

Minutes: Senate Judiciary

Tuesday, February 11, 2025 7:45 AM

Roll Call

Present: Sen. Blanc, Sen. Duhamel, Sen. Grove, Sen. Mehlhaff, Sen. Pischke, Sen. Hulse, and Sen. Wheeler

**The meeting was called to order by Senator Wheeler**

**MOTION: TO APPROVE THE MINUTES OF THURSDAY, FEBRUARY 06<sup>TH</sup>**

Moved by: Pischke  
Second by: Hulse  
Action: Prevailed by voice vote

**SB 62 : establish mandatory reporting requirements related to crimes, improper governmental conduct, and conflicts of interest, and to provide a penalty therefor.**

Presented by: Marty Jackley, Attorney General, State of South Dakota  
Proponents: Josh Haeder, South Dakota Treasurer (Handout(s) HO#1)  
Jason Jares, Self, Pierre  
Eric Ollila, South Dakota State Employees Organization, Pierre  
Opponents: Katie Hruska, Governor's Office  
Terra Larson, South Dakota Association of Criminal Defense Lawyers, Rapid City

**MOTION: AMEND SB 62**

62A

On page 1, line 1, of the Introduced bill, after "to" delete " crimes,"  
On page 1, line 2, delete ", and conflicts of interest" and insert " and crime"  
On the Introduced bill, delete everything after the enacting clause and insert:  
"

**Section 1. That § 1-56-11 be AMENDED:**

~~1-56-11. A state employee who suspects the existence of a conflict of interest, fraud, or theft~~ has reasonable cause to suspect that improper governmental conduct or a crime, as defined in section 2 of this Act, has occurred shall report the matter immediately to any, of the following:  
(1) ~~The employee's immediate supervisor;~~  
(2) ~~The attorney general's office; or~~  
(3) ~~The Department of Legislative Audit pursuant to the requirements set forth in chapter 3-6C.~~

**Section 2. That a NEW SECTION be added to chapter 3-6C:**

Terms used in this Act mean:

- (1) "Adverse employment action," constructive or actual discharge, suspension from employment, demotion, transfer, decrease in compensation or benefits, imposition of an unfavorable work schedule, or any other similar reprisal or retaliatory action;
- (2) "Conflict of interest," conduct defined or described in §§ 5-18A-17 to 5-18A-17.6, inclusive, 42-7A-27, and 42-7A-28;
- (3) "Crime," a criminal act attempted or committed by misusing a state employee's access, duty, position, or responsibility as a state employee, which constitutes a felony under state law;
- (4) "Good faith report," a report made, without malice, by a reporter, which the reporter has reasonable cause to believe is accurate and true;
- (5) "Improper governmental conduct," any conduct or omission that results in:
  - (a) A conflict of interest prohibited by state law;
  - (b) Fraud; or
  - (c) Theft of moneys or property belonging to or derived from federal, state, or local government sources, constituting a felony;
- (6) "Reasonable cause," a sufficient reason, based on known facts, to assume something is true;
- (7) "Reporter," a state employee who witnesses or has evidence of improper governmental conduct or a crime, and who makes a good faith report of the improper governmental conduct or the crime, to a supervisor or other appropriate authority;
- (8) "Required report," a report required in accordance with section 3 of this Act and pertaining to improper governmental conduct or a crime;
- (9) "State agency," any agency, board, bureau, commission, committee, department, division, or office of this state;
- (10) "State employee," a full-time, part-time, seasonal, or temporary employee of any state agency;
- (11) "Supervisor," a state employee with supervisory authority over one or more state employees;
- (12) "Supervisory authority," the power to, on a regular basis, and with use of independent judgment:
  - (a) Hire, lay off, promote, discharge, assign, reward, or discipline another state employee;
  - (b) Address, resolve, or review the grievance of another state employee; or
  - (c) Effectively recommend any action provided in subsection a or b of this subdivision.

**Section 3. That a NEW SECTION be added to chapter 3-6C:**

A state employee who, in the regular course of the state employee's duties, has reasonable cause to suspect that another state employee has engaged in improper governmental conduct or a crime shall promptly notify a supervisor.

Upon receipt of a reporter's good faith report, a supervisor shall submit information provided by the reporter to the attorney general and auditor-general in a required report pursuant to section 4 of this Act.

The supervisor shall promptly submit to the attorney general and auditor-general any record, as allowed by law, in the supervisor's custody or control, evidencing the improper governmental conduct or crime.

A supervisor who knowingly fails to make a report as required by this section is guilty of a Class 6 felony.

A supervisor who knowingly and intentionally fails to submit a record as required by this section is guilty of a Class 6 felony.

**Section 4. That a NEW SECTION be added to chapter 3-6C:**

A supervisor who must submit a required report pursuant to section 3 of this Act shall prepare the required report in a form prescribed by the attorney general.

The reporter shall cooperate with any investigation or inquiry initiated in response to the filing of the required report.

Nothing in this section may be construed to prohibit the reporter from filing a complaint pursuant to § 3-24-4.

**Section 5. That a NEW SECTION be added to chapter 3-6C:**

Each state agency shall adopt a written policy on reporting improper governmental conduct and crime and submitting records evidencing the improper governmental conduct or crime. Each state agency shall notify and inform state employees of the obligations and protections set forth in the provisions of sections 1, 3, and 4 of this Act.

**Section 6. That a NEW SECTION be added to chapter 3-6C:**

The attorney general shall provide information to the Government Operations and Audit Committee, on an annual basis, regarding the number of reports received pursuant to sections 3 and 4 of this Act and the disposition of each report.

Moved by: Mehlhaff  
Second by: Pischke  
Action: Withdrawn

**MOTION: AMEND SB 62**

62C

On page 1, line 1, of the Introduced bill, after "to" delete " crimes,"  
On page 1, line 2, delete ", and conflicts of interest" and insert " and crimes"  
On page 1, line 2, after "interest," insert " to revise reporter protections,"  
On the Introduced bill, delete everything after the enacting clause and insert:  
"

**Section 1. That § 1-56-11 be AMENDED:**

~~1-56-11. A state employee who suspects the existence of a conflict of interest, fraud, or theft~~ has reasonable cause to suspect that improper governmental conduct or a crime, as defined in section 2 of this Act, has occurred shall report the matter immediately to any, of the following:

- (1) ~~The employee's immediate supervisor;~~
- (2) ~~The attorney general's office; or~~

~~(3) — The Department of Legislative Audit pursuant to the requirements set forth in chapter 3-6C.~~

**Section 2. That a NEW SECTION be added to chapter 3-6C:**

Terms used in this Act mean:

- (1) "Adverse employment action," constructive or actual discharge, suspension from employment, demotion, transfer, decrease in compensation or benefits, imposition of an unfavorable work schedule, or any other similar reprisal or retaliatory action;
- (2) "Conflict of interest," conduct defined or described in §§ 5-18A-17 to 5-18A-17.6, inclusive, 42-7A-27, and 42-7A-28;
- (3) "Crime," a criminal act attempted or committed by misusing a state employee's access, duty, position, or responsibility as a state employee, which constitutes a felony under state law;
- (4) "Good faith report," a report made, without malice, by a reporter, which the reporter has reasonable cause to believe is accurate and true;
- (5) "Improper governmental conduct," any conduct or omission that results in:
  - (a) A conflict of interest prohibited by state law; or
  - (b) Fraud or theft of moneys or property belonging to or derived from federal, state, or local government sources, which constitutes a felony;
- (6) "Reasonable cause," a sufficient reason, based on known facts, to assume something is true;
- (7) "Reporter," a state employee who witnesses or has evidence of improper governmental conduct or a crime, and who makes a good faith report of the improper governmental conduct or the crime, to a supervisor or other appropriate authority;
- (8) "Required report," a report required in accordance with section 3 of this Act and pertaining to improper governmental conduct or a crime;
- (9) "State agency," any agency, board, bureau, commission, committee, department, division, or office of this state;
- (10) "State employee," a full-time, part-time, seasonal, or temporary employee of any state agency;
- (11) "Supervisor," a state employee with supervisory authority over one or more state employees;
- (12) "Supervisory authority," the power to, on a regular basis, and with use of independent judgment:
  - (a) Hire, lay off, promote, discharge, assign, reward, or discipline another state employee;
  - (b) Address, resolve, or review the grievance of another state employee; or
  - (c) Recommend any action provided in subsection a or b of this subdivision.

**Section 3. That a NEW SECTION be added to chapter 3-6C:**

Any state employee who, in the regular course of the state employee's duties, has reasonable cause, based on knowledge that is not privileged, to suspect that improper governmental conduct or a crime has occurred by a state employee shall promptly notify a supervisor.

Upon receipt of a good faith report, a supervisor shall submit a required report containing the reporter's information that is not privileged to the attorney general and auditor-general in accordance with section 4 of this Act. A supervisor who destroys evidence received through the good faith report is criminally liable under § 22-11-24.

A supervisor shall promptly submit to the attorney general and auditor-general any record, as allowed by law, in the supervisor's custody or control, evidencing the improper governmental conduct or crime.

A supervisor who knowingly fails to make a required report is guilty of a Class 1 misdemeanor.

A supervisor who knowingly and intentionally fails to submit a record as required by this section is guilty of a Class 1 misdemeanor.

**Section 4. That a NEW SECTION be added to chapter 3-6C:**

A supervisor who must submit a required report pursuant to section 3 of this Act shall prepare the required report in a form prescribed by the attorney general. One form may be used by more than one supervisor or reporter concerning the same incident of improper governmental conduct or crime.

The reporter and supervisor shall cooperate with any investigation or inquiry initiated in response to the filing of the required report.

A good faith report and supporting evidence is confidential as provided in § 1-27-1.5.

Nothing in this section may be construed to prohibit the reporter from filing a complaint pursuant to § 3-24-4.

**Section 5. That a NEW SECTION be added to chapter 3-6C:**

It is an affirmative defense to a prosecution under section 3 of this Act that the reporter or supervisor:

- (1) Reasonably believed the required report was made by another individual; or
- (2) Was unaware that a conflict of interest existed or that the conflict of interest was authorized pursuant to § 5-18A-17.2

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**Section 6. That a NEW SECTION be added to chapter 3-6C:**

Each state agency shall adopt a written policy on reporting improper governmental conduct and crime and submitting records evidencing the improper governmental conduct or crime. Each state agency shall notify and inform state employees of the obligations and protections set forth in this Act.

**Section 7. That a NEW SECTION be added to chapter 3-6C:**

The attorney general shall provide information to the Government Operations and Audit Committee, on an annual basis, regarding the number of reports received pursuant to sections 3 and 4 of this Act and the disposition of each report.

**Section 8. That a NEW SECTION be added to chapter 3-6C:**

Any state employee cooperating in making a good faith report or required report or submitting records pursuant to sections 3 and 4 of this Act is immune from any liability, civil or criminal, which might otherwise be incurred or imposed, and has the same immunity for participation in any judicial proceeding resulting from the reported

improper governmental conduct or crime. This immunity does not extend to a state employee who participated in the reported improper governmental conduct or crime.

**Section 9. That a NEW SECTION be added to chapter 3-6C:**

A state agency may not take adverse employment action against a reporter because the reporter:

- (1) Made a good faith report or otherwise filed a complaint;
- (2) Instituted or caused to be instituted a proceeding;
- (3) Requested or participated in an audit;
- (4) Testified, or will testify, in a proceeding; or
- (5) Exercised any other right or obligation imposed by this chapter or any law of this state.

The provisions of this section do not apply to a state employee who makes a false report or who makes a report in reckless disregard for the truth.

**Section 10. That a NEW SECTION be added to chapter 3-6C:**

To be eligible for protections under sections 8 and 9 of this Act, a state employee who discloses information about improper governmental conduct or a crime must do so in good faith and upon a reasonable belief that the information is accurate and true. A disclosure that is reckless or that the state employee knew or should have known was false or malicious is not a good faith report.

**Section 11. That a NEW SECTION be added to chapter 3-6C:**

A reporter may bring a civil action for a violation of section 9 of this Act in the circuit court of Hughes County against the reporter's supervisor, in the supervisor's official capacity, or the state agency by which the reporter is employed.

The court may order any of the following remedies:

- (1) An injunction to restrain continued violation of section 9 of this Act;
- (2) Reinstatement of the reporter to the same position or, if the position is filled, to an equivalent position;
- (3) Back pay; and
- (4) Full reinstatement of the reporter's fringe benefits and seniority rights.

The reporter may be entitled to recover reasonable attorney fees and costs.

An action pursuant to this section may not be brought more than two years after the date the unlawful adverse employment action occurred.

A reporter bringing an action under this section may not be required to exhaust existing internal procedures or other administrative remedies.

Nothing in this section may be construed to exclude a reporter's remedy pursuant to § 3-6D-22.

**Section 12. That § 4-11-9 be AMENDED:**

**4-11-9.** The auditor-general shall make detailed reports of the result of any audits or investigations made by the Department of Legislative Audit within sixty days after ~~such~~ the audits or investigations have been completed. The auditor-general shall file reports of state agencies with the Governor ~~and~~, the respective state agency, and the

attorney general. The auditor-general shall file reports of political subdivisions with the respective governing board and finance director.

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Moved by: Hulse  
 Second by: Wheeler  
 Action: Failed by Majority Members Present (2-4-1-0)

Voting Yes: Hulse and Wheeler

Voting No: Blanc, Duhamel, Mehlhaff, and Pischke

Excused: Grove

**MOTION: AMEND SB 62**

62A

On page 1, line 1, of the Introduced bill, after "to" delete " crimes,"  
 On page 1, line 2, delete ", and conflicts of interest" and insert " and crime"  
 On the Introduced bill, delete everything after the enacting clause and insert:  
 "

**Section 1. That § 1-56-11 be AMENDED:**

**1-56-11.** A state employee who ~~suspects the existence of a conflict of interest, fraud, or theft~~ has reasonable cause to suspect that improper governmental conduct or a crime, as defined in section 2 of this Act, has occurred shall report the matter immediately to any, of the following:  
 (1) ~~The employee's immediate supervisor;~~  
 (2) ~~The attorney general's office; or~~  
 (3) ~~The Department of Legislative Audit pursuant to the requirements set forth in chapter 3-6C.~~

**Section 2. That a NEW SECTION be added to chapter 3-6C:**

Terms used in this Act mean:

- (1) "Adverse employment action," constructive or actual discharge, suspension from employment, demotion, transfer, decrease in compensation or benefits, imposition of an unfavorable work schedule, or any other similar reprisal or retaliatory action;
- (2) "Conflict of interest," conduct defined or described in §§ 5-18A-17 to 5-18A-17.6, inclusive, 42-7A-27, and 42-7A-28;
- (3) "Crime," a criminal act attempted or committed by misusing a state employee's access, duty, position, or responsibility as a state employee, which constitutes a felony under state law;

- (4) "Good faith report," a report made, without malice, by a reporter, which the reporter has reasonable cause to believe is accurate and true;
- (5) "Improper governmental conduct," any conduct or omission that results in:
- (a) A conflict of interest prohibited by state law;
  - (b) Fraud; or
  - (c) Theft of moneys or property belonging to or derived from federal, state, or local government sources, constituting a felony;
- (6) "Reasonable cause," a sufficient reason, based on known facts, to assume something is true;
- (7) "Reporter," a state employee who witnesses or has evidence of improper governmental conduct or a crime, and who makes a good faith report of the improper governmental conduct or the crime, to a supervisor or other appropriate authority;
- (8) "Required report," a report required in accordance with section 3 of this Act and pertaining to improper governmental conduct or a crime;
- (9) "State agency," any agency, board, bureau, commission, committee, department, division, or office of this state;
- (10) "State employee," a full-time, part-time, seasonal, or temporary employee of any state agency;
- (11) "Supervisor," a state employee with supervisory authority over one or more state employees;
- (12) "Supervisory authority," the power to, on a regular basis, and with use of independent judgment:
- (a) Hire, lay off, promote, discharge, assign, reward, or discipline another state employee;
  - (b) Address, resolve, or review the grievance of another state employee; or
  - (c) Effectively recommend any action provided in subsection a or b of this subdivision.

**Section 3. That a NEW SECTION be added to chapter 3-6C:**

A state employee who, in the regular course of the state employee's duties, has reasonable cause to suspect that another state employee has engaged in improper governmental conduct or a crime shall promptly notify a supervisor.

Upon receipt of a reporter's good faith report, a supervisor shall submit information provided by the reporter to the attorney general and auditor-general in a required report pursuant to section 4 of this Act.

The supervisor shall promptly submit to the attorney general and auditor-general any record, as allowed by law, in the supervisor's custody or control, evidencing the improper governmental conduct or crime.

A supervisor who knowingly fails to make a report as required by this section is guilty of a Class 6 felony.

A supervisor who knowingly and intentionally fails to submit a record as required by this section is guilty of a Class 6 felony.

**Section 4. That a NEW SECTION be added to chapter 3-6C:**

A supervisor who must submit a required report pursuant to section 3 of this Act shall prepare the required report in a form prescribed by the attorney general.



The reporter shall cooperate with any investigation or inquiry initiated in response to the filing of the required report.

Nothing in this section may be construed to prohibit the reporter from filing a complaint pursuant to § 3-24-4.

**Section 5. That a NEW SECTION be added to chapter 3-6C:**

Each state agency shall adopt a written policy on reporting improper governmental conduct and crime and submitting records evidencing the improper governmental conduct or crime. Each state agency shall notify and inform state employees of the obligations and protections set forth in the provisions of sections 1, 3, and 4 of this Act.

**Section 6. That a NEW SECTION be added to chapter 3-6C:**

The attorney general shall provide information to the Government Operations and Audit Committee, on an annual basis, regarding the number of reports received pursuant to sections 3 and 4 of this Act and the disposition of each report.

"

Moved by: Mehlhaff  
Second by: Pischke  
Action: Prevailed by voice vote

**MOTION: DO PASS SB 62 AS AMENDED**

Moved by: Pischke  
Second by: Mehlhaff  
Action: Prevailed by Majority Members Elect (5-1-1-0)

Voting Yes: Blanc, Duhamel, Mehlhaff, Pischke, and Hulse

Voting No: Wheeler

Excused: Grove

**SB 63 : establish protections for state employees who report crimes, misconduct, or conflicts of interest.**

Presented by: Marty Jackley, Attorney General, State of South Dakota  
Proponents: Katie Hruska, Governor's Office  
Linda Duba, Self, Sioux Falls  
Eric Ollila, South Dakota State Employees Organization, Pierre  
Jason Jares, Self, Pierre (Handout(s) HO#1)

**MOTION: AMEND SB 63**

63A

On page 1, line 1, of the Introduced bill, delete " crimes, misconduct, or conflicts of interest" and insert " improper governmental conduct and crime"

On the Introduced bill, delete everything after the enacting clause and insert:

"

**Section 1. That a NEW SECTION be added to chapter 3-6C:**

Terms used in this Act mean:

- (1) "Adverse employment action," constructive or actual discharge, suspension from employment, demotion, transfer, decrease in compensation or benefits, imposition of an unfavorable work schedule, or any other similar reprisal or retaliatory action;
- (2) "Conflict of interest," conduct defined or described in §§ 5-18A-17 to 5-18A-17.6, inclusive, 42-7A-27, and 42-7A-28;
- (3) "Crime," a criminal act attempted or committed by misusing a state employee's access, duty, responsibility, or position as a state employee, which constitutes a felony under state law;
- (4) "Good faith report," a report made, without malice, by a reporter, which the reporter has reasonable cause to believe is accurate and true;
- (5) "Improper governmental conduct," any conduct or omission that results in:
  - (a) A conflict of interest prohibited by state law;
  - (b) Fraud; or
  - (c) Theft of moneys or property belonging to or derived from federal, state, or local government sources, constituting a felony;
- (6) "Reporter," a state employee who witnesses or has evidence of improper governmental conduct or a crime, and who makes a good faith report of the improper governmental conduct or the crime, to a supervisor or other appropriate authority;
- (7) "State agency," any agency, board, bureau, commission, committee, department, division, or office of this state; and
- (8) "State employee," a full-time, part-time, seasonal, or temporary employee of any state agency.

**Section 2. That a NEW SECTION be added to chapter 3-6C:**

A reporter who makes a good faith report of improper governmental conduct or crime, or submits records in support of the good faith report, is immune from any liability, civil or criminal, which might otherwise be incurred or imposed, and has the same immunity for participation in any judicial proceeding resulting from the good faith report. The immunity does not extend to a state employee who participated in the reported improper governmental conduct or crime.

**Section 3. That a NEW SECTION be added to chapter 3-6C:**

No state agency may take adverse employment action against a reporter because the reporter:

- (1) Made a good faith report of improper governmental conduct or a crime to an appropriate authority;
- (2) Filed a complaint;
- (3) Instituted or caused to be instituted a proceeding;
- (4) Requested or participated in an audit;

- (5) Testified, or will testify, in a proceeding; or  
 (6) Exercised any other right or obligation imposed by this chapter or any law of this state.

The provisions of this section do not apply to a state employee who made a report knowing the report was false or who made a report in a reckless disregard for the truth.

**Section 4. That a NEW SECTION be added to chapter 3-6C:**

To be eligible for protections under sections 2 and 3 of this Act, a reporter who discloses information about improper governmental conduct or a crime must do so in good faith and upon a reasonable belief that the information disclosed is accurate and true. A disclosure that is made with a reckless disregard for the truth or that the state employee knows or should know is false or malicious is not a good faith report.

**Section 5. That a NEW SECTION be added to chapter 3-6C:**

A reporter may bring a civil action for a violation of section 2 of this Act in the circuit court of Hughes County against the reporter's supervisor, in the supervisor's official capacity, or the state agency by which the reporter is employed.

The court may order any of the following remedies:

- (1) An injunction to restrain continued violation of Section 2 of this Act;
- (2) Reinstatement of the reporter to the same position or, if the position is filled, to an equivalent position;
- (3) Back pay;
- (4) Full reinstatement of fringe benefits and seniority rights; and
- (5) If appropriate and in the interests of justice, an award of attorney's fees and costs.

An action may not be brought pursuant to this section more than two years after the violation of section 2 of this Act occurred.

A reporter bringing an action under this section may not be required to exhaust existing internal procedures or other administrative remedies.

Nothing in this section may be construed to exclude a reporter's remedy pursuant to § 3-6D-22.

"

Moved by: Pischke  
 Second by: Hulse  
 Action: Prevailed by voice vote

**MOTION: DO PASS SB 63 AS AMENDED**

Moved by: Pischke  
 Second by: Hulse  
 Action: Prevailed by Majority Members Elect (6-0-1-0)

Voting Yes: Blanc, Duhamel, Mehlhaff, Pischke, Hulse, and Wheeler

Excused: Grove

**HAVING PASSED UNANIMOUSLY, THE CHAIR CERTIFIED SB 63 AS UNCONTESTED AND AS SUCH BE PLACED ON THE CONSENT CALENDAR.**

**SB 111 : permit a court to order family therapy or reunification therapy in a custody or visitation dispute.**

Presented by: Senator Tim Reed

Proponents: Dianna Miller, South Dakota Network Against Family Violence, Sioux Falls

**MOTION: DO PASS SB 111**

Moved by: Mehlhaff

Second by: Hulse

Action: Prevailed by Majority Members Elect (6-0-1-0)

Voting Yes: Blanc, Duhamel, Mehlhaff, Pischke, Hulse, and Wheeler

Excused: Grove

**THE CHAIR DEFERRED SB 123 UNTIL WEDNESDAY FEBRUARY 12 - 3PM TO 5PM OR 10 MINUTES AFTER SENATE ADJOURNS**

**THE CHAIR DEFERRED SB 140 UNTIL WEDNESDAY FEBRUARY 12 - 3PM TO 5PM OR 10 MINUTES AFTER SENATE ADJOURNS**

**THE CHAIR DEFERRED SB 175 UNTIL WEDNESDAY FEBRUARY 12 - 3PM TO 5PM OR 10 MINUTES AFTER SENATE ADJOURNS**

**MOTION: ADJOURN**

Moved by: Duhamel

Second by: Mehlhaff

Action: Prevailed by voice vote

Doug Mortenson, Committee Secretary

\_\_\_\_\_  
/s/ DAVID WHEELER  
David Wheeler, Chair