

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

937Y0317

## SENATE ENGROSSED NO. **HB 1076** - 3/7/2017

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Soli, Bartling, Hawley, Mickelson, Peterson (Kent), Qualm, and Wismer and Senators Greenfield (Brock), Frerichs, Heinert, and Sutton

1 FOR AN ACT ENTITLED, An Act to create a State Government Accountability Board.

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

3 Section 1. That the code be amended by adding a NEW SECTION to read:

4 There is hereby created a State Government Accountability Board to be composed of four  
5 members appointed by the Governor. Each member to be appointed shall be a former or retired  
6 circuit court judge or Supreme Court Justice. No more than two of the appointed members may  
7 be of the same political party. All appointees are subject to confirmation by the Senate and no  
8 appointee may be a member of the Legislature during the member's term on the board. The term  
9 for a board member is five years and a board member may only be removed for good cause.  
10 Good cause to remove a member is conduct such as: malfeasance or misfeasance in office,  
11 neglect of duty, corrupt conduct, gross incompetency, or active partisanship. A vacancy in the  
12 board's membership shall be filled by the Governor within thirty days of the event causing the  
13 vacancy. If a vacancy occurs before a term expires, the new member shall serve for the  
14 remaining portion of the unexpired term. If the Senate is not in session at the time the



1 appointment is made, the appointee may serve until the Senate has the opportunity to consider  
2 the appointment. The per diem and expenses of the board are the same as the per diem and  
3 expenses for members of interim committees of the Legislature.

4 Section 2. That the code be amended by adding a NEW SECTION to read:

5 The initial appointments for the members of the board are temporary and staggered with one  
6 member serving two years, one member serving three years, one member serving four years, and  
7 one member serving five years. Each member's initial term is to be determined by the Governor.

8 Section 3. That the code be amended by adding a NEW SECTION to read:

9 The State Government Accountability Board may review and investigate any person holding  
10 a statewide office, as defined in § 12-27-1, and employees of the executive branch of the state  
11 regarding:

- 12 (1) Allegations of impropriety related to any contract, grant, or loan with any public  
13 entity that provides the authority to any other entity to expend public funds;
- 14 (2) Documents filed under chapter 3-23 or alleged violations relating to conflicts of  
15 interest;
- 16 (3) Allegations of a direct or indirect interest in a contract in violation of the constitution  
17 or law;
- 18 (4) Allegations of malfeasance;
- 19 (5) Allegations of misappropriation of public funds;
- 20 (6) Allegations of use of false instruments to obtain public funds;
- 21 (7) Allegations of theft or embezzlement of public funds;
- 22 (8) Allegations of bribery; or
- 23 (9) Allegations of use of public money not authorized by law or in violation of the  
24 constitution.

1 The board may establish its own procedures, issue subpoenas, administer oaths, and take  
2 sworn testimony.

3 Section 4. That the code be amended by adding a NEW SECTION to read:

4 Any person acting in good faith may:

- 5 (1) Furnish information to the board relating to suspected, anticipated, or completed  
6 violations of a corrupt act relating to any subdivision in section 3 of this Act;
- 7 (2) File a report with the board; or
- 8 (3) File a complaint with the board alleging a violation of any subdivision of section 3  
9 of this Act.

10 The information, reports, or complaints and the investigative records and files of the board  
11 are confidential and not a public record according to chapter 1-27 until the board votes in favor  
12 of conducting a contested case hearing.

13 Section 5. That the code be amended by adding a NEW SECTION to read:

14 The board may refer any information, report, or complaint it receives to the Division of  
15 Criminal Investigation for investigation. If, based on the information, report, or complaint, the  
16 board has reasonable cause to believe that a crime has been committed, the matter shall be  
17 referred to the Division of Criminal Investigation. If the Division of Criminal Investigation has  
18 cause to believe that a law has been violated, the division shall refer the matter to a state's  
19 attorney or the attorney general for prosecution. If an investigation does not reveal sufficient  
20 facts to support a criminal prosecution, the Division of Criminal Investigation shall refer the  
21 matter back to the board for the board's consideration. If the Division of Criminal Investigation  
22 determines that the information, report, or complaint is frivolous, it shall communicate this  
23 determination to the board in writing and the board may close the matter.

24 Section 6. That the code be amended by adding a NEW SECTION to read:

1 A person acting in good faith is immune from civil liability for furnishing information, filing  
2 a report, or making a complaint. If a civil action is commenced against a person for damages  
3 related to furnishing information, filing a report, or making a complaint and the court determines  
4 that the person acted in good faith, the person may recover costs or disbursements under chapter  
5 15-17 including reasonable attorney's fees. However, if the court determines that the person  
6 furnishing information, filing a report, or making a complaint did not act in good faith, the  
7 person who commenced the civil action may recover costs or disbursements under chapter  
8 15-17, including reasonable attorney's fees, from the person who did not act in good faith.

9 Section 7. That the code be amended by adding a NEW SECTION to read:

10 If a majority of the members of the board vote that there is sufficient information to believe  
11 that a statewide office holder or executive branch employee has engaged in misconduct related  
12 to any subdivision of section 3 of this Act, the board shall conduct a contested case hearing  
13 according to chapter 1-26 to afford the accused person the opportunity to respond to the  
14 allegation.

15 Section 8. That the code be amended by adding a NEW SECTION to read:

16 At the conclusion of the contested case hearing before the board, if the board determines by  
17 a majority vote of the board that a violation has occurred, the board may:

- 18 (1) Issue a public or private reprimand;
- 19 (2) Direct a person to engage in coursework or community service; or
- 20 (3) Make a specific recommendation to the Governor.

21 Section 9. That the code be amended by adding a NEW SECTION to read:

22 A person who has submitted information, a report, or complaint to the board pursuant to  
23 section 4 of this Act may request a status update from the board. The board shall respond in  
24 writing.

1 Section 10. That the code be amended by adding a NEW SECTION to read:

2 The board shall annually report to the people, the Governor, and the Legislature on its  
3 activities. The report shall include data regarding any allegations of violations of subdivisions  
4 of section 3 of this Act, including the number of reports filed, complaints received, number of  
5 unique persons filing complaints or reports, and hearings conducted by the board. The board  
6 may not disclose information that is not subject to disclosure under chapter 1-27 or pursuant to  
7 section 4 of this Act.

8 Section 11. That the code be amended by adding a NEW SECTION to read:

9 The State Government Accountability Board is attached to the Office of the Attorney  
10 General for administrative and budgetary support. In order to review and investigate any alleged  
11 violation of the subdivisions listed in section 3 of the Act, the board may employ staff as it  
12 deems necessary.

13 Section 12. That § 3-6D-22 be amended to read:

14 3-6D-22. An employee may file a grievance with the Civil Service Commission if the  
15 employee believes that there has been retaliation because of reporting a violation of state law  
16 through the chain of command of the employee's department or, to the attorney general's office,  
17 the State Government Accountability Board, or because the employee has filed a suggestion  
18 pursuant to this section.