

PREVAILED	Roll Call No. _____
FAILED	Ayes _____
WITHDRAWN	Noes _____
RULED OUT OF ORDER	

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 209 be amended to read as follows:

- 1 Page 1, between lines 4 and 5, begin a new paragraph and insert:
- 2 "SECTION 2. IC 3-9-2-12.5 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 2009]: **Sec. 12.5. (a) As used in this section, "prohibited period"**
- 5 **refers to the following time periods:**
- 6 **(1) The period:**
- 7 **(A) that begins on the day in January in each**
- 8 **odd-numbered year on which the general assembly**
- 9 **reconvenes under IC 2-2.1-1-2; and**
- 10 **(B) that ends on the day on which the general assembly**
- 11 **adjourns sine die in an odd-numbered year under**
- 12 **IC 2-2.1-1-2.**
- 13 **(2) The period:**
- 14 **(A) that begins on the day before; and**
- 15 **(B) that ends on the day after;**
- 16 **the day in November of each year on which the general**
- 17 **assembly convenes.**
- 18 **(b) During a prohibited period, the governor and the governor's**
- 19 **candidate's committees may not do any of the following:**
- 20 **(1) Solicit campaign contributions.**
- 21 **(2) Accept campaign contributions.**
- 22 **(3) Conduct other fundraising activities. However, this**
- 23 **subdivision does not prohibit the governor from participating**
- 24 **in party activities conducted by a regular party committee.**

1 SECTION 3. IC 3-9-2.5 IS ADDED TO THE INDIANA CODE AS
 2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2009]:

4 **Chapter 2.5. Prohibition of Contributions by Certain State**
 5 **Contractors**

6 **Sec. 1. The definitions in IC 4-13-2.5 apply throughout this**
 7 **chapter.**

8 **Sec. 2. As used in this chapter, "affiliated person" refers to any**
 9 **of the following:**

10 (1) **A person with any ownership interest or distributive share**
 11 **of a business entity of more than seven and one-half percent**
 12 **(7.5%).**

13 (2) **An executive employee of a business entity.**

14 (3) **The spouse of an individual described in subdivision (1) or**
 15 **(2).**

16 (4) **The minor child of an individual described in subdivision**
 17 **(1) or (2).**

18 (5) **A subsidiary of a business entity.**

19 (6) **A member of the same unitary business group as a**
 20 **business entity.**

21 (7) **An organization recognized by the United States Internal**
 22 **Revenue Service as a tax-exempt organization described in**
 23 **Section 501(c) of the Internal Revenue Code that is**
 24 **established by:**

25 (A) **a business entity;**

26 (B) **a person described in subdivision (1), (2), (3) or (4); or**

27 (C) **an entity described in subdivision (5) or (6).**

28 (8) **A political action committee for which:**

29 (A) **a business entity; or**

30 (B) **any section 501(c) organization described in**
 31 **subdivision (7) related to that business entity;**

32 **is a sponsor.**

33 **Sec. 3. As used in this chapter, "business entity" refers to any of**
 34 **the following doing business for profit:**

35 (1) **A sole proprietorship.**

36 (2) **A partnership.**

37 (3) **A limited liability partnership.**

38 (4) **A limited liability company.**

39 (5) **A corporation.**

40 (6) **Any other person doing business for profit, regardless of**
 41 **the person's legal organization.**

42 **Sec. 4. As used in this chapter, "executive employee" refers to**
 43 **any of the following:**

44 (1) **The president of a business entity.**

45 (2) **The chairman of a business entity.**

46 (3) **The chief executive officer of a business entity.**

47 (4) **An employee of a business entity:**

1 (A) who has executive decision making authority over the
 2 long term and day to day affairs of the business entity; or
 3 (B) whose compensation is determined directly, in whole or
 4 in part, by the award or payment of contracts to the
 5 business entity.

6 Sec. 5. As used in this chapter, "registrant" refers to a person
 7 registered under this chapter.

8 Sec. 6. As used in this chapter, "sponsor" refers to an individual
 9 or organization that contributes at least thirty-three percent (33%)
 10 of the total funding of a political action committee.

11 Sec. 7. (a) This section applies to the following:

12 (1) A business entity whose annual aggregate offers for
 13 contracts total more than fifty thousand dollars (\$50,000).

14 (2) A business entity whose aggregate offers for contracts
 15 combined with the business entity's aggregate annual total
 16 value of contracts exceed fifty thousand dollars (\$50,000).

17 (3) A business entity whose contracts, in the aggregate,
 18 annually total more than fifty thousand dollars (\$50,000).

19 (b) Not later than August 1, 2009, a business entity described in
 20 subsection (a) shall register with the election division under this
 21 chapter.

22 (c) A business entity required to register under this section shall
 23 submit a copy of the registration certificate to the applicable
 24 contract officer not later than October 1, 2009.

25 (d) A business entity described in subsection (a)(1) or (a)(2) has
 26 a continuing duty to ensure that the registration is accurate during
 27 the period that:

28 (1) begins on the date of registration; and

29 (2) ends on the day after the date the contract is awarded.

30 A change in information must be reported to the election division
 31 not later than two (2) business days following the change.

32 (e) A business entity described in subsection (a)(3) has a
 33 continuing duty to ensure that the registration is accurate as
 34 provided in section 8(c) and 8(d) of this chapter.

35 Sec. 8. (a) This section applies to a business entity:

36 (1) not required to register under section 7 of this chapter;
 37 and

38 (2) whose aggregate offers for contracts:

39 (A) annually total more than fifty thousand dollars
 40 (\$50,000); or

41 (B) combined with the person's aggregate annual total
 42 value of contracts are greater than fifty thousand dollars
 43 (\$50,000).

44 (b) A business entity described in subsection (a) shall register
 45 with the election division under this chapter before submitting an
 46 offer whose value causes the business entity to fall within the
 47 description of subsection (a)(2).

1 (c) A business entity required to register under this section has
2 a continuing duty to ensure that the registration is accurate during
3 the period that:

- 4 (1) begins on the date of registration; and
5 (2) ends on the day after the date the contract is awarded.

6 (d) Any change in information must be reported to the election
7 division not later than two (2) business days following the change.

8 Sec. 9. (a) A business entity whose contracts, in the aggregate,
9 annually total more than fifty thousand dollars (\$50,000) must
10 maintain registration under this chapter and has a continuing duty
11 to ensure that the registration is accurate for:

- 12 (1) the duration of the term of office of any incumbent holder
13 of a state office at the time of any contract is entered into; or
14 (2) two (2) years following the expiration or termination of the
15 contracts;

16 whichever is longer.

17 (b) Any change in information must be reported to the election
18 division not later than ten (10) days following the change. However,
19 if a business entity required to register under this section has a
20 pending offer, a change in information must be reported to the
21 election division not later than two (2) business days after the
22 change.

23 Sec. 10. A business entity's continuing duty under this chapter
24 to ensure the accuracy of the business entity's registration includes
25 the requirement that the business entity notify the election division
26 of any changes in information relating to affiliated persons or any
27 other material changes.

28 Sec. 11. (a) The registration required by persons under this
29 chapter and any changes to that registration, must be made
30 electronically. The commission shall provide for electronic
31 registration by rule adopted under IC 4-22-2.

32 (b) A registration must contain substantially the following
33 information:

- 34 (1) The registrant's name and business address.
35 (2) The name and address of each of the registrant's affiliated
36 persons with a description of the affiliation for each person.

37 (c) A registration, and any changes to a registration must be
38 certified, under the penalties for perjury, that to the best of the
39 person's knowledge and belief, the information stated is true.

40 (d) The election division shall provide a registration certificate
41 to a person that registers under this chapter.

42 (e) A registration certificate must be:

- 43 (1) electronic; and
44 (2) accessible to the registrant through the election division's
45 website; and
46 (3) protected by a password.

47 Sec. 12. (a) For the purposes of this section, a database

1 maintained by the election division is "searchable" if the database
2 can be searched by the following terms:

- 3 (1) Affiliated person.
4 (2) Registrant.
5 (3) State agency.

6 (b) The election division shall maintain on its website a
7 searchable database containing all information required to be
8 submitted to the election division under this chapter.

9 (c) The database must contain links to any searchable database
10 of state contracts maintained by the state, searchable by registrant.

11 (d) The election division may not place the name of a minor
12 child in the database. However, the database must provide a link
13 to all contributions made by anyone reporting the same residential
14 address as an affiliated person.

15 **Sec. 13. A registrant shall provide a copy of the registration
16 certificate:**

- 17 (1) by first class mail or hand delivery;
18 (2) not later than ten (10) days after registration; and
19 (3) to each affiliated person whose identity is required to be
20 disclosed under this chapter.

21 **Sec. 14. (a) A registrant shall notify any political action
22 committee to which the registrant makes a contribution, at the time
23 of the contribution, that the person is registered with the election
24 division under this chapter.**

25 (b) An affiliated person of a registrant shall notify any political
26 action committee to which it makes a contribution that it is
27 affiliated with a registrant.

28 **Sec. 15. (a) During the period described in subsection (b):**

- 29 (1) a registrant who has a contract; and
30 (2) that registrant's affiliated persons;

31 may not make a contribution to an individual who holds a state
32 office or is a candidate for a state office.

33 (b) The prohibition on contributions under this section is
34 effective:

- 35 (1) during the term of office of any individual who holds a
36 state office when the contract is awarded; and
37 (2) until two (2) years after the date of the expiration or
38 termination of the contract;

39 whichever is later.

40 **Sec. 16. (a) During the period described in subsection (b):**

- 41 (1) a registrant who has no contracts but has an offer
42 pending; and
43 (2) that registrant's affiliated persons;

44 may not make a contribution to an individual who holds a state
45 office or is a candidate for a state office.

46 (b) The prohibition on contributions under this section:

- 47 (1) begins on the date that the solicitation is issued; and

- 1 **(2) ends on the day after the date the contract is awarded.**
- 2 **Sec. 17. A candidate or a candidate's committee that receives a**
- 3 **contribution from a person who is prohibited from making a**
- 4 **contribution under section 15 or 16 of this chapter shall pay an**
- 5 **amount equal to the value of the contribution to the election**
- 6 **division not later than thirty (30) days after receiving the**
- 7 **contribution. The election division shall deposit payments made**
- 8 **under this section in the campaign finance enforcement account**
- 9 **established by IC 3-6-4.1-24.**
- 10 SECTION 4. IC 3-9-4-16, AS AMENDED BY P.L.221-2005,
- 11 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 12 JULY 1, 2009]: Sec. 16. (a) In addition to any other penalty imposed,
- 13 a person who does any of the following is subject to a civil penalty
- 14 under this section:
- 15 (1) Fails to file with the election division a report in the manner
- 16 required under IC 3-9-5.
- 17 (2) Fails to file a statement of organization required under
- 18 IC 3-9-1.
- 19 (3) Is a committee or a member of a committee who disburses or
- 20 expends money or other property for any political purpose before
- 21 the money or other property has passed through the hands of the
- 22 treasurer of the committee.
- 23 (4) Makes a contribution other than to a committee subject to this
- 24 article or to a person authorized by law or a committee to receive
- 25 contributions on the committee's behalf.
- 26 (5) Is a corporation or labor organization that exceeds any of the
- 27 limitations on contributions prescribed by IC 3-9-2-4.
- 28 (6) Makes a contribution in the name of another person.
- 29 (7) Accepts a contribution made by one (1) person in the name of
- 30 another person.
- 31 (8) Is not the treasurer of a committee subject to this article, and
- 32 pays any expenses of an election or a caucus except as authorized
- 33 by this article.
- 34 (9) Commingles the funds of a committee with the personal funds
- 35 of an officer, a member, or an associate of the committee.
- 36 (10) Wrongfully uses campaign contributions in violation of
- 37 IC 3-9-3-4.
- 38 (11) Violates IC 3-9-2-12 **or IC 3-9-2-12.5.**
- 39 (12) Fails to designate a contribution as required by IC 3-9-2-5(c).
- 40 (13) Violates IC 3-9-3-5.
- 41 (14) Serves as a treasurer of a committee in violation of any of the
- 42 following:
- 43 (A) IC 3-9-1-13(1).
- 44 (B) IC 3-9-1-13(2).
- 45 (C) IC 3-9-1-18.
- 46 (15) Fails to comply with section 4(d) of this chapter.

1 **(16) Violates IC 3-9-2.5.**

2 (b) This subsection applies to a person who is subject to a civil
3 penalty under subsection (a)(1) or (a)(2) for filing a defective report or
4 statement. If the commission determines that a person failed to file the
5 amended report or statement of organization not later than noon five (5)
6 days after being given notice under section 14 of this chapter, the
7 commission may assess a civil penalty. The penalty is ten dollars (\$10)
8 for each day the report is late after the expiration of the five (5) day
9 period, not to exceed one hundred dollars (\$100) plus any investigative
10 costs incurred and documented by the election division. The civil
11 penalty limit under this subsection applies to each report separately.

12 (c) This subsection applies to a person who is subject to a civil
13 penalty under subsection (a)(1) or (a)(2) for a delinquent report or
14 statement. If the commission determines that a person failed to file the
15 report or statement of organization by the deadline prescribed under
16 this article, the commission shall assess a civil penalty. The penalty is
17 fifty dollars (\$50) for each day the report or statement is late, with the
18 afternoon of the final date for filing the report or statement being
19 calculated as the first day. The civil penalty under this subsection may
20 not exceed one thousand dollars (\$1,000) plus any investigative costs
21 incurred and documented by the election division. The civil penalty
22 limit under this subsection applies to each report separately.

23 (d) This subsection applies to a person who is subject to a civil
24 penalty under subsection (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), or
25 (a)(10). If the commission determines that a person is subject to a civil
26 penalty under subsection (a), the commission may assess a civil penalty
27 of not more than one thousand dollars (\$1,000), plus any investigative
28 costs incurred and documented by the election division.

29 (e) This subsection applies to a person who is subject to a civil
30 penalty under subsection (a)(5). If the commission determines that a
31 person is subject to a civil penalty under subsection (a)(5), the
32 commission may assess a civil penalty of not more than three (3) times
33 the amount of the contribution in excess of the limit prescribed by
34 IC 3-9-2-4, plus any investigative costs incurred and documented by
35 the election division.

36 (f) This subsection applies to a person who is subject to a civil
37 penalty under subsection (a)(11). If the commission determines that a
38 candidate or the candidate's committee has violated IC 3-9-2-12 or
39 **IC 3-9-2-12.5**, the commission shall assess a civil penalty equal to the
40 greater of the following, plus any investigative costs incurred and
41 documented by the election division:

- 42 (1) Two (2) times the amount of any contributions received.
43 (2) One thousand dollars (\$1,000).

44 (g) This subsection applies to a person who is subject to a civil
45 penalty under subsection (a)(12). If the commission determines that a
46 corporation or a labor organization has failed to designate a

1 contribution in violation of IC 3-9-2-5(c), the commission shall assess
 2 a civil penalty equal to the greater of the following, plus any
 3 investigative costs incurred and documented by the election division:

4 (1) Two (2) times the amount of the contributions undesignated.

5 (2) One thousand dollars (\$1,000).

6 (h) This subsection applies to a person who is subject to a civil
 7 penalty under subsection (a)(13). If the commission determines, by
 8 unanimous vote of the entire membership of the commission, that a
 9 person has violated IC 3-9-3-5, the commission may assess a civil
 10 penalty of not more than five hundred dollars (\$500), plus any
 11 investigative costs incurred and documented by the election division.

12 (i) This subsection applies to a person who is subject to a civil
 13 penalty under subsection (a)(14). If the commission determines, by
 14 unanimous vote of the entire membership of the commission, that a
 15 person has served as the treasurer of a committee in violation of any of
 16 the statutes listed in subsection (a)(14), the commission may assess a
 17 civil penalty of not more than five hundred dollars (\$500), plus any
 18 investigative costs incurred and documented by the election division.

19 (j) This subsection applies to a person who is subject to a civil
 20 penalty under subsection (a)(15). The commission may assess a civil
 21 penalty equal to the costs incurred by the election division for the
 22 manual entry of the data contained in the report or statement, plus any
 23 investigative costs incurred and documented by the election division.

24 **(k) This subsection applies to a person who is subject to a civil
 25 penalty under subsection (a)(16). The commission may assess a
 26 civil penalty of not more than:**

27 **(1) one thousand dollars (\$1,000) for each business day that a
 28 person knowingly or intentionally:**

29 **(A) fails to update a registration required by IC 3-9-2.5;**

30 **(B) fails to provide material information on a registration
 31 required by IC 3-9-2.5; or**

32 **(C) states false information on a registration required by
 33 IC 3-9-2.5; or**

34 **(2) not more than one thousand dollars (\$1,000) for any other
 35 violation of IC 3-9-2.5;**

36 **plus any investigative costs incurred and documented by the
 37 election division.**

38 ~~(l)~~ **(l)** All civil penalties collected under this section shall be
 39 deposited with the treasurer of state in the campaign finance
 40 enforcement account.

41 ~~(m)~~ **(m)** Proceedings of the commission under this section are subject
 42 to IC 4-21.5."

43 Page 12, between lines 28 and 29, begin a new paragraph and insert:
 44 "SECTION 15. IC 3-14-1-17 IS ADDED TO THE INDIANA CODE
 45 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 46 1, 2009]: **Sec. 17. A person who recklessly, knowingly, or**

1 intentionally makes a contribution in violation of IC 3-9-2.5
2 commits a Class B misdemeanor."

3 Page 12, after line 36, begin a new paragraph and insert:

4 "SECTION 17. IC 4-13-2.5 IS ADDED TO THE INDIANA CODE
5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2009]:

7 **Chapter 2.5. Political Contributions of Offerors and**
8 **Contractors**

9 **Sec. 1. This chapter applies to every:**

- 10 (1) offer submitted to a state agency; and
11 (2) contract awarded by a state agency;

12 after June 30, 2009.

13 **Sec. 2. (a) As used in this chapter, "contract" refers to a**
14 **contract for:**

- 15 (1) goods;
16 (2) services, including professional services;
17 (3) a public works project; or
18 (4) a highway project;

19 awarded by a state agency.

20 **(b) A contract awarded by a state agency under:**

- 21 (1) IC 4-13.6;
22 (2) IC 5-22;
23 (3) IC 5-23;
24 (4) IC 8-23; or
25 (5) any other statute;

26 is considered a contract for purposes of this chapter.

27 **Sec. 3. As used in this chapter, "contract officer" refers to the:**

- 28 (1) procurement agent under IC 5-22; or
29 (2) state officer or employee responsible for awarding a
30 contract.

31 **Sec. 4. As used in this chapter, "contractor" refers to a person**
32 **who has been awarded a contract with a state agency.**

33 **Sec. 5. (a) As used in this chapter, "offer" means a response to**
34 **a solicitation.**

35 **(b) The term includes a bid, proposal, and quote.**

36 **Sec. 6. As used in this chapter, "offeror" means a person who**
37 **submits an offer to a state agency.**

38 **Sec. 7. (a) As used in this chapter, "solicitation" means the**
39 **procedure by which a state agency invites persons to submit an**
40 **offer to enter into a contract with the state agency.**

41 **(b) The term includes an invitation for bids, a request for**
42 **proposals, and a request for quotes.**

43 **Sec. 8. As used in this chapter, "state agency" refers to any of**
44 **the following:**

- 45 (1) A state agency as defined in IC 4-13-1-1.
46 (2) An entity established by the general assembly as a body
47 corporate and politic that is governed by a body, any of whose

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members are:

- (A) the governor; or**
- (B) appointed by the governor.**

Sec. 9. Every offer submitted to, and contract entered into by a state agency must contain the following:

- (1) A certification by the offeror or contractor that either:**
 - (A) the offeror or contractor is not required to register with the election division under IC 3-9-2.5; or**
 - (B) the offeror or contractor has registered with the election division under IC 3-9-2.5 and acknowledges a continuing duty to update the registration.**
- (2) A statement that the contract is voidable under section 11 or 12 of this chapter for the offeror's or contractor's failure to comply with this chapter or IC 3-9-2.5.**

Sec. 10. (a) A copy of an offeror's registration certificate must accompany an offer by a person required to register under this chapter.

(b) A contracting officer may not accept an offer unless the offeror's registration certificate is submitted with the offer.

Sec. 11. In addition to any penalty under this chapter or IC 3-9-2.5, the knowing or intentional failure to disclose material information required for registration renders:

- (1) the offeror nonresponsible; or**
- (2) a contract voidable by the contract officer if the contract officer considers it to be in the best interest of the state.**

Sec. 12. (a) This section applies to a contract with a person who violates IC 3-9-2.5-15 or IC 3-9-2.5-16.

(b) A contract described in subsection (a) is voidable by the contract officer if the contract officer considers it to be in the best interest of the state.

(c) A contract described in subsection (a) is terminated by operation of law if the affected person violates IC 3-9-2.5-15 or IC 3-9-2.5-16, more than two (2) times. The affected person is also considered a nonresponsible offeror for three (3) years after the date of the most recent violation."

Renumber all SECTIONS consecutively.
(Reference is to ESB 209 as printed April 7, 2009.)