



April 18, 2011

ENGROSSED
SENATE BILL No. 559

DIGEST OF SB 559 (Updated April 18, 2011 10:28 am - DI 69)

Citations Affected: IC 35-44.

Synopsis: Conflict of interest. Specifies certain definitions and defenses that apply to the crime of conflict of interest.

Effective: July 1, 2011.

Bray, Head

(HOUSE SPONSORS — KOCH, GRUBB)

January 20, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 15, 2011, amended, reported favorably — Do Pass.

February 17, 2011, read second time, ordered engrossed.

February 18, 2011, engrossed.

February 22, 2011, read third time, passed. Yeas 48, nays 0.

HOUSE ACTION

March 28, 2011, read first time and referred to Committee on Courts and Criminal Code.

April 18, 2011, amended, reported — Do Pass.

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ES 559—LS 7425/DI 106+



April 18, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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ENGROSSED SENATE BILL No. 559



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-44-1-3 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. **(a) The following**
- 3 **definitions apply throughout this section:**
- 4 **(1) "Dependent" means any of the following:**
- 5 **(A) The spouse of a public servant.**
- 6 **(B) A child, stepchild, or adoptee (as defined in**
- 7 **IC 31-9-2-2) of a public servant who is:**
- 8 **(i) unemancipated; and**
- 9 **(ii) less than eighteen (18) years of age.**
- 10 **(C) An individual more than one-half (1/2) of whose**
- 11 **support is provided during a year by the public servant.**
- 12 **(2) "Governmental entity served by the public servant" means**
- 13 **the immediate governmental entity being served by a public**
- 14 **servant.**
- 15 **(3) "Pecuniary interest" means an interest in a contract or**
- 16 **purchase if the contract or purchase will result or is intended**
- 17 **to result in an ascertainable increase in the income or net**



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worth of:

(A) the public servant; or

(B) a dependent of the public servant who:

(i) is under the direct or indirect administrative control of the public servant; or

(ii) receives a contract or purchase order that is reviewed, approved, or directly or indirectly administered by the public servant.

(a) (b) A public servant who knowingly or intentionally:

(1) has a pecuniary interest in; or

(2) derives a profit from;

a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony.

(b) This section does not prohibit a public servant from receiving compensation for:

(1) services provided as a public servant; or

(2) expenses incurred by the public servant as provided by law.

(c) This section does not prohibit a public servant from having a pecuniary interest in or deriving a profit from a contract or purchase connected with the governmental entity served under any of the following conditions:

(1) If the:

(A) public servant is not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity;

(B) functions and duties performed by the public servant for the governmental entity are unrelated to the contract or purchase; and

(C) public servant makes a disclosure under subsection (d)(1) through (d)(6):

(2) If the contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government:

(3) If the public servant:

(A) is an elected public servant or a member of the board of trustees of a state supported college or university; and

(B) makes a disclosure under subsection (d)(1) through (d)(6):

(4) If the public servant:

(A) was appointed by an elected public servant or the board of trustees of a state supported college or university; and

(B) makes a disclosure under subsection (d)(1) through (d)(7):

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- 1 (5) If the public servant:
- 2 (A) acts in only an advisory capacity for a state supported
- 3 college or university; and
- 4 (B) does not have authority to act on behalf of the college or
- 5 university in a matter involving a contract or purchase.
- 6 (6) If the public servant:
- 7 (A) is employed by the governing body of a school corporation
- 8 and the contract or purchase involves the employment of a
- 9 dependent or the payment of fees to a dependent; and
- 10 (B) makes a disclosure under subsection (d)(1) through (d)(6).
- 11 (7) If the public servant is under the jurisdiction of the state ethics
- 12 commission as provided in IC 4-2-6-2.5 and obtains from the state
- 13 ethics commission; following full and truthful disclosure; written
- 14 approval that the public servant will not or does not have a
- 15 conflict of interest in connection with the contract or purchase
- 16 under IC 4-2-6 and this section. The approval required under this
- 17 subdivision must be:
- 18 (A) granted to the public servant before action is taken in
- 19 connection with the contract or purchase by the governmental
- 20 entity served; or
- 21 (B) sought by the public servant as soon after the contract or
- 22 purchase as the public servant becomes aware of the facts that
- 23 give rise to a question of conflict of interest.
- 24 (d) A disclosure required by this section must:
- 25 (1) be in writing;
- 26 (2) describe the contract or purchase to be made by the
- 27 governmental entity;
- 28 (3) describe the pecuniary interest that the public servant has in
- 29 the contract or purchase;
- 30 (4) be affirmed under penalty of perjury;
- 31 (5) be submitted to the governmental entity and be accepted by
- 32 the governmental entity in a public meeting of the governmental
- 33 entity prior to final action on the contract or purchase;
- 34 (6) be filed within fifteen (15) days after final action on the
- 35 contract or purchase with:
- 36 (A) the state board of accounts; and
- 37 (B) if the governmental entity is a governmental entity other
- 38 than the state or a state supported college or university; the
- 39 clerk of the circuit court in the county where the governmental
- 40 entity takes final action on the contract or purchase; and
- 41 (7) contain, if the public servant is appointed; the written approval
- 42 of the elected public servant (if any) or the board of trustees of a

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1 state supported college or university (if any) that appointed the
 2 public servant.

3 (e) The state board of accounts shall forward to the state ethics
 4 commission a copy of all disclosures filed with the board under
 5 IC 16-22-2 through IC 16-22-5, IC 16-23-1, or this section.

6 (f) The state ethics commission shall maintain an index of all
 7 disclosures received by the commission. The index must contain a
 8 listing of each public servant, setting forth the disclosures received by
 9 the commission made by that public servant.

10 (g) A public servant has a pecuniary interest in a contract or
 11 purchase if the contract or purchase will result or is intended to result
 12 in an ascertainable increase in the income or net worth of:

13 (1) the public servant; or
 14 (2) a dependent of the public servant who:

15 (A) is under the direct or indirect administrative control of the
 16 public servant; or
 17 (B) receives a contract or purchase order that is reviewed;
 18 approved; or directly or indirectly administered by the public
 19 servant.

20 (h) It is a defense in a prosecution under this section that the public
 21 servant's interest in the contract or purchase and all other contracts and
 22 purchases made by the governmental entity during the twelve (12)
 23 months before the date of the contract or purchase was two hundred
 24 fifty dollars (\$250) or less.

25 (i) Notwithstanding subsection (d); a member of the board of
 26 trustees of a state supported college or university; or a person appointed
 27 by such a board of trustees; complies with the disclosure requirements
 28 of this chapter with respect to the member's or person's pecuniary
 29 interest in a particular type of contract or purchase which is made on
 30 a regular basis from a particular vendor if the member or person files
 31 with the state board of accounts and the board of trustees a statement
 32 of pecuniary interest in that particular type of contract or purchase
 33 made with that particular vendor. The statement required by this
 34 subsection must be made on an annual basis.

35 (j) This section does not apply to members of the governing board
 36 of a hospital organized or operated under IC 16-22-1 through
 37 IC 16-22-5 or IC 16-23-1.

38 (k) As used in this section; "dependent" means any of the following:

39 (1) The spouse of a public servant.
 40 (2) A child; stepchild; or adoptee (as defined in IC 31-9-2-2) of a
 41 public servant who is:
 42 (A) unemancipated; and

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- (B) less than eighteen (18) years of age.
- (3) Any individual more than one-half (1/2) of whose support is provided during a year by the public servant.
- (c) It is not an offense under this section if:
 - (1) The public servant or the public servant's dependent receives compensation through salary or an employment contract for:
 - (A) services provided as a public servant; or
 - (B) expenses incurred by the public servant as provided by law.
 - (2) The public servant's interest in the contract or purchase and all other contracts and purchases made by the governmental entity during the twelve (12) months before the date of the contract or purchase was two hundred fifty dollars (\$250) or less.
 - (3) The contract or purchase involves utility services from a utility whose rate structure is regulated by the state or federal government.
 - (4) The public servant:
 - (A) acts in only an advisory capacity for a state supported college or university; and
 - (B) does not have authority to act on behalf of the college or university in a matter involving a contract or purchase.
 - (5) A public servant under the jurisdiction of the state ethics commission (as provided in IC 4-2-6-2.5) obtains from the state ethics commission, following full and truthful disclosure, written approval that the public servant will not or does not have a conflict of interest in connection with the contract or purchase under IC 4-2-6 and this section. The approval required under this subdivision must be:
 - (A) granted to the public servant before action is taken in connection with the contract or purchase by the governmental entity served; or
 - (B) sought by the public servant as soon after the contract or purchase as the public servant becomes aware of the facts that give rise to a question of conflict of interest.
 - (6) A public servant who makes a disclosure that meets the requirements of subsection (d) or (e) and is:
 - (A) not a member or on the staff of the governing body empowered to contract or purchase on behalf of the governmental entity, and functions and performs duties for the governmental entity unrelated to the contract or

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- 1 purchase;
- 2 (B) appointed by an elected public servant;
- 3 (C) employed by the governing body of a school
- 4 corporation and the contract or purchase involves the
- 5 employment of a dependent or the payment of fees to a
- 6 dependent;
- 7 (D) elected; or
- 8 (E) a member of, or a person appointed by, the board of
- 9 trustees of a state supported college or university.
- 10 (7) The public servant is a member of the governing board of
- 11 a hospital organized or operated under IC 16-22-1 through
- 12 IC 16-22-5 or IC 16-23-1.
- 13 (d) A disclosure must:
- 14 (1) be in writing;
- 15 (2) describe the contract or purchase to be made by the
- 16 governmental entity;
- 17 (3) describe the pecuniary interest that the public servant has
- 18 in the contract or purchase;
- 19 (4) be affirmed under penalty of perjury;
- 20 (5) be submitted to the governmental entity and be accepted
- 21 by the governmental entity in a public meeting of the
- 22 governmental entity before final action on the contract or
- 23 purchase;
- 24 (6) be filed within fifteen (15) days after final action on the
- 25 contract or purchase with:
- 26 (A) the state board of accounts; and
- 27 (B) if the governmental entity is a governmental entity
- 28 other than the state or a state supported college or
- 29 university, the clerk of the circuit court in the county
- 30 where the governmental entity takes final action on the
- 31 contract or purchase; and
- 32 (7) contain, if the public servant is appointed, the written
- 33 approval of the elected public servant (if any) or the board of
- 34 trustees of a state supported college or university (if any) that
- 35 appointed the public servant.
- 36 (e) This subsection applies only to a person who is a member of,
- 37 or a person appointed by, the board of trustees of a state supported
- 38 college or university. A person to whom this subsection applies
- 39 complies with the disclosure requirements of this chapter with
- 40 respect to the person's pecuniary interest in a particular type of
- 41 contract or purchase which is made on a regular basis from a
- 42 particular vendor if the individual files with the state board of

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1 **accounts and the board of trustees a statement of pecuniary**
2 **interest in that particular type of contract or purchase made with**
3 **that particular vendor. The statement required by this subsection**
4 **must be made on an annual basis.**

5 SECTION 2. IC 35-44-1-7, AS AMENDED BY P.L.222-2005,
6 SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2011]: Sec. 7. (a) As used in this section, "pecuniary interest"
8 has the meaning set forth in section ~~3(g)~~ **3(a)(3)** of this chapter.

- 9 (b) A person who knowingly or intentionally:
 - 10 (1) obtains a pecuniary interest in a contract or purchase with an
 - 11 agency within one (1) year after separation from employment or
 - 12 other service with the agency; and
 - 13 (2) is not a public servant for the agency but who as a public
 - 14 servant approved, negotiated, or prepared on behalf of the agency
 - 15 the terms or specifications of:
 - 16 (A) the contract; or
 - 17 (B) the purchase;

18 commits profiteering from public service, a Class D felony.

19 (c) This section does not apply to negotiations or other activities
20 related to an economic development grant, loan, or loan guarantee.

21 (d) This section does not apply if the person receives less than two
22 hundred fifty dollars (\$250) of the profits from the contract or
23 purchase.

- 24 (e) It is a defense to a prosecution under this section that:
 - 25 (1) the person was screened from any participation in the contract
 - 26 or purchase;
 - 27 (2) the person has not received a part of the profits of the contract
 - 28 or purchase; and
 - 29 (3) notice was promptly given to the agency of the person's
 - 30 interest in the contract or purchase.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 559, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 2, delete "(a) This section".

Page 1, delete lines 3 through 5.

Page 1, line 6, delete "(b)" and insert "(a)".

Page 1, run in lines 2 through 6.

Page 1, line 17, delete "The term does not include any other governmental".

Page 2, delete line 1.

Page 2, line 13, delete "(c)" and insert "(b)".

Page 5, delete lines 8 through 9, begin a new paragraph and insert: "**(c) It is not an offense under this section if:**".

Page 5, line 10, after "servant" insert "**or the public servant's dependent**".

Page 5, line 10, after "compensation" insert "**through salary or an employment contract**".

Page 5, line 40, delete "This subdivision does not apply to a public servant who is:" and insert "**A public servant who makes a disclosure that meets the requirements of subsection (d) or (e) and is:**"

Page 6, line 4, delete "or".

Page 6, line 8, delete "." and insert "; **or**

(D) elected.

(7) The public servant is a member of the governing board of a hospital organized or operated under IC 16-22-1 through IC 16-22-5 or IC 16-23-1."

Page 6, delete lines 9 through 10.

Page 6, line 11, delete "(e)" and insert "(d)".

Page 6, line 13, delete "described in subsection (c)(6)".

Page 6, line 36, delete "(f)" and insert "(e)".

and when so amended that said bill do pass.

(Reference is to SB 559 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 10, Nays 0.

ES 559—LS 7425/DI 106+



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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 559, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 6, line 6, delete "or".

Page 6, line 7, delete "." and insert "; or".

Page 6, between lines 7 and 8, begin a new line double block indented and insert:

"(E) a member of, or a person appointed by, the board of trustees of a state supported college or university."

Page 6, line 11, delete "This subsection does not apply to a member of, or a person".

Page 6, delete line 12.

Page 6, line 13, delete "university."

Page 7, after line 4, begin a new paragraph and insert:

"SECTION 2. IC 35-44-1-7, AS AMENDED BY P.L.222-2005, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 7. (a) As used in this section, "pecuniary interest" has the meaning set forth in section ~~3(g)~~ **3(a)(3)** of this chapter.

(b) A person who knowingly or intentionally:

(1) obtains a pecuniary interest in a contract or purchase with an agency within one (1) year after separation from employment or other service with the agency; and

(2) is not a public servant for the agency but who as a public servant approved, negotiated, or prepared on behalf of the agency the terms or specifications of:

(A) the contract; or

(B) the purchase;

commits profiteering from public service, a Class D felony.

(c) This section does not apply to negotiations or other activities related to an economic development grant, loan, or loan guarantee.

(d) This section does not apply if the person receives less than two hundred fifty dollars (\$250) of the profits from the contract or purchase.

(e) It is a defense to a prosecution under this section that:

(1) the person was screened from any participation in the contract or purchase;

(2) the person has not received a part of the profits of the contract or purchase; and

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(3) notice was promptly given to the agency of the person's interest in the contract or purchase."

and when so amended that said bill do pass.

(Reference is to SB 559 as printed February 16, 2011.)

STEUERWALD, Chair

Committee Vote: yeas 7, nays 0.

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