

INSTRUCTIONS FOR DISCLOSURE BY STATE EMPLOYEE UNDER G.L. c. 268A, § 7(b)

FINANCIAL INTEREST IN A STATE CONTRACT

SUMMARY

You are a state employee, but not a legislator. You wish to have a financial interest, directly or indirectly, in a contract made by a state agency other than the one you serve. To be eligible for an exemption under § 7(b) of the conflict of interest law, you must meet certain requirements, explained below, and you must file a § 7(b) disclosure with the State Ethics Commission. If the contract is for your personal services, you must get a written certification from the head of the agency that makes the contract.

WHEN TO USE THE § 7(b) DISCLOSURE FORM

You are either an **elected, compensated state employee**, other than a state Senator or a state Representative, or you are a **non-elected, compensated state employee**, as defined by G.L. c. 268A, § 1(q). Section 7 of the conflict of interest law prohibits you from having a **financial interest, directly or indirectly, in a contract made by a state agency**. This financial interest may be:

- Another **non-elected, compensated state position**, or
- A direct financial interest in a **contract between a state agency and you**; or
- An indirect financial interest in a state contract – in other words, you have a **financial stake in a contract or transaction between a state agency and someone else**, such as a company or organization.

You may be eligible for an **exemption under § 7(b)**, however, that will allow you to have such a financial interest in a state contract. To use a § 7(b) exemption, you must meet the following requirements:

- 1) The state agency that you serve as a state employee (“your State Agency”) is **not the same state agency** that makes the contract in which you have a financial interest (“the contracting agency”) – you are not already employed by the contracting agency;
- 2) Your State Agency **does not regulate** the activities of the contracting agency;
- 3) In your position as a state employee, you **do not participate in or have official responsibility for** the activities of the contracting agency; and
- 4) The state contract was made after **public notice** (i.e., the state agency advertised the opportunity so members of the public could apply or compete for it) or through **competitive bidding**.

If you can meet all of these requirements, you must complete a **§ 7(b) disclosure** that fully discloses your interest and the interests of your immediate family in the state contract, and file it with the State Ethics Commission.

PERSONAL SERVICES CONTRACTS

There are additional requirements if you have a financial interest in a **contract for personal services**, i.e., you will **work directly for a state agency** as an employee, independent contractor, consultant, etc. In that case, it must be true that:

- 1) the services will be provided **outside your normal working hours** as a state employee;
- 2) the services are **not required as part of your regular duties as a state employee**; and
- 3) you are compensated for your services under the personal services contract for **not more than 500 hours** during a calendar year.

For a **personal services contract**, you must complete the **§ 7(b) disclosure** and submit it to the head of the state agency that made the contract. The **head of the contracting agency** must make a **written certification**

that no employee of that agency is available to perform those services as part of their regular duties. Your Disclosure and the Certification by the head of the contracting agency must be filed with the State Ethics Commission.

FINANCIAL INTEREST IN A STATE CONTRACT

A **financial interest** in a contract may be **direct or indirect, large or small, positive or negative** – a gain or a loss, a benefit or an obligation. Section 7 does not prohibit you from having a financial interest in a state contract by owning less than 1% of the stock of a corporation.

Examples of financial interests in a state contract are:

- You have a **non-elected, compensated state employee position** -- this is a **personal services contract** if you work directly for a state agency.
- **A state agency has a contract with you.**
- **You have a financial stake in a contract or transaction between a state agency and another person or an entity**, such as a company or organization.
- You work for a company or organization that has a contract with a state agency other than the one you serve as a state employee, and you are a **“key employee”** because the **contract identifies you by name or otherwise makes it clear that the state has contracted for your services in particular.**

KEEPING OR ADDING A FINANCIAL INTEREST IN A STATE CONTRACT

Depending on the circumstances, you may use a **§ 7(b) disclosure** to report the following facts:

- You **ALREADY HAD** a financial interest in a state contract **BEFORE** you became a state employee, and you will continue to **KEEP** it, **OR**
- You already are a state employee, and you will **ADD** a **NEW** financial interest in a state contract.

The disclosure form indicates when **ELECTED** and **NON-ELECTED** state employees can use a § 7(b) exemption to **KEEP** or **ADD** financial interests in state contracts of the types listed above.

IF YOU ALREADY HAVE MORE THAN ONE COMPENSATED STATE EMPLOYEE POSITION, PLEASE CALL THE STATE ETHICS COMMISSION FOR ADVICE ABOUT § 7(b).

FILING THE § 7(b) DISCLOSURE

In the disclosure, enter information about your state employee position at the top of the form.

Enter information about the financial interest in a state contract in the next parts of the form.

- Answer questions in **BOX # 1** if you are an **ELECTED state employee.**
- Answer questions in **BOX # 2** if you are a **NON-ELECTED state employee.**

Not a personal services contract -

If the financial interest that you are reporting is **NOT a personal services contract**, complete and sign the disclosure and **file it with the State Ethics Commission.**

Personal services contract -

If the financial interest that you are reporting is a **PERSONAL SERVICES CONTRACT** with a state agency, a **Certification** at the end of the disclosure form must be signed by the head of the state agency that is hiring you. **Submit your completed Disclosure and the blank Certification form to the head of the contracting agency.**

The head of the contracting agency should complete the Certification and provide you with a copy. **The Disclosure and Certification must be filed with the State Ethics Commission.**

WHO SHOULD NOT USE A § 7(b) DISCLOSURE

If you are a **state Senator or Representative**, the exemption available to you is **§ 7(c)**.

If you are **an uncompensated state employee**, or you otherwise satisfy the requirements for being a **special state employee**, you may use exemptions under **§ 7(d), § 7(e) or 930 CMR 6.13** instead of § 7(b).

If you are **adding an uncompensated state position**, use the exemption under **930 CMR 6.02**.

If you need advice about completing the disclosure, please call the Attorney of the Day at (617) 371-9500 or e-mail the State Ethics Commission at requestadvice@massmail.state.ma.us.