
SENATE BILL No. 99

DIGEST OF INTRODUCED BILL

Citations Affected: IC 3-9-2.5; IC 4-2-6-10.2; IC 4-13-2.5.

Synopsis: State contractor accountability. Provides that persons who have contracts with state government or who bid on contracts with state government and certain persons affiliated with the contractors and bidders may not make political contributions to an individual who holds a state office or is a candidate for a state office. Requires persons who have contracts with state government or who bid on contracts with state government to register with the department of administration (department). Requires the department to make the information provided by registrants available to the agency maintaining the Indiana transparency portal in a searchable data base on the state's web site. Requires registrants to notify their affiliated persons that they are registered. Provides civil penalties for violations. Provides that, for the violation of a requirement or prohibition, a bidder may be found nonresponsible and the contract of a contractor may be voided. Provides that state employees in the executive branch who have purchasing or procurement authority may not solicit political contributions unless the soliciting individual is a candidate for public office.

Effective: July 1, 2011.

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January 5, 2011, read first time and referred to Committee on Elections.

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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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SENATE BILL No. 99



A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

1 SECTION 1. IC 3-9-2.5 IS ADDED TO THE INDIANA CODE AS
 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2011]:
 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. The following apply to this chapter:**
 9 (1) **A person with any ownership interest or distributive share**
 10 **of a business entity of more than seven and one-half percent**
 11 **(7.5%) is an "affiliated person" of the business entity.**
 12 (2) **An executive employee of a business entity is an "affiliated**
 13 **person" of the business entity.**
 14 (3) **The spouse of an individual described in subdivision (1) or**
 15 **(2) is an "affiliated person" of the business entity of which the**
 16 **individual described in subdivision (1) or (2) is an affiliated**
 17 **person.**



- 1 **(4) The minor child of an individual described in subdivision**
- 2 **(1) or (2) is an "affiliated person" of the business entity of**
- 3 **which the individual described in subdivision (1) or (2) is an**
- 4 **affiliated person.**
- 5 **(5) A subsidiary of a business entity is an "affiliated person"**
- 6 **of the business entity.**
- 7 **(6) A member of the same unitary business group as a**
- 8 **business entity is an "affiliated person" of the business entity.**
- 9 **(7) An organization that:**
 - 10 **(A) is recognized by the United States Internal Revenue**
 - 11 **Service as a tax exempt organization described in Section**
 - 12 **501(c) of the Internal Revenue Code; and**
 - 13 **(B) is established by:**
 - 14 **(i) a business entity;**
 - 15 **(ii) a person who is an affiliated person of a business**
 - 16 **entity under subdivision (1), (2), (3), or (4); or**
 - 17 **(iii) an entity that is an affiliated person of a business**
 - 18 **entity under subdivision (5) or (6);**
 - 19 **is an "affiliated person" of the business entity.**
 - 20 **(8) A political action committee for which:**
 - 21 **(A) a business entity is a sponsor; or**
 - 22 **(B) an organization that is an affiliated person of a**
 - 23 **business entity under subdivision (7) is a sponsor;**
 - 24 **is an "affiliated person" of the business entity.**
- 25 **Sec. 3. As used in this chapter, "business entity" refers to any of**
- 26 **the following doing business for profit:**
 - 27 **(1) A sole proprietorship.**
 - 28 **(2) A partnership.**
 - 29 **(3) A limited liability partnership.**
 - 30 **(4) A limited liability company.**
 - 31 **(5) A corporation.**
 - 32 **(6) Any other person doing business for profit, regardless of**
 - 33 **the person's legal organization.**
- 34 **Sec. 4. As used in this chapter, "executive employee" refers to**
- 35 **any of the following:**
 - 36 **(1) The president of a business entity.**
 - 37 **(2) The chairman of a business entity.**
 - 38 **(3) The chief executive officer of a business entity.**
 - 39 **(4) An employee of a business entity:**
 - 40 **(A) who has executive decision making authority over the**
 - 41 **long term and day to day affairs of the business entity; or**
 - 42 **(B) whose compensation is determined directly, in whole or**

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1 in part, by the awarding of contracts by the state to the
2 business entity or payment made under contracts awarded
3 by the state to the business entity.

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

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

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

10 (1) A business entity whose annual aggregate offers for
11 contracts total more than one hundred thousand dollars
12 (\$100,000).

13 (2) A business entity whose aggregate offers for contracts
14 combined with the business entity's aggregate annual total
15 value of contracts exceed one hundred thousand dollars
16 (\$100,000).

17 (3) A business entity whose contracts, in the aggregate,
18 annually total more than one hundred thousand dollars
19 (\$100,000).

20 (b) A business entity described in subsection (a) shall register
21 with the department as provided in this chapter.

22 (c) A business entity making an offer that will cause the business
23 entity to meet the description set forth in subsection (a)(1) or (a)(2)
24 shall register with the department before submitting the offer
25 whose value causes the business entity to meet the description set
26 forth in subsection (a)(1) or (a)(2).

27 (d) A business entity that is described in subsection (c) has a
28 continuing duty to ensure that the registration of the business
29 entity is accurate during the period that:

- 30 (1) begins on the date of registration; and
- 31 (2) ends on the day after the date the contract for which the
32 business entity made the offer is awarded.

33 If a change makes information reported by the business entity in
34 registering under this chapter no longer accurate, the change must
35 be reported to the department under subsection (f)(2) not later
36 than two (2) business days after the change.

37 (e) A business entity described in subsection (a)(3) shall
38 maintain its registration under this chapter and has a continuing
39 duty to ensure that the registration is accurate for the longer of the
40 following:

- 41 (1) Four (4) years after the date of the award of any contract
42 awarded to the business entity while the business met the

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description set forth in subsection (a)(3).

(2) One (1) year after the expiration or termination of any contract awarded to the business entity while the business met the description set forth in subsection (a)(3).

(f) If a change makes information reported by a business entity in registering under this chapter no longer accurate, the business entity must report the change to the department:

(1) except as provided in subdivision (2), not later than ten (10) days after the change; or

(2) if the business entity has a pending offer for a contract, not later than two (2) business days after the change.

(g) A business entity required to register under this chapter and to ensure the continuing accuracy of the information reported by the business entity in registering under this chapter shall notify the department of:

(1) any change in information relating to an affiliated person of the business entity; or

(2) any other material change.

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

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

(c) This section expires January 1, 2013.

Sec. 8. (a) The registration required under this chapter and any changes to that registration must be made electronically. The department may adopt rules under IC 4-22-2 providing for electronic registration and electronic changes in registration under this chapter.

(b) The registration of a business entity under this chapter must contain substantially the following information:

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

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

(c) The individual:

(1) registering for a business entity under this chapter; or

(2) changing the registration of a business entity under this chapter;

must certify, subject to the penalties for perjury, that, to the best of the individual's knowledge and belief, the information stated is true.

(d) The department shall provide a registration certificate to a

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person that registers under this chapter.

(e) A registration certificate provided under subsection (d) must be:

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

Sec. 9. (a) For purposes of this section, a data base maintained under this section is "searchable" if the data base can be searched for the following terms:

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

(b) The department shall provide information required under this chapter to be posted on the Indiana transparency portal to be kept in a searchable data base containing all information required to be submitted to the department under this chapter.

(c) The data base must contain links to any searchable data base of state contracts that is maintained by the state and can be searched for the term "registrant".

(d) The data base maintained under subsection (b) must be fully accessible to the election division, as determined by the election division, the department, and the Indiana transparency portal.

(e) The name of a minor child may not be placed in a location in the data base maintained under subsection (b) that is accessible to the public. Public information in the data base relating to a minor child:

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

Sec. 10. A registrant shall provide a copy of the registration certificate provided by the department under section 8(d) of this chapter to each affiliated person of the registrant whose identity is required to be disclosed under this chapter. A registrant shall provide a copy of the registration certificate to an affiliated person under this section by first class mail or hand delivery not later than ten (10) days after the registrant's registration under this chapter.

Sec. 11. (a) At the time a registrant makes a contribution to a political action committee, the registrant shall inform the political action committee that the person is registered with the department under this chapter.

(b) An affiliated person of a registrant shall notify any political

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1 action committee to which the affiliated person makes a
2 contribution that the affiliated person is an affiliated person of a
3 registrant under this chapter.

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

- 5 (1) a registrant who has a contract; and
- 6 (2) affiliated persons of the registrant described in subdivision
7 (1);

8 shall not make a contribution to an individual who holds a state
9 office or is a candidate for a state office.

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

11 (1) begins on the date on which the contract is awarded to the
12 registrant; and

13 (2) ends on the later of the following:

14 (A) Four (4) years after the date on which a contract is
15 awarded to the registrant.

16 (B) One (1) year after the date of the expiration or
17 termination of the contract.

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

19 (1) a registrant who has no contracts but has an offer for a
20 contract pending; and

21 (2) affiliated persons of the registrant described in subdivision
22 (1);

23 shall not make a contribution to an individual who holds a state
24 office or is a candidate for a state office.

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

26 (1) begins on the date of issuance of the solicitation to which
27 the registrant responded in submitting the offer; and

28 (2) ends on the day after the date on which the contract for
29 which the registrant submitted the offer is awarded.

30 Sec. 14. (a) A candidate or a candidate's committee that receives
31 a contribution from a person who is prohibited from making a
32 contribution under section 12 or 13 of this chapter shall pay an
33 amount equal to the value of the contribution to the election
34 division not later than thirty (30) days after receiving the
35 contribution.

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

39 SECTION 2. IC 4-2-6-10.2 IS ADDED TO THE INDIANA CODE
40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
41 1, 2011]: Sec. 10.2. The following may not solicit political
42 contributions on behalf of a candidate for public office, unless the

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1 **soliciting individual is the candidate for public office:**
2 **(1) An appointing authority.**
3 **(2) An employee who has purchasing or procurement**
4 **authority on behalf of the agency that employs the employee.**
5 SECTION 3. IC 4-13-2.5 IS ADDED TO THE INDIANA CODE
6 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2011]:
8 **Chapter 2.5. Political Contributions of Offerors and**
9 **Contractors**
10 **Sec. 1. This chapter applies to every:**
11 **(1) offer submitted to a state agency; and**
12 **(2) contract awarded by a state agency;**
13 **after June 30, 2011.**
14 **Sec. 2. (a) As used in this chapter, "contract" refers to a**
15 **contract for:**
16 **(1) goods;**
17 **(2) services, including professional services;**
18 **(3) a public works project; or**
19 **(4) a highway project;**
20 **awarded by a state agency.**
21 **(b) A contract awarded by a state agency under:**
22 **(1) IC 4-13.6;**
23 **(2) IC 5-22;**
24 **(3) IC 5-23;**
25 **(4) IC 8-23; or**
26 **(5) any other statute;**
27 **is considered a contract for purposes of this chapter.**
28 **Sec. 3. As used in this chapter, "contract officer" refers to:**
29 **(1) an individual who is a purchasing agent under IC 5-22; or**
30 **(2) the state officer or employee responsible for awarding a**
31 **contract.**
32 **Sec. 4. As used in this chapter, "contractor" refers to a person**
33 **who has been awarded a contract with a state agency.**
34 **Sec. 5. As used in this chapter, "department" refers to the**
35 **Indiana department of administration established by IC 4-13-1-2.**
36 **Sec. 6. (a) As used in this chapter, "offer" means a response to**
37 **a solicitation.**
38 **(b) The term includes a bid, a proposal, and a quote.**
39 **Sec. 7. As used in this chapter, "offeror" means a person who**
40 **submits an offer to a state agency.**
41 **Sec. 8. (a) As used in this chapter, "solicitation" means the**
42 **procedure by which a state agency invites persons to submit an**

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offer to enter into a contract with the state agency.

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

Sec. 9. As used in this chapter, "state agency" refers to any of the following:

(1) A state agency (as defined in IC 4-13-1-1(b)).

(2) An entity that was established by the general assembly as a body corporate and politic and that is governed by a body, any of whose members is:

(A) the governor; or

(B) appointed by the governor.

Sec. 10. Every offer submitted to a state agency and every 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 department under IC 3-9-2.5; or

(B) the offeror or contractor has registered with the department 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 12 or 13 of this chapter for the offeror's or contractor's failure to comply with this chapter or IC 3-9-2.5.

Sec. 11. (a) A person that:

(1) is required to register with the department under IC 3-9-2.5; and

(2) submits an offer;

must submit, along with the offer, a copy of the registration certificate provided to the person by the department under IC 3-9-2.5-8.

(b) A contracting officer may not accept an offer from a person described in subsection (a) unless a copy of the person's registration certificate is submitted with the offer.

Sec. 12. If a person that is required to register with the department under IC 3-9-2.5 knowingly or intentionally fails to register with the department under IC 3-9-2.5 or knowingly or intentionally fails to disclose to the department material information that the person is required to disclose under IC 3-9-2.5, in addition to the person being subject to any penalty under this chapter or IC 3-9-2.5:

(1) the person, with respect to any offer submitted by the person, is nonresponsible; and

(2) a contract awarded to the person is voidable by the

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1 contract officer if the contract officer considers the voiding of
2 the contract to be in the best interest of the state.

3 Sec. 13. (a) This section applies to a contract with a person who
4 violates IC 3-9-2.5-12 or IC 3-9-2.5-13.

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

8 (c) If the person referred to in subsection (a) violates
9 IC 3-9-2.5-12 or IC 3-9-2.5-13 more than two (2) times:

10 (1) the contract described in subsection (a) is terminated by
11 operation of law; and

12 (2) the person referred to in subsection (a) is considered a
13 nonresponsible offeror for three (3) years after the date of the
14 person's latest violation of IC 3-9-2.5-12 or IC 3-9-2.5-13.

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