

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

400Y0118

## HOUSE BILL NO. 1022

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to revise and repeal certain provisions relating to education  
2 service agencies.

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

4 Section 1. That § 3-23-6 be amended to read:

5 3-23-6. No board member, fiscal agent, officer, or executive of a local service agency,  
6 school district, cooperative education service unit, ~~education service agency, nonprofit education~~  
7 ~~service agency~~, or jointly governed education service entity that receives money from or through  
8 the state may have an interest in a contract nor receive a direct benefit from a contract that the  
9 local service agency, school district, cooperative education service unit, ~~education service~~  
10 ~~agency, nonprofit education service agency~~, or jointly governed education service entity is a  
11 party to the contract except as provided in § 3-23-8.

12 Section 2. That § 3-23-8 be amended to read:

13 3-23-8. A local service agency, school district, cooperative education service unit, ~~education~~  
14 ~~service agency, nonprofit education service agency~~, or jointly governed education service entity  
15 may authorize a board member, fiscal agent, officer, or executive to have an interest in a



1 contract or derive a direct benefit from a contract if:

- 2 (1) The person has provided full written disclosure to the agency, district, or unit  
3 governing board;
- 4 (2) The governing board has reviewed the essential terms of the transaction or contract  
5 and the person's role in the contract or transaction; and
- 6 (3) The transaction or the terms of the contract are fair, reasonable, and not contrary to  
7 the public interest.

8 No member of a local service agency, school district, cooperative education service unit,  
9 ~~education service agency, nonprofit education service agency,~~ or jointly governed education  
10 service entity may participate in or vote upon a decision of a local service agency, school  
11 district, cooperative education service unit, ~~education service agency, nonprofit education~~  
12 ~~service agency,~~ or jointly governed education service entity relating to a matter in which the  
13 member has an interest or derives a direct benefit.

14 The authorization shall be in writing. Any authorization given pursuant to this section is a  
15 public record. Each authorization shall be filed with the auditor-general. The auditor-general  
16 shall compile the authorizations and present them annually for review by the Government  
17 Operations and Audit Committee. A board member, fiscal agent, officer, or executive of a local  
18 service agency, school district, cooperative education service unit, ~~education service agency,~~  
19 ~~nonprofit education service agency,~~ or jointly governed education service entity may comply  
20 with this section if: the local service agency, school district, cooperative education service unit,  
21 ~~education service agency, nonprofit education service agency,~~ or jointly governed education  
22 service entity puts on its regular meeting agenda an inquiry for conflicts disclosure prior to the  
23 consideration of any substantive matters; the person subject to this chapter publicly discloses  
24 his or her interest in a contract, direct benefit, or other conflict with any matter on the agenda;

1 the person is excused from discussion and consideration of such matters; the board determines  
2 the matter underlying the conflict is fair, reasonable, and not contrary to the public interest; and  
3 the disclosure is included in the minutes which are publicly available.

4 Section 3. That § 3-23-9 be amended to read:

5 3-23-9. Any person who knowingly violates §§ 3-23-6 to 3-23-8, inclusive, shall be removed  
6 from office or employment and is guilty of a Class 1 misdemeanor. Any benefit to a person  
7 derived from the person's knowing violation of §§ 3-23-6 to 3-23-8, inclusive, is subject to  
8 forfeiture. Any contract made in violation of §§ 3-23-6 to 3-23-8, inclusive, is voidable by the  
9 governing body of the local service agency, school district, cooperative education service unit,  
10 ~~education service agency, nonprofit education service agency,~~ or jointly governed education  
11 service entity.

12 Section 4. That § 3-23-11 be repealed.

13 ~~3-23-11. Any entity established pursuant to § 13-3-76 to 13-3-81 not subject to an audit~~  
14 ~~requirement under § 13-5-33.2 shall be audited annually. Each audit required under state law~~  
15 ~~shall be done to confirm compliance with §§ 3-23-3 and 3-23-8 according to guidelines~~  
16 ~~established by the auditor-general.~~

17 Section 5. That § 13-3-76 be repealed.

18 ~~13-3-76. The secretary of the Department of Education shall establish seven education~~  
19 ~~service agencies to provide services and leadership to school districts on a regional basis. Each~~  
20 ~~education service agency shall serve the school districts in a particular region of the state as~~  
21 ~~determined by the secretary of education, and the secretary shall ensure that every school district~~  
22 ~~is served by an education service agency. Each education service agency may be incorporated~~  
23 ~~in the State of South Dakota as a nonprofit corporation organized under chapters 47-22 to 47-28,~~  
24 ~~inclusive, which is exempt from taxation pursuant to 501(a) of the Internal Revenue Code, 26~~

1 ~~U.S.C. Section 501(a), and may be listed as an exempt organization in Section 501(c) of the~~  
2 ~~Internal Revenue Code, 26 U.S.C. Section 501(c), or an education service agency may be~~  
3 ~~directed by an educational cooperative.~~

4 Section 6. That § 13-3-77 be repealed.

5 ~~— 13-3-77. Education service agencies are hereby authorized and empowered to develop,~~  
6 ~~manage, and provide support services and programs as determined by the needs of the local~~  
7 ~~school districts and as approved by the secretary of education. An education service agency may:~~

8 ~~— (1) — Act primarily as a service agency in providing services and programs as identified~~  
9 ~~and requested by the school districts it serves, including professional development,~~  
10 ~~instructional materials, educational technology, curriculum development, and~~  
11 ~~alternative educational programs;~~

12 ~~— (2) — Provide for economy, efficiency, and cost effectiveness in the cooperative delivery~~  
13 ~~and purchase or lease of educational services, materials, and products; the services~~  
14 ~~may include purchasing cooperatives, insurance cooperatives, business management~~  
15 ~~services, auditing and accounting services, school safety and risk prevention training,~~  
16 ~~data processing, and assistance with student records;~~

17 ~~— (3) — Provide administrative services such as communications and public relations~~  
18 ~~services, employee background checks, grants management services, printing and~~  
19 ~~publication services, and internship services;~~

20 ~~— (4) — Provide educational services through leadership and research and development in~~  
21 ~~elementary and secondary education;~~

22 ~~— (5) — Work cooperatively with the Department of Education, institutions of higher~~  
23 ~~education, local school districts, and other educational organizations to support,~~  
24 ~~develop, and implement long-range plans and strategic goals for the enhancement of~~

1 educational opportunities in elementary and secondary education; and  
2 ~~(6) Serve, when appropriate and if funds are available, as a repository, clearinghouse,~~  
3 ~~and administrator of federal, state, local, and private funds on behalf of school~~  
4 ~~districts that may participate in special programs, projects, or grants in order to~~  
5 ~~enhance the quality of education in South Dakota schools.~~

6 Section 7. That § 13-3-78 be repealed.

7 ~~13-3-78. Each education service agency shall have an advisory board. The advisory board~~  
8 ~~shall meet at least twice a year, and its membership shall include the superintendent or a~~  
9 ~~designee of the superintendent from every school district served by the agency. The advisory~~  
10 ~~board shall provide guidance to the agency relative to the needs of the school districts and how~~  
11 ~~the education service agency might address those needs.~~

12 Section 8. That § 13-3-79 be repealed.

13 ~~13-3-79. Beginning in 2008, the advisory board for each education service agency shall,~~  
14 ~~upon receiving the approval of the secretary of education, appoint a fiscal agent to oversee the~~  
15 ~~daily operations of the education service agency. Once appointed, the fiscal agent shall serve~~  
16 ~~at the pleasure of the board. However, a board's decision to rescind a fiscal agent's appointment~~  
17 ~~shall be approved by the secretary of education.~~

18 Section 9. That § 13-3-80 be repealed.

19 ~~13-3-80. A statewide leadership board, composed of the fiscal agent from each education~~  
20 ~~service agency and a representative from the Department of Education, shall be created to~~  
21 ~~establish uniform policies among the education service agencies and to allow for~~  
22 ~~communication and the exchange of ideas.~~

23 Section 10. That § 13-3-81 be repealed.

24 ~~13-3-81. Upon receiving approval from the Department of Education, each education service~~

1 ~~agency, with input from both the advisory board and the statewide leadership board, may, as~~  
2 ~~funding permits, contract with other entities to provide services to the school districts it serves.~~

3 Section 11. That § 13-3-82 be repealed.

4 ~~— 13-3-82. Each year, the Department of Education shall conduct an assessment and a~~  
5 ~~performance evaluation of each education service agency and submit its findings in writing to~~  
6 ~~the Legislature.~~

7 Section 12. That § 13-3-83 be repealed.

8 ~~— 13-3-83. The South Dakota Board of Education shall promulgate rules pursuant to chapter~~  
9 ~~1-26 establishing the evaluation process and the criteria and performance measures the~~  
10 ~~department will use to evaluate the education service agencies.~~