meeting. An executive or closed meeting shall be held only upon a majority vote of the members of the public body present and voting, and discussion during the closed meeting is restricted to the purpose specified in the closure motion. Nothing in § 1-25-1

or this section prevents an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit it. A violation of this section is a Class 2 misdemeanor.

**Section 2.** That § 1-27-1.5 be AMENDED.

**1-27-1.5. Certain records not open to inspection and copying.**

The following records are not subject to §§ 1-27-1, 1-27-1.1, 1-27-1.3, ~~and §~~ or 1-27-1.23:

(1) Personal information in records regarding any student, prospective student, or former student of any educational institution if such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public in accordance with 20 U.S.C. § 1232g as the law existed on January 1, 2009;

(2) Medical records, including all records of drug or alcohol testing, treatment, or counseling, other than records of births and deaths. This law in no way abrogates or changes existing state and federal law pertaining to birth and death records;

(3) Trade secrets, the specific details of bona fide research, applied research, or scholarly or creative artistic projects being conducted at a school, postsecondary institution or laboratory funded in whole or in part by the state, and other proprietary or commercial information which if released would infringe intellectual property rights, give advantage to business competitors, or serve no material public purpose;

(4) Records which consist of attorney work product or which are subject to any privilege recognized in article V of chapter 19-19;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, if the records constitute a part of the examination, investigation, intelligence information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training. However, this subdivision does not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person, and this subdivision does not apply to a 911 recording or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure. This law in no way abrogates or

changes §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of information from confidential informants;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property;

(7) Personnel information other than salaries and routine directory information. However, this subdivision does not apply to the public inspection or copying of any current or prior contract with any public employee and any related document that specifies the consideration to be paid to the employee;

(8) ~~Information pertaining to the protection of public or private property and any person on or within public or private property including:~~

~~(a) Any vulnerability assessment or response plan intended to prevent or mitigate criminal acts;~~

~~(b) Emergency management or response;~~

~~(c) Public safety information that would create a substantial likelihood of endangering public safety or property, if disclosed;~~

~~(d) Computer or communications network schema, passwords, or user identification names;~~

~~(e) Guard schedules;~~

~~(f) Lock combinations; and~~

~~(g) Any blueprint, building plan, or infrastructure record regarding any building or facility that would expose or create vulnerability through disclosure of the location, configuration, or security of critical systems of the building or facility;~~

~~(9)~~ The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Gaming Commission and those persons or entities with which the commission has entered into contractual relationships. Nothing in this subdivision allows the commission to withhold from the public any information relating to amounts paid persons or entities with which the commission has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the municipality, or county where the prize winner resides;

~~(10)~~(9) Personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

~~(11)~~(10) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

~~(12)~~(11) Correspondence, memoranda, calendars or logs of appointments, working papers, and records of telephone calls of public officials or employees;

~~(13)~~(12) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in South Dakota if necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This subdivision does not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, or the federal Native American Graves Protection and Repatriation Act;

~~(14)~~(13) Records or portions of records kept by public bodies which maintain collections of archeological, historical, or paleontological significance which nongovernmental donors have requested to remain closed or which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the federal Native American Graves Protection and Repatriation Act and the Archeological Resources Protection Act;

~~(15)~~(14) Employment applications and related materials, except for applications and related materials submitted by individuals hired into executive or policymaking positions of any public body;

~~(16)~~(15) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; passport numbers, driver license numbers; or other personally identifying numbers or codes; and financial account numbers supplied to state and local governments by citizens or held by state and local governments regarding employees or contractors;

~~(17)~~(16) Any emergency or disaster response plans or protocols, safety or security audits or reviews, or lists of emergency or disaster response personnel or material; any location or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other military or law enforcement equipment or personnel;

~~(18)~~(17) Any test questions, scoring keys, results, or other examination data for any examination to obtain licensure, employment, promotion or reclassification, or academic credit;

~~(19)~~(18) Personal correspondence, memoranda, notes, calendars or appointment logs, or other personal records or documents of any public official or employee;

~~(20)~~(19) Any document declared closed or confidential by court order, contract, or stipulation of the parties to any civil or criminal action or proceeding except as provided under § 1-27-1.23;

~~(21)~~(20) Any list of names or other personally identifying data of occupants of camping or lodging facilities from the Department of Game, Fish and Parks;

~~(22)~~(21) Records which, if disclosed, would constitute an unreasonable release of personal information;

~~(23) Records which, if released, could endanger the life or safety of any person;~~

~~(24)~~(22) Internal agency record or information received by agencies that are not required to be filed with such agencies, if the records do not constitute final statistical or factual tabulations, final instructions to staff that affect the public, or final agency policy or determinations, or any completed state or federal audit and if the information is not otherwise public under other state law, including chapter 15-15A and § 1-26-21;

~~(25)~~(23) Records of individual children regarding commitment to the Department of Corrections pursuant to chapters 26-8B and 26-8C;

~~(26)~~(24) Records regarding inmate disciplinary matters pursuant to § 1-15-20;

~~(27)~~(25) Any other record made closed or confidential by state or federal statute or rule or as necessary to participate in federal programs and benefits;

~~(28)~~(26) A record of a settlement agreement or litigation regarding investment or bankruptcy and involving the South Dakota Investment Council or the South Dakota Retirement System, or both, unless the settlement or litigation results in a finding of liability against the council or system, or both; and

~~(29)~~(27) A record of a settlement agreement or litigation regarding medical services involving any county hospital established under chapter 34-8 or any municipal hospital established under chapter 34-9.

**Section 3.** That a NEW SECTION be added:

**1-27-1.24. Records--Safety and security--Nondisclosure--Exception.**

The following safety, security, and protection records are not subject to § 1-27-1, 1-27-1.1, 1-27-1.3, or 1-27-1.23:

(1) Records pertaining to the protection of public or private property and any person on or within public or private property including:

(a) Any vulnerability assessment or response plan intended to prevent or mitigate criminal acts;

(b) Emergency management or response;

(c) Public safety information that would create a substantial likelihood of endangering public safety or property, if disclosed;

(d) Computer or communications network schema, passwords, or user identification names;

(e) Guard schedules;

(f) Lock combinations; and

(g) Any blueprint, building plan, or infrastructure record regarding any building or facility that would expose or create vulnerability through disclosure of the location, configuration, or security of critical systems of the building or facility; and

(2) Records that could endanger the life or safety of any person, if released.

Nothing in this section may be construed to exempt or restrict the full disclosure of direct and indirect expenditures, by any public entity, for the provision of protection or security to the Governor or to any other state or public officials, including costs of meals, lodging, travel, and compensation.