



## ARIZONA DEPARTMENT OF TRANSPORTATION POLICIES AND PROCEDURES

### PER-6.02 CONFLICT OF INTEREST OF OFFICERS AND EMPLOYEES

Effective: October 19, 2023

Supersedes: PER-6.02 (6/23/2014)

Responsible Office: Human Resources, 602-712-8188

Review: October 19, 2025

Transmittal: October 2023

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NOTICE: This policy and procedure does not create a contract for employment between any employee and the Arizona Department of Transportation (ADOT). Nothing in this policy and procedure changes the fact that all uncovered employees of ADOT are at-will employees and serve at the pleasure of the appointing authority.

#### 1.1 PURPOSE

To familiarize ADOT officers and employees, including newly-hired employees, with the following:

- A. State's conflict of interest laws
- B. ADOT's policy related to conflict of interest
- C. The State of Arizona Standards of Conduct
- D. ADOT's Code of Conduct
- E. Applicable State Codes of Conduct

#### 1.2 SCOPE

This policy applies to all employees of ADOT.

#### 1.3 AUTHORITY

[Arizona Revised Statutes \(A.R.S.\) §§ 38-501 - 38-511](#)

[Arizona Administrative Code \(A.A.C.\) R2-5A-501](#)

#### 1.4 DEFINITIONS

State of Arizona Definitions  
related to conflict of interest

[A.R.S. § 38-502](#)

## 1.5 THE ARIZONA CONFLICT OF INTEREST LAW

This section summarizes the conflict of interest laws, which establish minimum standards for the conduct of public officers and employees who are, or may become, involved with a contract or decision in their official capacity which might affect their personal pecuniary interest or those of their relatives.

- A. The Arizona conflict of interest law affects ADOT employees and officers in the following manner:
  - 1. A conflict of interest potentially arises whenever a public officer or employee of ADOT has, or who's relative has, a substantial interest in any contract with, sale to, purchase from, or service provided to ADOT. When such an interest exists, a public officer or employee shall make known that interest in writing to ADOT, and shall refrain from voting upon or otherwise participating in any manner as an officer or employee regarding such contract, sale, purchase, or service.
  - 2. A conflict of interest also potentially arises whenever a public officer or employee of ADOT has, or who's relative has, a substantial interest in any decision of ADOT. When such an interest exists, a public officer or employee shall make known that interest in writing to ADOT, and shall refrain from participating in any manner as an officer or employee in such a decision.
  - 3. Notwithstanding the provisions of paragraph 1.5A (1) and (2) above, no public officer or employee of ADOT shall supply to ADOT any equipment, material, supplies, or services, unless pursuant to an award or contract after public competitive bidding.
- B. To determine whether a substantial interest exists, the public officer or employees must ask the following questions:
  - 1. Will the contract, sale, purchase, service, or decision have an impact, either positive or negative, on an interest of the employee or the employee's relative?
  - 2. Is the interest pecuniary or proprietary? (A pecuniary interest involves money; a proprietary interest involves ownership.)
  - 3. Is the interest other than one statutorily designated as a remote interest? (See A.R.S. § 38-502.)
    - a. If the answer to any of these questions is yes, then a substantial interest exists which requires disclosure and disqualification by the public officer or employee (See A.R.S. § 38-502).
    - b. Further, even if the officer or employee may not have a substantial interest in

a decision in which they are about to participate, if one of their relatives has a substantial interest in the decision the officer or employee must disclose the interest and refrain from participating in the decision. They may not justify their failure to comply with the conflict of interest laws by stating that they were unaware of a relative's interest. Public officers and employees have an affirmative obligation to become aware of any interests their relatives may have in which they may become involved.

- c. If you are unsure of how to answer any of these questions, please see your supervisor for guidance.
- C. Any interest in a decision or contract not covered by one or more of the enumerated remote interests at [A.R.S. § 38-502\(10\)\(a-i\)](#) is a substantial interest requiring compliance with the disclosure and withdrawal requirements of the law.
- D. The officer or employee must be aware of and identify the circumstances in which an agency's actions might affect the interests of themselves or relatives and avoid any situation in which a conflict of interest exists. Once a determination is made that the interest is a substantial and not a remote interest, disclosure of that interest and withdrawal from participation is mandatory. Even if the public officer or employee believes that they can be objective in the matter and that the public interest would not be harmed by their participation, the officer or employee must both disclose the conflict and completely withdraw from consideration of the matter in which their interests are involved. Disclosure and disqualification must occur even if there is little or no likelihood that the officer or employee would participate in the matter.
- E. Arizona's conflict of interest statutes are broadly construed in favor of the public and substantial civil and criminal penalties are provided for failure to comply with the statutory requirements.
  1. [A.R.S. § 38-509](#) requires that all state agencies "maintain for public inspection in a special file, all documents necessary to memorialize all disclosures of substantial interest", including potential conflicts of interests. Any public officer or employee who has substantial interest or a conflict of interest in any agency decision or in the award of a contract must disclose that interest in the special conflict of interest file of the public agency, [A.R.S. § 38-503\(A\) and \(B\)](#). The officer or employee shall file a signed written disclose statement fully disclosing the interest. Disclosures shall be made annually utilizing the [Arizona State Personnel System Disclosure Statement](#) and filed in the agency special conflict of interest file maintained by ADOT's Law and Policy Office.
  2. Any officer or employee who feels that they may have a conflict of interest in a specific matter should immediately disqualify themselves from participation in all related activities and decisions and prepare a memorandum, directed to the officer's or employee's supervisor, explaining in detail the conflict of interest and affirming

that the office or employee has disqualified himself. This memorandum will be placed in the conflict of interest file maintained by the agency for public inspection pursuant to [A.R.S. § 38-509](#). The office or employee should identify the specific matter in which there may be a substantial interest based on whatever knowledge the officer or employee possesses.

3. Having disclosed the conflict of interest and disqualified themselves, the officer or employee must not communicate about the matter with anyone involved in the decision making process in order to avoid the appearance of impropriety.
4. In the unlikely situation that the majority of members of an agency have a conflict of interest and the agency is unable to act in its official capacity, [A.R.S. § 38-508\(B\)](#) provides that the agency may take action or empower another employee to act after the members of the agency who have apparent conflicts have made known their substantial interests in the official records of their agency.
5. [A.R.S. § 38-504\(A\)](#) states: “No public officer or employee may represent another person for compensation before a public agency by which the officer or employee is or was employed within the preceding twelve months concerning any matters with which such officer or employee was directly concerned and in which they personally participated during their employment or service by a substantial and material exercise of administrative discretion.”
6. [A.R.S. § 38-504\(B\)](#) includes a prohibition on both the disclosure and use of confidential information, even if a public officer or employee does not profit or benefit from the use of the information, they are still prohibited from disclosing the information for the statutory period. The statutory period exists during the course of employment and for two years after employment has terminated, unless appropriate authorization from their agency has been obtained.
  - a. The prohibition includes either the disclosure or use of the information. Thus, even though no person profit inures to the benefit of the public officer or employee through its use, they are still prohibited from disclosing the information for the statutory period.
7. [A.R.S. § 38-504\(C\)](#) prohibits public officers and employees from using or attempting to use their official position in order to secure valuable benefits for themselves, unless such benefits are part of the compensation they would normally be entitled to for performing their duties.
8. [A.R.S. § 38-505\(A\)](#) prohibits a public officer or employee from agreeing to receive or receiving, either directly or indirectly, compensation other than as provided by law for services rendered by the officer or employee in any case, proceeding, application or other matter pending before their agency.

F. Sanctions for Violations

1. Criminal Penalties

- a. The knowing or intentional violation of any provision of the conflict of interest of law is a class 6 felony [A.R.S. § 38-510\(A\)\(1\)](#).
  - b. The negligent or reckless violation of the law is a class 1 misdemeanor. This means that a public officer or employee may be prosecuted if he fails to disclose a conflict of interest, of which he did not, but should have known [A.R.S. § 38-510\(A\)\(2\)](#).
  - c. The knowing falsification, concealment, or cover-up of a material fact pursuant to a scheme to defraud in any matter related to the business conducted by a state agency or any political subdivision of the state is a class 5 felony [A.R.S. § 13-2311](#).
2. Upon conviction of a violation of the conflict of interest laws, a public officer or employee forfeits his public office or employment [A.R.S. § 38-510\(B\)](#).
  3. Any contract made by the state or any of its departments or agencies is subject to cancellation by the Governor if anyone significantly involved in the contract process on behalf of the state was or is also employed by or acted as consultant to any other party to the contract during the time the contract or extension to the contract is in effect [A.R.S. § 38-511](#).

**1.6 ADOT'S CONFLICT OF INTEREST POLICY**

- A. It is ADOT's policy to notify all its officers and employees of their responsibility in relation to [A.R.S. §§ 38-502 - 38-511](#), and not violate the intent of these statutes while conducting official business.
  1. In addition, ADOT has specifically developed the following policy, based on [A.R.S. §38-502](#) and [§ 38-503](#), concerning the business conduct of officers and employees. (For secondary employment rules and procedures, see ADOT Policy and Procedure PER-6.04, Secondary Employment.)
- B. The State's conflict of interest laws ([A.R.S. § 38-502 to § 38-511](#)) and this policy are applicable at all times while conducting the official business of ADOT. The exemption at [A.R.S. § 41- 2501\(J\)](#) is not applicable to the enforcement of the State's conflict of interest laws or of this policy.
- C. The officers or employees shall not affiliate themselves with public or private organizations or entities so as to raise an expectation that official favors will be granted.

1. No officer or employee shall accept or solicit, directly or indirectly, anything of economic value which is or may appear to be designed to influence official conduct, particularly from persons seeking to obtain contractual, business or other financial arrangements with the Department or who has interests that might be substantially affected by the performance of the officer's or employee's duty.
  2. Officers or employees should exercise caution when accepting meals, beverages or other refreshments from individuals who are seeking or already conducting official business with the state. The acceptance of beverages or other incidental refreshments should be limited to the infrequent occasions when offered in the ordinary course of a meeting or conference, and when such foods are offered at no charge to all participants.
  3. This policy does not restrict an officer or employee from seeking a loan from a financial institution on customary terms and for proper purposes, nor does it prohibit the acceptance of unsolicited promotional materials of nominal value.
  4. Since the intention of this policy is to avoid even the appearance of any impropriety, officers or employees are encouraged to report any offer of a gift or gratuity to the immediate supervisor as soon as possible after such an offer is made.
- D. All ADOT officers and employees shall conduct their official and personal affairs at all times in compliance with the ADOT Code of Conduct. In addition, the State of Arizona Code of Conduct for Employees Engaged in Accounting, Financial and Budgeting Activities applies to all officers and employees engaged in those activities (For more information, see GAO [SAAM 0515](#) Code of Conduct).
- E. Supplementation of this policy and procedure is not permitted at any organizational level without prior written approval by the ADOT Chief Human Resources Officer. All division and section/group policies or procedures relating to the subject matter covered by this policy and procedure that are in effect on the date of this publication shall be provided to the ADOT Chief Human Resources Officer for review and approval.

#### **1.7 PROCEDURE FOR REPORTING SUBSTANTIAL INTERESTS OF OFFICERS OR EMPLOYEES AND RELATIVES**

- A. Arizona law requires that public officers and employees make known the existence of any substantial interest which they and their relatives have in:
1. Any contract, sale, purchase, or service to ADOT.
  2. Any decision to be made by ADOT.
- B. Officers or employees shall send the Arizona State Personnel System Disclosure Statement to their supervisor when they are hired and annually thereafter.

- C. When a conflict of interest is disclosed, the supervisor shall notify HR and the Office of Law and Policy of the disclosure.
- D. The Office of Law and Policy shall conduct an investigation into the disclosed conflict to determine what remedial steps, if any, are necessary to ensure the employee does not participate in any manner in the matter with which the employee has a conflict.
- E. The Arizona State Personnel System Disclosure Statement shall be placed in a special conflict of interest file maintained for public inspection.

## **1.8 CORRESPONDING POLICIES AND RELEVANT SOURCES**

[A.A.C. Title 2, Chapter 5 \(the State Personnel Rules\)](#)

Arizona Constitution, Article 9, Section 7 - [Gift Clause](#)

Arizona Department of Administration (ADOA), General Accounting Office (GAO), [SAAM 0515](#), Code of Conduct for State of Arizona Employees Engaged in Accounting, Financial and Budgeting Activities.

ADOA, GAO [SAAM 0535](#), Related Party Transactions

ADOA, GAO [SAAM 5558](#) Accepting Gifts

[ADOT Code of Conduct](#)

[ADOA GAO Code of Conduct](#) for State of Arizona Employees Engaged in Accounting, Financial, and Budget Activities

[PER-6.07 Secondary Employment](#)

[ADOT Secondary Employment Approval Request Form](#)

[Arizona State Personnel System Disclosure Statement](#)