



2021 South Dakota Legislature

House Bill 1089

Introduced by: **Representative Howard**

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

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

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

5 **1-25-2. Executive or closed meetings--Purposes--Authorization--Violation**
 6 **as misdemeanor.**

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

- 8 (1) Discussing the qualifications, competence, performance, character or fitness of any
 9 public officer or employee or prospective public officer or employee. The term,
 10 employee, does not include any independent contractor;
- 11 (2) Discussing the expulsion, suspension, discipline, assignment of or the educational
 12 program of a student or the eligibility of a student to participate in interscholastic
 13 activities provided by the South Dakota High School Activities Association;
- 14 (3) Consulting with legal counsel or reviewing communications from legal counsel about
 15 proposed or pending litigation or contractual matters;
- 16 (4) Preparing for contract negotiations or negotiating with employees or employee
 17 representatives;
- 18 (5) Discussing marketing or pricing strategies by a board or commission of a business
 19 owned by the state or any of its political subdivisions, when public discussion may
 20 be harmful to the competitive position of the business; or
- 21 (6) Discussing information listed in ~~subdivisions 1-27-1.5(8) and 1-27-1.5(17)~~
 22 subdivision 1-27-1.5(16) and § 1-27-1.24.

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

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

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

5 **1-27-1.5. Certain records not open to inspection and copying.**

6 The following records are not subject to §§ 1-27-1, 1-27-1.1, 1-27-1.3, ~~and § or~~
7 1-27-1.23:

- 8 (1) Personal information in records regarding any student, prospective student, or
9 former student of any educational institution if such records are maintained by and
10 in the possession of a public entity, other than routine directory information
11 specified and made public in accordance with 20 U.S.C. § 1232g as the law existed
12 on January 1, 2009;
- 13 (2) Medical records, including all records of drug or alcohol testing, treatment, or
14 counseling, other than records of births and deaths. This law in no way abrogates
15 or changes existing state and federal law pertaining to birth and death records;
- 16 (3) Trade secrets, the specific details of bona fide research, applied research, or
17 scholarly or creative artistic projects being conducted at a school, postsecondary
18 institution or laboratory funded in whole or in part by the state, and other
19 proprietary or commercial information which if released would infringe intellectual
20 property rights, give advantage to business competitors, or serve no material public
21 purpose;
- 22 (4) Records which consist of attorney work product or which are subject to any privilege
23 recognized in article V of chapter 19-19;
- 24 (5) Records developed or received by law enforcement agencies and other public bodies
25 charged with duties of investigation or examination of persons, institutions, or
26 businesses, if the records constitute a part of the examination, investigation,
27 intelligence information, citizen complaints or inquiries, informant identification, or
28 strategic or tactical information used in law enforcement training. However, this
29 subdivision does not apply to records so developed or received relating to the
30 presence of and amount or concentration of alcohol or drugs in any body fluid of
31 any person, and this subdivision does not apply to a 911 recording or a transcript
32 of a 911 recording, if the agency or a court determines that the public interest in
33 disclosure outweighs the interest in nondisclosure. This law in no way abrogates or

- 1 changes §§ 23-5-7 and 23-5-11 or testimonial privileges applying to the use of
 2 information from confidential informants;
- 3 (6) Appraisals or appraisal information and negotiation records concerning the purchase
 4 or sale, by a public body, of any interest in real or personal property;
- 5 (7) Personnel information other than salaries and routine directory information.
 6 However, this subdivision does not apply to the public inspection or copying of any
 7 current or prior contract with any public employee and any related document that
 8 specifies the consideration to be paid to the employee;
- 9 ~~(8) Information pertaining to the protection of public or private property and any person~~
 10 ~~on or within public or private property including:~~
- 11 ~~(a) Any vulnerability assessment or response plan intended to prevent or mitigate~~
 12 ~~criminal acts;~~
- 13 ~~(b) Emergency management or response;~~
- 14 ~~(c) Public safety information that would create a substantial likelihood of endangering~~
 15 ~~public safety or property, if disclosed;~~
- 16 ~~(d) Computer or communications network schema, passwords, or user identification~~
 17 ~~names;~~
- 18 ~~(e) Guard schedules;~~
- 19 ~~(f) Lock combinations; and~~
- 20 ~~(g) Any blueprint, building plan, or infrastructure record regarding any building or~~
 21 ~~facility that would expose or create vulnerability through disclosure of the location,~~
 22 ~~configuration, or security of critical systems of the building or facility;~~
- 23 ~~(9) The security standards, procedures, policies, plans, specifications, diagrams, access~~
 24 ~~lists, and other security-related records of the Gaming Commission and those~~
 25 ~~persons or entities with which the commission has entered into contractual~~
 26 ~~relationships. Nothing in this subdivision allows the commission to withhold from~~
 27 ~~the public any information relating to amounts paid persons or entities with which~~
 28 ~~the commission has entered into contractual relationships, amounts of prizes paid,~~
 29 ~~the name of the prize winner, and the municipality, or county where the prize winner~~
 30 ~~resides;~~
- 31 ~~(10)~~(9) Personally identified private citizen account payment information, credit
 32 information on others supplied in confidence, and customer lists;
- 33 ~~(11)~~(10) Records or portions of records kept by a publicly funded library which, when
 34 examined with or without other records, reveal the identity of any library patron
 35 using the library's materials or services;

- 1 ~~(12)~~(11) Correspondence, memoranda, calendars or logs of appointments, working
2 papers, and records of telephone calls of public officials or employees;
- 3 ~~(13)~~(12) Records or portions of records kept by public bodies which would reveal the
4 location, character, or ownership of any known archaeological, historical, or
5 paleontological site in South Dakota if necessary to protect the site from a
6 reasonably held fear of theft, vandalism, or trespass. This subdivision does not
7 apply to the release of information for the purpose of scholarly research,
8 examination by other public bodies for the protection of the resource or by
9 recognized tribes, or the federal Native American Graves Protection and
10 Repatriation Act;
- 11 ~~(14)~~(13) Records or portions of records kept by public bodies which maintain
12 collections of archeological, historical, or paleontological significance which
13 nongovernmental donors have requested to remain closed or which reveal the
14 names and addresses of donors of such articles of archaeological, historical, or
15 paleontological significance unless the donor approves disclosure, except as the
16 records or portions thereof may be needed to carry out the purposes of the federal
17 Native American Graves Protection and Repatriation Act and the Archeological
18 Resources Protection Act;
- 19 ~~(15)~~(14) Employment applications and related materials, except for applications and
20 related materials submitted by individuals hired into executive or policymaking
21 positions of any public body;
- 22 ~~(16)~~(15) Social security numbers; credit card, charge card, or debit card numbers and
23 expiration dates; passport numbers, driver license numbers; or other personally
24 identifying numbers or codes; and financial account numbers supplied to state and
25 local governments by citizens or held by state and local governments regarding
26 employees or contractors;
- 27 ~~(17)~~(16) Any emergency or disaster response plans or protocols, safety or security
28 audits or reviews, or lists of emergency or disaster response personnel or material;
29 any location or listing of weapons or ammunition; nuclear, chemical, or biological
30 agents; or other military or law enforcement equipment or personnel;
- 31 ~~(18)~~(17) Any test questions, scoring keys, results, or other examination data for any
32 examination to obtain licensure, employment, promotion or reclassification, or
33 academic credit;
- 34 ~~(19)~~(18) Personal correspondence, memoranda, notes, calendars or appointment logs,
35 or other personal records or documents of any public official or employee;

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

4 ~~(21)~~(20) Any list of names or other personally identifying data of occupants of camping
 5 or lodging facilities from the Department of Game, Fish and Parks;

6 ~~(22)~~(21) Records which, if disclosed, would constitute an unreasonable release of
 7 personal information;

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

9 ~~(24)~~(22) Internal agency record or information received by agencies that are not
 10 required to be filed with such agencies, if the records do not constitute final
 11 statistical or factual tabulations, final instructions to staff that affect the public, or
 12 final agency policy or determinations, or any completed state or federal audit and
 13 if the information is not otherwise public under other state law, including chapter
 14 15-15A and § 1-26-21;

15 ~~(25)~~(23) Records of individual children regarding commitment to the Department of
 16 Corrections pursuant to chapters 26-8B and 26-8C;

17 ~~(26)~~(24) Records regarding inmate disciplinary matters pursuant to § 1-15-20;

18 ~~(27)~~(25) Any other record made closed or confidential by state or federal statute or
 19 rule or as necessary to participate in federal programs and benefits;

20 ~~(28)~~(26) A record of a settlement agreement or litigation regarding investment or
 21 bankruptcy and involving the South Dakota Investment Council or the South Dakota
 22 Retirement System, or both, unless the settlement or litigation results in a finding
 23 of liability against the council or system, or both; and

24 ~~(29)~~(27) A record of a settlement agreement or litigation regarding medical services
 25 involving any county hospital established under chapter 34-8 or any municipal
 26 hospital established under chapter 34-9.

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

28 **1-27-1.24. Records--Safety and security--Nondisclosure--Exception.**

29 The following safety, security, and protection records are not subject to § 1-27-1,
 30 1-27-1.1, 1-27-1.3, or 1-27-1.23:

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

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

- 1 **(b) Emergency management or response;**
2 **(c) Public safety information that would create a substantial likelihood of**
3 **endangering public safety or property, if disclosed;**
4 **(d) Computer or communications network schema, passwords, or user**
5 **identification names;**
6 **(e) Guard schedules;**
7 **(f) Lock combinations; and**
8 **(g) Any blueprint, building plan, or infrastructure record regarding any building**
9 **or facility that would expose or create vulnerability through disclosure of**
10 **the location, configuration, or security of critical systems of the building or**
11 **facility; and**
12 **(2) Records that could endanger the life or safety of any person, if released.**
13 **Nothing in this section may be construed to exempt or restrict the full disclosure**
14 **of direct and indirect expenditures, by any public entity, for the provision of protection or**
15 **security to the Governor or to any other state or public officials, including costs of meals,**
16 **lodging, travel, and compensation.**