



Reprinted
February 22, 2011

SENATE BILL No. 302

DIGEST OF SB 302 (Updated February 21, 2011 5:07 pm - DI 87)

Citations Affected: IC 5-11; IC 36-1.

Synopsis: Nepotism. Prohibits a relative of an executive, a member of the legislative body, or a member of the fiscal body (public official) of a county, city, town, or township (local unit) from being employed by the local unit. Prohibits an individual who is a relative of: (1) an elected officer (not including an executive or member of the legislative or fiscal body); or (2) an employee; of a local unit from being employed by the local unit in a position that would put the elected officer or employee in a direct line of supervision over the individual. Specifies that an employee of a local unit is not required by these provisions to be terminated or reassigned from any position held by that individual before July 1, 2011, but provides that this grandfathering provision expires January 1, 2015. Provides that a unit can enter into or renew a contract for (1) the procurement of goods and services; or (2) a contract for public works; with a relative of a public official or a business entity in which a relative has an ownership interest if the public official makes full written disclosure and satisfies any other requirements of the public purchasing law or the public works law. Requires each public official and elected officer of the local unit to annually certify in writing, subject to the penalties for perjury, that the official or officer is in compliance with the nepotism law and submit the certification to the executive of the local unit. Requires the executive of the local unit to file with the annual personnel report filed with the state board of accounts, a statement: (1) certified under the penalties for perjury; and (2) that the unit has implemented a policy that complies with the nepotism law.

Effective: July 1, 2011.

Lawson C, Miller

January 6, 2011, read first time and referred to Committee on Local Government.
February 10, 2011, amended, reported favorably — Do Pass.
February 21, 2011, read second time, amended, ordered engrossed.

SB 302—LS 7241/DI 87+



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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. 302

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 5-11-13-1, AS AMENDED BY P.L.169-2006,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 1. (a) Every state, county, city, town, township, or
4 school official, elective or appointive, who is the head of or in charge
5 of any office, department, board, or commission of the state or of any
6 county, city, town, or township, and every state, county, city, town, or
7 township employee or agent who is the head of, or in charge of, or the
8 executive officer of any department, bureau, board, or commission of
9 the state, county, city, town, or township, and every executive officer
10 by whatever title designated, who is in charge of any state educational
11 institution or of any other state, county, or city institution, shall during
12 the month of January of each year prepare, make, and sign a written or
13 printed certified report, correctly and completely showing the names
14 and business addresses of each and all officers, employees, and agents
15 in their respective offices, departments, boards, commissions, and
16 institutions, and the respective duties and compensation of each, and
17 shall forthwith file said report in the office of the state examiner of the

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1 state board of accounts. However, no more than one (1) report covering
2 the same officers, employees, and agents need be made from the state
3 or any county, city, town, township, or school unit in any one (1) year.

4 **(b) This subsection applies to a unit (as defined in IC 36-1-2-13).**
5 **The report must include a statement by the executive (as defined**
6 **in IC 36-1-2-5) of the unit, certified under the penalties for perjury,**
7 **that the unit has implemented a policy that complies with**
8 **IC 36-1-20. The executive (as defined in IC 36-1-2-5) and the unit**
9 **are subject to the penalties set forth in IC 36-1-20 for failure to**
10 **comply with this subsection.**

11 SECTION 2. IC 36-1-20 IS ADDED TO THE INDIANA CODE AS
12 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
13 1, 2011]:

14 **Chapter 20. Employment of Relatives; Contracting With**
15 **Relatives**

16 **Sec. 1. This chapter applies only to a unit.**

17 **Sec. 2. This chapter does not apply to the following:**

- 18 (1) An individual who is a vendor or employed by a vendor for
19 a purchase of mowing services or property maintenance
20 services.
- 21 (2) An individual who is a member of a paid fire department
22 or a volunteer fire department that renders fire protection
23 services to the unit.

24 **Sec. 3. For purposes of this chapter, the performance of the**
25 **duties of a precinct election officer (as defined in IC 3-5-2-40.1)**
26 **that are imposed by IC 3 is not considered employment by a unit.**

27 **Sec. 4. As used in this chapter, "employee" means an individual**
28 **who is employed by a unit on a full-time, a part-time, a temporary,**
29 **an intermittent, or an hourly basis.**

30 **Sec. 5. As used in this chapter, "public official" means:**

- 31 (1) the executive;
- 32 (2) a member of the legislative body; or
- 33 (3) a member of the fiscal body.

34 **Sec. 6. (a) As used in this chapter, "relative" means any of the**
35 **following:**

- 36 (1) A husband.
- 37 (2) A wife.
- 38 (3) A father, grandfather, or stepfather.
- 39 (4) A mother, grandmother, or stepmother.
- 40 (5) A son, grandson, stepson, or son-in-law.
- 41 (6) A daughter, granddaughter, stepdaughter, or
- 42 daughter-in-law.

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1 **(7) A brother or stepbrother.**
2 **(8) A sister or stepsister.**
3 **(b) A relative by adoption, half-blood, marriage, or remarriage**
4 **is considered a relative of whole kinship for purposes of this**
5 **chapter.**
6 **Sec. 7. (a) As used in this chapter, "relative" means any of the**
7 **following:**
8 **(1) A husband.**
9 **(2) A wife.**
10 **(3) A father, grandfather, or stepfather.**
11 **(4) A mother, grandmother, or stepmother.**
12 **(5) A son, grandson, stepson, or son-in-law.**
13 **(6) A daughter, granddaughter, stepdaughter, or**
14 **daughter-in-law.**
15 **(7) A brother or stepbrother.**
16 **(8) A sister or stepsister.**
17 **(9) An aunt.**
18 **(10) An uncle.**
19 **(11) A niece.**
20 **(12) A nephew.**
21 **(13) A first cousin.**
22 **(b) A relative by adoption, half-blood, marriage, or remarriage**
23 **is considered a relative of whole kinship for purposes of this**
24 **chapter.**
25 **Sec. 8. (a) An individual who is a relative of a public official may**
26 **not be employed by the unit.**
27 **(b) An individual who is a relative of:**
28 **(1) an elected officer, not including a public official; or**
29 **(2) an employee;**
30 **of a unit may not be employed in a position in which the elected**
31 **officer or employee is in a direct line of supervision over the**
32 **individual.**
33 **Sec. 9. (a) A unit may enter into a contract or renew a contract**
34 **for the procurement of goods and services or a contract for public**
35 **works with:**
36 **(1) an individual who is a relative of a public official; or**
37 **(2) a business entity that is wholly or partially owned by a**
38 **relative of a public official;**
39 **if the unit and the public official satisfy the requirements of this**
40 **section.**
41 **(b) A unit may enter into a contract or renew a contract with an**
42 **individual or business entity described in subsection (a) if:**

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(1) the public official files with the unit a full disclosure, which must:

- (A) be in writing;**
- (B) describe the contract or purchase to be made by the unit;**
- (C) describe the relationship that the public official has to the business entity or individual that contracts or purchases;**
- (D) be affirmed under penalty of perjury;**
- (E) be submitted to the unit and be accepted by the unit in a public meeting of the unit prior to final action on the contract or purchase; and**
- (F) be filed not later than fifteen (15) days after final action on the contract or purchase with:**

- (i) the state board of accounts; and**
- (ii) the clerk of the circuit court in the county where the unit takes final action on the contract or purchase; and**

(2) the unit satisfies any other requirements under IC 5-22 or IC 36-1-12.

(c) A public official shall also comply with the disclosure provisions of IC 35-44-1-3, if applicable.

(d) This section does not affect the initial term of a contract in existence at the time the term of office of the public official of the unit begins.

Sec. 10. (a) This chapter does not require the termination or reassignment of any employee of a unit from any position held by that individual before July 1, 2011.

(b) This subsection expires January 1, 2015.

Sec. 11. (a) Each public official and elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the official or officer is in compliance with this chapter. An official or officer shall submit the certification to the executive of the unit not later than December 31 of each year.

(b) The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit that the unit has implemented a policy that complies with this chapter. The executive's statement must be certified under penalties for perjury.

Sec. 12. If the state board of accounts finds that a unit has not implemented a policy that complies with this chapter, the state board of accounts shall forward the information to:

- (1) the prosecuting attorney of each county where the unit is**

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1 **located; and**
2 **(2) the department of local government finance.**
3 **Sec. 13. If a unit fails to comply with this chapter:**
4 **(1) the executive of the unit may be subject to prosecution for**
5 **perjury under IC 35-44-2-1; and**
6 **(2) the department of local government finance may not**
7 **approve:**
8 **(A) the unit's budget; or**
9 **(B) any additional appropriations for the unit;**
10 **for the ensuing calendar year until the state board of accounts**
11 **certifies to the department of local government finance that**
12 **the unit is in compliance with this chapter.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 302, 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, delete lines 1 through 17.

Page 2, delete lines 1 through 11.

Page 2, line 32, delete "political subdivision" and insert "**unit**".

Page 2, line 34, delete "political subdivision," and insert "**unit**,".

Page 2, line 35, delete "political" and insert "**unit**".

Page 2, line 36, delete "subdivision".

Page 2, line 36, delete "is in compliance" and insert "**has implemented a policy that complies**".

Page 2, line 37, delete "political subdivision" and insert "**unit**".

Page 3, delete lines 3 through 42, begin a new paragraph and insert: "**Sec. 1. This chapter applies only to a unit.**

Sec. 2. This chapter does not apply to the following:

(1) An individual who is a vendor or employed by a vendor for a purchase of mowing services or property maintenance services.

(2) An individual who is a member of a paid fire department or a volunteer fire department that renders fire protection services to the unit.

Sec. 3. For purposes of this chapter, the performance of the duties of a precinct election officer (as defined in IC 3-5-2-40.1) that are imposed by IC 3 is not considered employment by a unit.

Sec. 4. As used in this chapter, "employee" means an individual who is employed by a unit on a full-time, a part-time, a temporary, an intermittent, or an hourly basis.

Sec. 5. As used in this chapter, "public official" means:

- (1) the executive;
- (2) a member of the legislative body; or
- (3) a member of the fiscal body.

Sec. 6. (a) As used in this chapter, "relative" means any of the following:

- (1) A husband.
- (2) A wife.
- (3) A father, grandfather, or stepfather.
- (4) A mother, grandmother, or stepmother.
- (5) A son, grandson, stepson, or son-in-law.
- (6) A daughter, granddaughter, stepdaughter, or daughter-in-law.

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- (7) A brother or stepbrother.
- (8) A sister or stepsister.
- (9) An aunt.
- (10) An uncle.
- (11) A niece.
- (12) A nephew.
- (13) A first cousin.

(b) A relative by adoption, half-blood, marriage, or remarriage is considered a relative of whole kinship for purposes of this chapter.

Sec. 7. (a) An individual who is a relative of a public official may not be employed by the unit.

(b) An individual who is a relative of:

- (1) an elected officer, not including a public official; or
- (2) an employee;

of a unit may not be employed in a position in which the elected officer or employee is in a direct line of supervision over the individual.

Sec. 8. (a) Except as provided in section 9 of this chapter, a unit may not enter into a contract or renew a contract with:

- (1) an individual to provide goods or services to the unit if the individual is a relative of a public official; or
- (2) a business entity to provide goods or services if a relative of a public official has an ownership interest in the business entity.

(b) This section does not prohibit a unit from entering into a contract or renewing a contract if an employee of:

- (1) an individual contractor under subsection (a)(1); or
- (2) a business entity under subsection (a)(2);

is a relative of a public official.

(c) This section does not affect the initial term of a contract in existence at the time the term of office of the public official of the unit begins.

Sec. 9. (a) A unit may enter into a contract or renew a contract with an individual or business entity described in section 8(a) of this chapter, if:

- (1) the unit makes a finding in a public meeting that the individual or business entity described in section 7(a) of this chapter is the only provider:
 - (A) of goods or services that meets the specifications of the unit; and
 - (B) that is located within the boundaries of the unit; and

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(2) the public official files with the unit a full disclosure, which must:

- (A) be in writing;**
- (B) describe the contract or purchase to be made by the unit;**
- (C) describe the relationship that the public official has to the business entity or individual that contracts or purchases;**
- (D) be affirmed under penalty of perjury;**
- (E) be submitted to the unit and be accepted by the unit in a public meeting of the unit prior to final action on the contract or purchase; and**
- (F) be filed not later than fifteen (15) days after final action on the contract or purchase with:**
 - (i) the state board of accounts; and**
 - (ii) the clerk of the circuit court in the county where the unit takes final action on the contract or purchase.**

(b) A public official shall also comply with the disclosure provisions of IC 35-44-1-3, if applicable.

Sec. 10. (a) This chapter does not require the termination or reassignment of any employee of a unit from any position held by that individual before July 1, 2011.

(b) This subsection expires January 1, 2015.

Sec. 11. (a) Each public official and elected officer of the unit shall annually certify in writing, subject to the penalties for perjury, that the official or officer is in compliance with this chapter. An official or officer shall submit the certification to the executive of the unit not later than December 31 of each year.

(b) The annual report filed by a unit with the state board of accounts under IC 5-11-13-1 must include a statement by the executive of the unit that the unit has implemented a policy that complies with this chapter. The executive's statement must be certified under penalties for perjury.

Sec. 12. If the state board of accounts finds that a unit has not implemented a policy that complies with this chapter, the state board of accounts shall forward the information to:

- (1) the prosecuting attorney of each county where the unit is located; and**
- (2) the department of local government finance.**

Sec. 13. If a unit fails to comply with this chapter:

- (1) the executive of the unit may be subject to prosecution for perjury under IC 35-44-2-1; and**

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(2) the department of local government finance may not approve:

(A) the unit's budget; or

(B) any additional appropriations for the unit;

for the ensuing calendar year until the state board of accounts certifies to the department of local government finance that the unit is in compliance with this chapter."

Delete pages 4 through 5.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 302 as introduced.)

LAWSON C, Chairperson

Committee Vote: Yeas 5, Nays 3.

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SENATE MOTION

Madam President: I move that Senate Bill 302 be amended to read as follows:

Page 2, between lines 33 and 34, begin a new paragraph and insert:

"Sec. 6. (a) As used in this chapter, "relative" means any of the following:

(1) A husband.

(2) A wife.

(3) A father, grandfather, or stepfather.

(4) A mother, grandmother, or stepmother.

(5) A son, grandson, stepson, or son-in-law.

(6) A daughter, granddaughter, stepdaughter, or daughter-in-law.

(7) A brother or stepbrother.

(8) A sister or stepsister.

(b) A relative by adoption, half-blood, marriage, or remarriage is considered a relative of whole kinship for purposes of this chapter."

Page 2, line 34, delete "6." and insert "7."

Page 3, line 11, delete "7." and insert "8."

Page 3, between lines 18 and 19, begin a new paragraph and insert:

"Sec. 9. (a) A unit may enter into a contract or renew a contract for the procurement of goods and services or a contract for public works with:



(1) an individual who is a relative of a public official; or
(2) a business entity that is wholly or partially owned by a relative of a public official;
if the unit and the public official satisfy the requirements of this section.

(b) A unit may enter into a contract or renew a contract with an individual or business entity described in subsection (a) if:

(1) the public official files with the unit a full disclosure, which must:

- (A) be in writing;
- (B) describe the contract or purchase to be made by the unit;
- (C) describe the relationship that the public official has to the business entity or individual that contracts or purchases;
- (D) be affirmed under penalty of perjury;
- (E) be submitted to the unit and be accepted by the unit in a public meeting of the unit prior to final action on the contract or purchase; and
- (F) be filed not later than fifteen (15) days after final action on the contract or purchase with:
 - (i) the state board of accounts; and
 - (ii) the clerk of the circuit court in the county where the unit takes final action on the contract or purchase; and

(2) the unit satisfies any other requirements under IC 5-22 or IC 36-1-12.

(c) A public official shall also comply with the disclosure provisions of IC 35-44-1-3, if applicable.

(d) This section does not affect the initial term of a contract in existence at the time the term of office of the public official of the unit begins."

Page 3, delete lines 19 through 42

Page 4, delete lines 1 through 19.

(Reference is to SB 302 as printed February 11, 2011.)

LAWSON C

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