

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

I move that House Bill 1238 be amended to read as follows:

- 1 Between the enacting clause and line 1, begin a new paragraph and
- 2 insert:
- 3 "SECTION 1. IC 3-9-2.5 IS ADDED TO THE INDIANA CODE AS
- 4 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 5 1, 2011]:
- 6 **Chapter 2.5. Prohibition of Contributions by Certain State**
- 7 **Contractors**
- 8 **Sec. 1. The definitions in IC 4-13-2.5 apply throughout this**
- 9 **chapter.**
- 10 **Sec. 2. For purposes of this chapter, a person is an "affiliated**
- 11 **person" of a business entity if the person is any of the following:**
- 12 (1) **A person with any ownership interest or distributive share**
- 13 **of the business entity of more than seven and five-tenths**
- 14 **percent (7.5%).**
- 15 (2) **An executive employee of the business entity.**
- 16 (3) **The spouse of an individual described in subdivision (1) or**
- 17 **(2).**
- 18 (4) **The minor child of an individual described in subdivision**
- 19 **(1) or (2).**
- 20 (5) **A subsidiary of the business entity.**
- 21 (6) **A member of the same unitary business group as the**
- 22 **business entity.**
- 23 (7) **An organization recognized by the United States Internal**
- 24 **Revenue Service as a tax exempt organization described in**

- 1 Section 501(c) of the Internal Revenue Code that is
2 established by:
- 3 (A) the business entity;
4 (B) a person described in subdivision (1), (2), (3), or (4); or
5 (C) an entity described in subdivision (5) or (6).
- 6 (8) A political action committee for which:
7 (A) the business entity; or
8 (B) any Section 501(c) organization described in
9 subdivision (7) related to that business entity;
10 is a sponsor.

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

- 13 (1) A sole proprietorship.
14 (2) A partnership.
15 (3) A limited liability partnership.
16 (4) A limited liability company.
17 (5) A corporation.
18 (6) Any other person doing business for profit, regardless of
19 the person's legal organization.

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

- 22 (1) The president of a business entity.
23 (2) The chairman of a business entity.
24 (3) The chief executive officer of a business entity.
25 (4) An employee of a business entity:
26 (A) who has executive decision making authority over the
27 long term and day to day affairs of the business entity; or
28 (B) whose compensation is determined directly, in whole or
29 in part, by the award of, or payment under, contracts with
30 the state to the business entity.

31 **Sec. 5.** As used in this chapter, "registrant" refers to a person
32 registered under this chapter.

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

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

- 37 (1) A business entity whose annual aggregate offers for
38 contracts total more than one hundred thousand dollars
39 (\$100,000).
40 (2) A business entity whose aggregate offers for contracts
41 combined with the business entity's aggregate annual total
42 value of contracts exceed one hundred thousand dollars
43 (\$100,000).
44 (3) A business entity whose contracts, in the aggregate,
45 annually total more than one hundred thousand dollars
46 (\$100,000).

47 **(b)** A business entity described in subsection (a) shall register

1 with the department as provided in this chapter.

2 (c) A business entity described in subsection (a)(1) or (a)(2) shall
3 register with the department before submitting an offer whose
4 value causes the business entity to fall within the description of
5 subsection (a)(1) or (a)(2).

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

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

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

11 A change in information must be reported to the department not
12 later than two (2) business days following the change.

13 (e) A business entity whose contracts, in the aggregate, annually
14 total more than one hundred thousand dollars (\$100,000) shall
15 maintain registration under this chapter and has a continuing duty
16 to ensure that the registration is accurate for:

17 (1) four (4) years after the date of the award of the contract;

18 or

19 (2) one (1) year after the expiration or termination of the
20 contract;

21 whichever is longer.

22 (f) A change in information must be reported to the department
23 not later than ten (10) days following the change. However, if a
24 business entity required to register under this section has a pending
25 offer, a change in information must be reported to the department
26 not later than two (2) business days after the change.

27 (g) A business entity's continuing duty under this chapter to
28 ensure the accuracy of the business entity's registration includes
29 the requirement that the business entity notify the department of
30 any changes in information relating to affiliated persons or any
31 other material changes.

32 Sec. 7.1. (a) This section applies to a business entity that on July
33 1, 2011, is described by section 7(a) of this chapter.

34 (b) A business entity described in subsection (a) shall register as
35 provided in this chapter not later than September 1, 2011.

36 (c) This section expires January 1, 2013.

37 Sec. 8. (a) The registration required under this chapter and any
38 changes to that registration must be made electronically. The
39 department may provide for the details of electronic registration
40 by rule adopted under IC 4-22-2 that is not inconsistent with this
41 chapter.

42 (b) A registration must contain substantially the following
43 information:

44 (1) The registrant's name and business address.

45 (2) The name and address of each of the registrant's affiliated
46 persons with a description of the affiliation for each person.

47 (c) A registration and any changes to a registration must be

1 certified, under the penalties for perjury, that, to the best of the
2 person's knowledge and belief, the information stated is true.

3 (d) The department shall provide a registration certificate to a
4 person that registers under this chapter.

5 (e) A registration certificate must be:

- 6 (1) electronic;
- 7 (2) accessible to the registrant through the department's
8 Internet web site; and
- 9 (3) protected by a password.

10 Sec. 9. (a) For purposes of this section, a data base maintained
11 by the department is "searchable" if the data base can be searched
12 by the following categories:

- 13 (1) The name of an affiliated person.
- 14 (2) The name of the registrant.
- 15 (3) The name of the state agency.

16 (b) The department shall maintain on its Internet web site a
17 searchable data base containing all information required to be
18 submitted to the department under this chapter.

19 (c) The data base must contain links to any searchable data base
20 of state contracts maintained by the state, searchable by registrant.

21 (d) The data base must be fully accessible to the election division
22 as determined by the election division and the department.

23 (e) The name of a minor child may not be placed in a location in
24 the data base that is accessible to the public. Public information
25 relating to a minor child must:

- 26 (1) be designated as relating to a minor child; and
- 27 (2) must provide a link to all contributions made by anyone
28 reporting the same residential address as the minor child.

29 Sec. 10. A registrant shall provide a copy of the registration
30 certificate:

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

35 Sec. 11. (a) A registrant shall notify any political action
36 committee to which the registrant makes a contribution, at the time
37 of the contribution, that the person is registered with the
38 department under this chapter.

39 (b) An affiliated person of a registrant shall notify any political
40 action committee to which the affiliated person makes a
41 contribution that the affiliated person is affiliated with a registrant.

42 Sec. 12. (a) During the period described in subsection (b):

- 43 (1) a registrant who has a contract; and
- 44 (2) affiliated persons of the registrant described in subdivision
45 (1);

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

1 **(b) The prohibition on contributions under this section:**

2 **(1) begins on the date of the award of the contract to the**
3 **registrant; and**

4 **(2) ends on the later of the following:**

5 **(A) four (4) years after the date that a contract is awarded**
6 **to the registrant; and**

7 **(B) one (1) year after the date of the expiration or**
8 **termination of the contract.**

9 **Sec. 13. (a) During the period described in subsection (b):**

10 **(1) a registrant who does not have a contract but has a**
11 **contract offer pending; and**

12 **(2) affiliated persons of the registrant described in subdivision**
13 **(1);**

14 **may not make a contribution to an individual who holds a state**
15 **office or is a candidate for a state office.**

16 **(b) The prohibition on contributions under this section:**

17 **(1) begins on the date that the solicitation is issued; and**

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

19 **Sec. 14. (a) A candidate or a candidate's committee that receives**
20 **a contribution from a person who is prohibited from making a**
21 **contribution under section 12 or 13 of this chapter shall pay an**
22 **amount equal to the value of the contribution to the election**
23 **division not later than thirty (30) days after receiving the**
24 **contribution.**

25 **(b) The election division shall deposit payments made under this**
26 **section in the campaign finance enforcement account established**
27 **by IC 3-6-4.1-24.**

28 SECTION 9. IC 3-9-4-16, AS AMENDED BY P.L.221-2005,
29 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2011]: Sec. 16. (a) In addition to any other penalty imposed,
31 a person who does any of the following is subject to a civil penalty
32 under this section:

33 (1) Fails to file with the election division a report in the manner
34 required under IC 3-9-5.

35 (2) Fails to file a statement of organization required under
36 IC 3-9-1.

37 (3) Is a committee or a member of a committee who disburses or
38 expends money or other property for any political purpose before
39 the money or other property has passed through the hands of the
40 treasurer of the committee.

41 (4) Makes a contribution other than to a committee subject to this
42 article or to a person authorized by law or a committee to receive
43 contributions on the committee's behalf.

44 (5) Is a corporation or labor organization that exceeds any of the
45 limitations on contributions prescribed by IC 3-9-2-4.

46 (6) Makes a contribution in the name of another person.

47 (7) Accepts a contribution made by one (1) person in the name of

- 1 another person.
- 2 (8) Is not the treasurer of a committee subject to this article, and
3 pays any expenses of an election or a caucus except as authorized
4 by this article.
- 5 (9) Commingles the funds of a committee with the personal funds
6 of an officer, a member, or an associate of the committee.
- 7 (10) Wrongfully uses campaign contributions in violation of
8 IC 3-9-3-4.
- 9 (11) Violates IC 3-9-2-12.
- 10 (12) Fails to designate a contribution as required by IC 3-9-2-5(c).
- 11 (13) Violates IC 3-9-3-5.
- 12 (14) Serves as a treasurer of a committee in violation of any of the
13 following:
- 14 (A) IC 3-9-1-13(1).
- 15 (B) IC 3-9-1-13(2).
- 16 (C) IC 3-9-1-18.
- 17 (15) Fails to comply with section 4(d) of this chapter.
- 18 **(16) Violates IC 3-9-2.5.**
- 19 (b) This subsection applies to a person who is subject to a civil
20 penalty under subsection (a)(1) or (a)(2) for filing a defective report or
21 statement. If the commission determines that a person failed to file the
22 amended report or statement of organization not later than noon five (5)
23 days after being given notice under section 14 of this chapter, the
24 commission may assess a civil penalty. The penalty is ten dollars (\$10)
25 for each day the report is late after the expiration of the five (5) day
26 period, not to exceed one hundred dollars (\$100) plus any investigative
27 costs incurred and documented by the election division. The civil
28 penalty limit under this subsection applies to each report separately.
- 29 (c) This subsection applies to a person who is subject to a civil
30 penalty under subsection (a)(1) or (a)(2) for a delinquent report or
31 statement. If the commission determines that a person failed to file the
32 report or statement of organization by the deadline prescribed under
33 this article, the commission shall assess a civil penalty. The penalty is
34 fifty dollars (\$50) for each day the report or statement is late, with the
35 afternoon of the final date for filing the report or statement being
36 calculated as the first day. The civil penalty under this subsection may
37 not exceed one thousand dollars (\$1,000) plus any investigative costs
38 incurred and documented by the election division. The civil penalty
39 limit under this subsection applies to each report separately.
- 40 (d) This subsection applies to a person who is subject to a civil
41 penalty under subsection (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), or
42 (a)(10). If the commission determines that a person is subject to a civil
43 penalty under subsection (a), the commission may assess a civil penalty
44 of not more than one thousand dollars (\$1,000), plus any investigative
45 costs incurred and documented by the election division.
- 46 (e) This subsection applies to a person who is subject to a civil

1 penalty under subsection (a)(5). If the commission determines that a
2 person is subject to a civil penalty under subsection (a)(5), the
3 commission may assess a civil penalty of not more than three (3) times
4 the amount of the contribution in excess of the limit prescribed by
5 IC 3-9-2-4, plus any investigative costs incurred and documented by
6 the election division.

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

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

15 (g) This subsection applies to a person who is subject to a civil
16 penalty under subsection (a)(12). If the commission determines that a
17 corporation or a labor organization has failed to designate a
18 contribution in violation of IC 3-9-2-5(c), the commission shall assess
19 a civil penalty equal to the greater of the following, plus any
20 investigative costs incurred and documented by the election division:

- 21 (1) Two (2) times the amount of the contributions undesignated.
22 (2) One thousand dollars (\$1,000).

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

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

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

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

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

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

1 **(B) fails to provide material information on a registration**
 2 **required by IC 3-9-2.5; or**
 3 **(C) states false information on a registration required by**
 4 **IC 3-9-2.5; or**
 5 **(2) one thousand dollars (\$1,000) for any other violation of**
 6 **IC 3-9-2.5;**
 7 **plus any investigative costs incurred and documented by the**
 8 **election division.**

9 ~~(k)~~ **(l)** All civil penalties collected under this section shall be
 10 deposited with the treasurer of state in the campaign finance
 11 enforcement account.

12 ~~(j)~~ **(m)** Proceedings of the commission under this section are subject
 13 to IC 4-21.5.

14 SECTION 10. IC 3-14-1-17 IS ADDED TO THE INDIANA CODE
 15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 16 1, 2011]: **Sec. 17. A person who recklessly, knowingly, or**
 17 **intentionally makes a contribution in violation of IC 3-9-2.5**
 18 **commits a Class B misdemeanor.**

19 SECTION 11. IC 4-2-6-10.2 IS ADDED TO THE INDIANA CODE
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2011]: **Sec. 10.2. The following may not solicit political**
 22 **contributions on behalf of a candidate for public office, unless the**
 23 **soliciting individual is the candidate for public office:**

24 **(1) An appointing authority.**
 25 **(2) An employee who has purchasing or procurement**
 26 **authority.**

27 SECTION 13. IC 4-13-2.5 IS ADDED TO THE INDIANA CODE
 28 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 29 JULY 1, 2011]:

30 **Chapter 2.5. Political Contributions of Offerors and**
 31 **Contractors**

32 **Sec. 1. This chapter applies to every:**
 33 **(1) offer submitted to a state agency; and**
 34 **(2) contract awarded by a state agency;**
 35 **after June 30, 2011.**

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

38 **(1) goods;**
 39 **(2) services, including professional services;**
 40 **(3) a public works project; or**
 41 **(4) a highway project;**

42 **awarded by a state agency.**
 43 **(b) A contract awarded by a state agency under:**

44 **(1) IC 4-13.6;**
 45 **(2) IC 5-22;**
 46 **(3) IC 5-23;**
 47 **(4) IC 8-23; or**

- 1 **(5) any other statute;**
 2 **is considered a contract for purposes of this chapter.**
- 3 **Sec. 3. As used in this chapter, "contract officer" refers to the:**
 4 **(1) purchasing agent under IC 5-22; or**
 5 **(2) state officer or employee responsible for awarding a**
 6 **contract.**
- 7 **Sec. 4. As used in this chapter, "contractor" refers to a person**
 8 **who has been awarded a contract with a state agency.**
- 9 **Sec. 5. As used in this chapter, "department" refers to the**
 10 **Indiana department of administration established by IC 4-13-1-2.**
- 11 **Sec. 6. (a) As used in this chapter, "offer" means a response to**
 12 **a solicitation.**
- 13 **(b) The term includes a bid, proposal, and quote.**
- 14 **Sec. 7. As used in this chapter, "offeror" means a person who**
 15 **submits an offer to a state agency.**
- 16 **Sec. 8. (a) As used in this chapter, "solicitation" means the**
 17 **procedure by which a state agency invites a person to submit an**
 18 **offer to enter into a contract with the state agency.**
- 19 **(b) The term includes an invitation for bids, a request for**
 20 **proposals, and a request for quotes.**
- 21 **Sec. 9. As used in this chapter, "state agency" refers to any of**
 22 **the following:**
- 23 **(1) A state agency (as defined in IC 4-13-1-1(b)).**
 24 **(2) An entity established by the general assembly as a body**
 25 **corporate and politic that is governed by a body, any of whose**
 26 **members are:**
- 27 **(A) the governor; or**
 28 **(B) appointed by the governor.**
- 29 **Sec. 10. Every offer submitted to, and contract entered into by,**
 30 **a state agency must contain the following:**
- 31 **(1) A certification by the offeror or contractor that either:**
 32 **(A) the offeror or contractor is not required to register**
 33 **with the department under IC 3-9-2.5; or**
 34 **(B) the offeror or contractor has registered with the**
 35 **department under IC 3-9-2.5 and acknowledges a**
 36 **continuing duty to update the registration.**
- 37 **(2) A statement that the contract is voidable under section 11**
 38 **or 12 of this chapter for the offeror's or contractor's failure**
 39 **to comply with this chapter or IC 3-9-2.5.**
- 40 **Sec. 11. (a) A copy of an offeror's registration certificate must**
 41 **accompany an offer by a person required to register under this**
 42 **chapter.**
- 43 **(b) A contracting officer may not accept an offer unless the**
 44 **offeror's registration certificate is submitted with the offer.**
- 45 **Sec. 12. In addition to any penalty under this chapter or**
 46 **IC 3-9-2.5, the knowing or intentional failure to disclose material**
 47 **information required for registration renders:**

1 **(1) the offeror nonresponsible; or**
2 **(2) a contract voidable by the contract officer if the contract**
3 **officer considers it to be in the best interest of the state.**
4 **Sec. 13. (a) This section applies to a contract with a person who**
5 **violates IC 3-9-2.5-12 or IC 3-9-2.5-13.**
6 **(b) A contract described in subsection (a) is voidable by the**
7 **contract officer if the contract officer considers it to be in the best**
8 **interest of the state.**
9 **(c) A contract described in subsection (a) is terminated by**
10 **operation of law if the affected person violates IC 3-9-2.5-12 or**
11 **IC 3-9-2.5-13 more than two (2) times. The affected person is also**
12 **considered a nonresponsible offeror for three (3) years after the**
13 **date of the most recent violation."**
14 Renumber all SECTIONS consecutively.
 (Reference is to HB 1238 as printed February 1, 2011.)

Representative Goodin