

State Board Disclosure Laws
WAIVER & DISCLOSURE DECISION MATRIX
SDCL 3-23-1 et seq.
Effective July 1, 2017

DO I NEED TO DISCLOSE OR REQUEST A WAIVER?

This matrix will assist a current or former state board member in determining whether it is necessary to disclose an interest in a contract or to seek a waiver in order to receive a benefit from a contract with a State agency or with a political subdivision of the State. This matrix is not designed to be used in isolation. Instead, it should be used in conjunction with the State Board Disclosure Law Instructions and Forms, the annual disclosure form prepared by the Attorney General's Office,¹ a review of the Disclosure Laws, and discussions with legal counsel. This matrix is intended as a general guide only and is not by itself determinative of whether disclosure is necessary. The statutes covered by this matrix can be found in HB 1170 and SB 65 from the 2017 legislative session. These laws go into effect on July 1, 2017.

The questions in this matrix may not address your specific situation. In addition, to answer these questions, you should keep in mind that an agreement does not always need to be in writing to be considered a contract. Also, keep in mind that a board member him or herself need not be a party to the contract for the contract to be covered under the disclosure laws. If you have any doubt as to the answer to any of the questions below, you are encouraged to choose "YES" for the purposes of completing the matrix and deciding whether you need to disclose a contractual relationship or request a waiver.

1. Within the last year, was I a member of one of the boards, commissions, or authorities listed below?
 - (1) South Dakota Building Authority;
 - (2) Board of Economic Development;
 - (3) South Dakota Housing Development Authority;
 - (4) South Dakota Health and Education Facilities Authority;
 - (5) Science and Technology Authority Board of Directors;
 - (6) South Dakota Ellsworth Development Authority;
 - (7) South Dakota Commission on Gaming;
 - (8) South Dakota Lottery Commission;
 - (9) State Brand Board;
 - (10) Game, Fish and Parks Commission;
 - (11) Banking Commission;
 - (12) Board of Trustees of the South Dakota Retirement System;
 - (13) Aeronautics Commission;
 - (14) South Dakota State Railroad Board;

¹ This form can be on the Attorney General's website at:
<http://atg.sd.gov/legal/opengovernment/authorityboardcommission.aspx>.

- (15) Transportation Commission;
- (16) South Dakota Board of Education;
- (17) Board of Regents;
- (18) Board of Pardons and Paroles;
- (19) Board of Minerals and Environment;
- (20) Board of Water and Natural Resources;
- (21) South Dakota Railroad Authority;
- (22) Board of Water Management; or
- (23) South Dakota Board of Technical Education.

If YES, proceed to next question.

If NO, no disclosure or request for waiver is needed.²

- 2. Do I have an ownership interest of five percent or greater in any entity that receives grant money from the state, either directly or by a pass-through grant, or that contracts with the state or any political subdivision for services?

If YES, **DISCLOSURE IS NECESSARY FOR CURRENT BOARD MEMBERS ONLY. HOWEVER, NO REQUEST FOR WAIVER IS NEEDED.** Proceed to question 3 to determine if you have additional obligations under the law.

If NO, proceed to the next question.

- 3. Does the contract involve the expenditure of government funds?

If YES, proceed to next question.

If NO, no disclosure or request for waiver is needed unless:

- (a) the contract is with a political subdivision of the state; and
- (b) the political subdivision approves of the contract and is under the regulatory oversight of the authority, board, commission, or the agency to which the authority, board, or commission is attached for reporting or oversight purposes.

If (a) and (b) are satisfied proceed to the next question.

- 4. Is the contract with:
 - a. The state agency to which the authority, board, or commission is attached for reporting or oversight purposes; OR
 - b. With the State and requires approval of the authority, board, or commission; OR

² This matrix does not address conflicts for a board member, fiscal agent, officer, or executive of a local service agency, school district, cooperative education service unit, or education service agency, that receives money from or through the state. However, such persons are also subject to the provisions of HB 1170.

- c. With a political subdivision which is under the regulatory oversight of the authority, board, or commission or under the regulatory oversight of the agency to which the authority, board or commission is attached?

If YES, proceed to next question.

If NO to all, no disclosure or request for waiver is needed.

- 5. Does the contract fit one of the following exceptions:
 - a. The only financial benefit to the board member is the value associated with the member's publicly-traded investments or holdings or the value associated with the investments or holdings of a person with whom the board member lives or commingles assets; OR
 - b. The member's only interest arises from an act of the Board that has general application; OR
 - c. The member is a state employee and authorized to enter into the contract pursuant to SDCL 5-18A-17 through 5-18A-17.6; OR
 - d. The contract is for the sale of goods, or for maintenance or repair services, in the regular course of business at or below a price offered to all customers; OR
 - e. The contract is subject to a public bidding process; OR
 - f. The contract is for the deposit of public funds in a financial institution as otherwise authorized by law?

If YES to any, no disclosure or request for waiver is necessary.

If NO to all, proceed to next question.

- 6. Am I, my spouse, or any other person with whom I live or commingle assets a party to or intended beneficiary of the contract?

If YES, **DISCLOSURE AND REQUEST FOR WAIVER IS NEEDED.**

If NO, proceed to next question.

- 7. Do I, my spouse, or any other person with whom I live or commingle assets have more than a five percent ownership interest in a party to the contract?

If YES, **DISCLOSURE AND REQUEST FOR WAIVER IS NEEDED.**

If NO, proceed to next question.

- 8. Will or do I, my spouse, or any other person with whom I live or commingle assets acquire property under the contract?

If YES, **DISCLOSURE AND REQUEST FOR WAIVER IS NEEDED.**

If NO, proceed to next question.

9. Will or do I, my spouse, or any other person with whom I live or commingle assets receive from a contracting party compensation, commission, promotion, or other monetary benefit directly attributable to the contract?

If YES, **DISCLOSURE AND REQUEST FOR WAIVER IS NEEDED.**

If NO, proceed to next question.

10. Am I, my spouse, or any other person with whom I live or commingle assets employed by a party to the contract?

If YES, **DISCLOSURE IS NECESSARY FOR CURRENT BOARD MEMBERS ONLY. HOWEVER, NO REQUEST FOR WAIVER IS NEEDED.**

If NO, proceed to the next question.

11. Am I, my spouse, or any other person with whom I live or commingle assets serving as a board member of an entity that is a party to the contract and receiving more than nominal compensation for service on such board?

If YES, **DISCLOSURE IS NECESSARY FOR CURRENT BOARD MEMBERS ONLY. HOWEVER, NO REQUEST FOR WAIVER IS NEEDED.**

If NO, no disclosure or request for waiver is necessary.