

DISCLOSURE OF CONFLICTS OF INTEREST FOR STATE AUTHORITY BOARD AND COMMISSION MEMBERS

The general prohibition against conflicts of interest for state authority boards and commission member is covered by statute.

SDCL § 3-23-1

3-23-1. State authority, board, and commission members prohibited from having interest in or deriving direct benefit from contract. No elected or appointed member of a state authority, board, or commission may have an interest in or derive a direct benefit from any contract:

- (1) With the state agency to which the authority, board, or commission is attached for reporting or oversight purposes that requires the expenditure of government funds;
- (2) With the state that requires the approval of the authority, board, or commission and the expenditure of government funds; or
- (3) With a political subdivision of the state if the political subdivision approves the contract and is under the regulatory oversight of the authority, board, or commission, or the agency to which the authority, board, or commission is attached for reporting or oversight purposes.

No elected or appointed member of a state authority, board, or commission may derive a direct benefit from any contract as provided under this section for one year after the end of the member's term on the authority, board, or commission, except as provided in § 3-23-3 or 3-23-4.

The circumstances under which a state authority board or commission may authorize a member to derive direct benefit from a contract is covered by statute.

SDCL § 3-23-3

3-23-3. Circumstances under which state authority, board, or commission may authorize member to derive direct benefit from contract. Any elected or appointed state authority, board, or commission may authorize an authority, board, or commission member to derive a direct benefit from a contract if:

- (1) The member has provided full disclosure to the authority, board, or commission, including:
 - (a) All parties to the contract;
 - (b) The member's role in the contract;
 - (c) The purpose and objective of the contract;
 - (d) The consideration or benefit conferred or agreed to be conferred upon each party;

and

- (e) The duration of the contract;
- (2) The authority, board, or commission finds that the terms of the contract are fair, reasonable, and not contrary to the public interest; and
- (3) The authorization is a public record included in the official minutes of the authority, board, or commission, that shall be filed with the auditor-general and attorney general.

The auditor-general shall compile the authorizations and present them annually for review by the Government Operations and Audit Committee. A member who requests an authorization under this section shall make the request prior to entering into any contract that requires disclosure or within forty-five days after entering into the contract. Once disclosed and authorized by the governing board, no further disclosure or authorization is required unless the contract extends into consecutive fiscal years. A contract that extends into consecutive fiscal years requires an annual disclosure, but no new authorization is required. If the authority, board, or commission rejects the request for authorization made by the member, the contract is voidable and subject to disgorgement pursuant to

§ 3-23-5, or the member may resign from the authority, board, or commission. No member of a state authority, board, or commission may participate in or vote upon a decision of the state authority, board, or commission relating to a matter in which the member derives a direct benefit.

There are certain circumstances where a state authority board or commission member may have an interest in a contract.

SDCL § 3-23-3.1

3-23-3.1. Circumstances under which state authority, board, or commission member may have interest in contract. Any elected or appointed state authority, board, or commission member may have an interest in a contract if:

(1) The member, upon learning of the interest subject to the provisions of this chapter or a transaction that may create an interest subject to the provisions of this chapter discloses the interest no later than the first meeting of the authority, board, or commission held after the first day of July of each year;

(2) The authority, board, or commission is notified of the contract and the member's role in the contract;

(3) The terms of the contract do not violate any other provision of law; and

(4) The disclosure is included in the minutes that are publicly available and are filed with the auditor-general and attorney general.

Each member shall receive a form, developed by the attorney general, for the purpose of annual disclosure of any interest and direct benefit covered by the provisions of this chapter. In addition to any interest in a contract and direct benefit covered by the provisions of this chapter, the member shall also disclose at least annually any 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. An authority, board, or commission member who has an interest in a contract pursuant to this section shall disclose the existence of a contract in which the member has an interest but for which authorization by the authority, board, or commission is not required for the person to have an interest in the contract. The auditor-general shall compile and present any disclosure annually for review by the Department of Legislative Audit and the Government Operations and Audit Committee.

The penalties for a violation of the Conflicts of Interest statutes is removal from the position and may include a criminal offense being charged.

SDCL § 3-23-5

3-23-5. Removal of state authority, board, or commission member for violation--Criminal penalties--Disgorgement--Voidable contract. Any elected or appointed state authority, board, or commission member who knowingly violates §§ 3-23-1 to 3-23-4, inclusive, shall be removed from the authority, board, or commission and is guilty of a Class 1 misdemeanor. Any person who knowingly violates §§ 3-23-1 to 3-23-4, inclusive, and is also guilty of theft under chapter 22-30A, shall be penalized at the next greater class of penalty prescribed by chapters 22-6 and 22-30A. No authority, board, or commission member who has submitted a good faith request for authorization pursuant to § 3-23-3 may be convicted of a crime under this chapter. Any benefit to the authority, board, or commission member in violation of §§ 3-23-1 and 3-23-2 is subject to disgorgement and any contract made in violation of this chapter is voidable by the authority, board, or commission.