

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WITHDRAWN	Noes _____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

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 179 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and 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, 2012]:**
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 the purposes of this chapter, a person is an**
11 **"affiliated person" of a business entity if the person is any of the**
12 **following:**
13 **(1) A person with any ownership interest in or distributive**
14 **share of the business entity of more than seven and one-half**
15 **percent (7.5%).**
16 **(2) An executive employee of the business entity.**
17 **(3) The spouse of an individual described in subdivision (1) or**
18 **(2).**
19 **(4) The minor child of an individual described in subdivision**
20 **(1) or (2).**
21 **(5) A subsidiary of the business entity.**
22 **(6) A member of the same unitary business group as the**
23 **business entity.**
24 **(7) An organization that is recognized by the United States**

1 Internal Revenue Service as a tax exempt organization
 2 described in Section 501(c) of the Internal Revenue Code and
 3 that is established by:

- 4 (A) the business entity;
 5 (B) a person described in subdivision (1), (2), (3), or (4); or
 6 (C) an entity described in subdivision (5) or (6).

7 (8) A political action committee for which:

- 8 (A) the business entity; or
 9 (B) any Section 501(c) organization described in
 10 subdivision (7) related to that business entity;

11 is a sponsor.

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

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

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

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

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

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

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

- 38 (1) A business entity whose annual aggregate offers for
 39 contracts total more than one hundred thousand dollars
 40 (\$100,000).
 41 (2) A business entity whose aggregate offers for contracts
 42 combined with the business entity's aggregate annual total
 43 value of contracts exceed one hundred thousand dollars
 44 (\$100,000).
 45 (3) A business entity whose contracts, in the aggregate,
 46 annually total more than one hundred thousand dollars
 47 (\$100,000).

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

3 (c) A business entity that does not yet meet a description set
4 forth in subsection (a)(1) or (a)(2) shall register with the
5 department before submitting an offer whose value will cause the
6 business entity to fall within the description set forth in subsection
7 (a)(1) or (a)(2).

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

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

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

13 A change in information provided in registering by a business
14 entity to which this subsection applies must be reported to the
15 department not later than two (2) business days following the
16 change.

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

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

22 or

23 (2) one (1) year after the expiration or termination of the
24 contract;

25 whichever is longer.

26 (f) A change in information provided in registering by a
27 business entity to which subsection (e) applies must be reported to
28 the department not later than ten (10) days following the change.
29 However, if a business entity required to register under subsection
30 (e) has a pending offer, a change in information must be reported
31 to the department not later than two (2) business days after the
32 change.

33 (g) A business entity's continuing duty under this chapter to
34 ensure the accuracy of the business entity's registration includes
35 the requirement that the business entity notify the department of
36 any changes in information relating to affiliated persons or any
37 other material changes.

38 **Sec. 7.1. (a) This section applies to a business entity that on July**
39 **1, 2012, is described by section 7(a) of this chapter.**

40 (b) A business entity described in subsection (a) shall register as
41 provided in this chapter not later than September 1, 2012.

42 (c) This section expires January 1, 2014.

43 **Sec. 8. (a) The registration required under this chapter and any**
44 **changes to that registration must be made electronically. The**
45 **department may provide for the details of electronic registration**
46 **by a rule adopted under IC 4-22-2 that is not inconsistent with this**
47 **chapter.**

1 (b) A registration must contain substantially the following
2 information:

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

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

6 (c) A registration and any changes to a registration must be
7 certified, under the penalties for perjury, that, to the best of the
8 knowledge and belief of the person registering, the information
9 stated is true.

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

12 (e) A registration certificate must be:

13 (1) electronic;

14 (2) accessible to the registrant through the department's
15 Internet web site; and

16 (3) protected by a password.

17 Sec. 9. (a) For purposes of this section, a data base maintained
18 by the department is "searchable" if the data base can be searched
19 by the following terms:

20 (1) Affiliated person.

21 (2) Registrant.

22 (3) State agency.

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

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

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

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

33 (1) be designated as relating to a minor child; and

34 (2) provide a link to all contributions made by anyone
35 reporting the same residential address as the minor child.

36 Sec. 10. A registrant shall provide a copy of the registration
37 certificate:

38 (1) by first class mail or hand delivery;

39 (2) not later than ten (10) days after registration; and

40 (3) to each affiliated person whose identity is required to be
41 disclosed under this chapter.

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

46 (b) An affiliated person of a registrant shall notify any political
47 action committee to which the affiliated person makes a

- 1 contribution that the affiliated person is affiliated with a registrant.
 2 **Sec. 12. (a) During the period described in subsection (b):**
 3 (1) a registrant who has a contract; and
 4 (2) affiliated persons of the registrant described in subdivision
 5 (1);
 6 may not make a contribution to an individual who holds a state
 7 office or is a candidate for a state office.
 8 (b) The prohibition on contributions under this section:
 9 (1) begins on the date of the award of the contract to the
 10 registrant; and
 11 (2) ends on the later of the following:
 12 (A) Four (4) years after the date that a contract is awarded
 13 to the registrant.
 14 (B) One (1) year after the date of the expiration or
 15 termination of the contract.
 16 **Sec. 13. (a) During the period described in subsection (b):**
 17 (1) a registrant who has no contracts but has an offer
 18 pending; and
 19 (2) affiliated persons of the registrant described in subdivision
 20 (1);
 21 may not make a contribution to an individual who holds a state
 22 office or is a candidate for a state office.
 23 (b) The prohibition on contributions under this section:
 24 (1) begins on the date that the solicitation is issued; and
 25 (2) ends on the day after the date the contract is awarded.
 26 **Sec. 14. (a) A candidate or a candidate's committee that receives**
 27 **a contribution from a person who is prohibited from making a**
 28 **contribution under section 12 or 13 of this chapter shall pay an**
 29 **amount equal to the value of the contribution to the election**
 30 **division not later than thirty (30) days after receiving the**
 31 **contribution.**
 32 (b) The election division shall deposit payments made under this
 33 section in the campaign finance enforcement account established
 34 by IC 3-6-4.1-24.
 35 SECTION 2. IC 3-9-4-16, AS AMENDED BY P.L.225-2011,
 36 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JULY 1, 2012]: Sec. 16. (a) In addition to any other penalty imposed,
 38 a person who does any of the following is subject to a civil penalty
 39 under this section:
 40 (1) Fails to file with the election division a report in the manner
 41 required under IC 3-9-5.
 42 (2) Fails to file a statement of organization required under
 43 IC 3-9-1.
 44 (3) Is a committee or a member of a committee who disburses or
 45 expends money or other property for any political purpose before
 46 the money or other property has passed through the hands of the
 47 treasurer of the committee.

- 1 (4) Makes a contribution other than to a committee subject to this
 2 article or to a person authorized by law or a committee to receive
 3 contributions on the committee's behalf.
 4 (5) Is a corporation or labor organization that exceeds any of the
 5 limitations on contributions prescribed by IC 3-9-2-4.
 6 (6) Makes a contribution in the name of another person.
 7 (7) Accepts a contribution made by one (1) person in the name of
 8 another person.
 9 (8) Is not the treasurer of a committee subject to this article, and
 10 pays any expenses of an election or a caucus except as authorized
 11 by this article.
 12 (9) Commingles the funds of a committee with the personal funds
 13 of an officer, a member, or an associate of the committee.
 14 (10) Wrongfully uses campaign contributions in violation of
 15 IC 3-9-3-4.
 16 (11) Violates IC 3-9-2-12.
 17 (12) Fails to designate a contribution as required by IC 3-9-2-5(c).
 18 (13) Violates IC 3-9-3-5.
 19 (14) Serves as a treasurer of a committee in violation of any of the
 20 following:
 21 (A) IC 3-9-1-13(1).
 22 (B) IC 3-9-1-13(2).
 23 (C) IC 3-9-1-18.
 24 (15) Fails to comply with section 4(d) of this chapter.
 25 (16) Violates IC 3-9-3-2.5 by making a communication that
 26 contains a disclaimer that is not presented in a clear and
 27 conspicuous manner required by IC 3-9-3-2.5(d) and
 28 IC 3-9-3-2.5(e). This subdivision does not apply to a person
 29 whose sole act is, in the normal course of business, participating
 30 in the preparation, printing, distribution, or broadcast of the
 31 communication containing the disclaimer.
 32 **(17) Violates IC 3-9-2.5.**
 33 (b) This subsection applies to a person who is subject to a civil
 34 penalty under subsection (a)(1) or (a)(2) for filing a defective report or
 35 statement. If the commission determines that a person failed to file the
 36 amended report or statement of organization not later than noon five (5)
 37 days after being given notice under section 14 of this chapter, the
 38 commission may assess a civil penalty. The penalty is ten dollars (\$10)
 39 for each day the report is late after the expiration of the five (5) day
 40 period, not to exceed one hundred dollars (\$100) plus any investigative
 41 costs incurred and documented by the election division. The civil
 42 penalty limit under this subsection applies to each report separately.
 43 (c) This subsection applies to a person who is subject to a civil
 44 penalty under subsection (a)(1) or (a)(2) for a delinquent report or
 45 statement. If the commission determines that a person failed to file the
 46 report or statement of organization by the deadline prescribed under

1 this article, the commission shall assess a civil penalty. The penalty is
2 fifty dollars (\$50) for each day the report or statement is late, with the
3 afternoon of the final date for filing the report or statement being
4 calculated as the first day. The civil penalty under this subsection may
5 not exceed one thousand dollars (\$1,000) plus any investigative costs
6 incurred and documented by the election division. The civil penalty
7 limit under this subsection applies to each report separately.

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

14 (e) This subsection applies to a person who is subject to a civil
15 penalty under subsection (a)(5). If the commission determines that a
16 person is subject to a civil penalty under subsection (a)(5), the
17 commission may assess a civil penalty of not more than three (3) times
18 the amount of the contribution in excess of the limit prescribed by
19 IC 3-9-2-4, plus any investigative costs incurred and documented by
20 the election division.

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

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

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

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

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

43 (i) This subsection applies to a person who is subject to a civil
44 penalty under subsection (a)(14). If the commission determines, by
45 unanimous vote of the entire membership of the commission, that a
46 person has served as the treasurer of a committee in violation of any of

1 the statutes listed in subsection (a)(14), the commission may assess a
 2 civil penalty of not more than five hundred dollars (\$500), plus any
 3 investigative costs incurred and documented by the election division.

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

9 (k) This subsection applies to a person who is subject to a civil
 10 penalty under subsection (a)(16). If the commission determines that a
 11 person is subject to a civil penalty under subsection (a)(16), the
 12 commission may assess a civil penalty of not more than one thousand
 13 dollars (\$1,000) for each communication circulated or published (but
 14 not for each of the copies of the communication actually circulated or
 15 published), plus any investigative costs incurred and documented by
 16 the election division.

17 **(l) This subsection applies to a person who is subject to a civil
 18 penalty under subsection (a)(17). The commission may assess a
 19 civil penalty of not more than:**

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

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

23 **(B) fails to provide material information required in a
 24 registration under IC 3-9-2.5; or**

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

27 **(2) one thousand dollars (\$1,000) for any other violation of
 28 IC 3-9-2.5;**

29 **plus any investigative costs incurred and documented by the
 30 election division.**

31 **(m)** All civil penalties collected under this section shall be
 32 deposited with the treasurer of state in the campaign finance
 33 enforcement account.

34 **(n)** Proceedings of the commission under this section are
 35 subject to IC 4-21.5.

36 SECTION 3. IC 3-14-1-17 IS ADDED TO THE INDIANA CODE
 37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 38 1, 2012]: **Sec. 17. A person who recklessly, knowingly, or
 39 intentionally makes a contribution in violation of IC 3-9-2.5
 40 commits a Class B misdemeanor.**

41 SECTION 4. IC 4-13-2.5 IS ADDED TO THE INDIANA CODE
 42 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 43 JULY 1, 2012]:

44 **Chapter 2.5. Political Contributions of Offerors and
 45 Contractors**

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

- 1 (1) offer submitted to a state agency; and
 2 (2) contract awarded by a state agency;
 3 after June 30, 2012.
- 4 Sec. 2. (a) As used in this chapter, "contract" refers to a
 5 contract for:
 6 (1) goods;
 7 (2) services, including professional services;
 8 (3) a public works project; or
 9 (4) a highway project;
 10 awarded by a state agency.
- 11 (b) A contract awarded by a state agency under:
 12 (1) IC 4-13.6;
 13 (2) IC 5-22;
 14 (3) IC 5-23;
 15 (4) IC 8-23; or
 16 (5) any other statute;
 17 is considered a contract for purposes of this chapter.
- 18 Sec. 3. As used in this chapter, "contract officer" refers to the:
 19 (1) purchasing agent under IC 5-22; or
 20 (2) state officer or employee responsible for awarding a
 21 contract.
- 22 Sec. 4. As used in this chapter, "contractor" refers to a person
 23 who has been awarded a contract with a state agency.
- 24 Sec. 5. As used in this chapter, "department" refers to the
 25 Indiana department of administration established by IC 4-13-1-2.
- 26 Sec. 6. (a) As used in this chapter, "offer" means a response to
 27 a solicitation.
 28 (b) The term includes a bid, proposal, and quote.
- 29 Sec. 7. As used in this chapter, "offeror" means a person who
 30 submits an offer to a state agency.
- 31 Sec. 8. (a) As used in this chapter, "solicitation" means the
 32 procedure by which a state agency invites persons to submit an
 33 offer to enter into a contract with the state agency.
 34 (b) The term includes an invitation for bids, a request for
 35 proposals, and a request for quotes.
- 36 Sec. 9. As used in this chapter, "state agency" refers to any of
 37 the following:
 38 (1) A state agency (as defined in IC 4-13-1-1(b)).
 39 (2) An entity established by the general assembly as a body
 40 corporate and politic that is governed by a body that has a
 41 member who is:
 42 (A) the governor; or
 43 (B) appointed by the governor.
- 44 Sec. 10. Every offer submitted to, and contract entered into by,
 45 a state agency must contain the following:
 46 (1) A certification by the offeror or contractor that either:
 47 (A) the offeror or contractor is not required to register

1 with the department under IC 3-9-2.5; or
2 **(B) the offeror or contractor has registered with the**
3 **department under IC 3-9-2.5 and acknowledges a**
4 **continuing duty to update the registration.**
5 **(2) A statement that the contract is voidable under section 12**
6 **or 13 of this chapter for the offeror's or contractor's failure**
7 **to comply with this chapter or IC 3-9-2.5.**
8 **Sec. 11. (a) A copy of an offeror's registration certificate must**
9 **accompany an offer by a person required to register under this**
10 **chapter.**
11 **(b) A contracting officer may not accept an offer unless the**
12 **offeror's registration certificate is submitted with the offer.**
13 **Sec. 12. In addition to any penalty under this chapter or**
14 **IC 3-9-2.5, the knowing or intentional failure to disclose material**
15 **information required for registration renders:**
16 **(1) the offeror nonresponsible; or**
17 **(2) a contract voidable by the contract officer if the contract**
18 **officer considers it to be in the best interest of the state.**
19 **Sec. 13. (a) This section applies to a contract with a person who**
20 **violates IC 3-9-2.5-12 or IC 3-9-2.5-13.**
21 **(b) A contract described in subsection (a) is voidable by the**
22 **contract officer if the contract officer considers it to be in the best**
23 **interest of the state.**
24 **(c) A contract described in subsection (a) is terminated by**
25 **operation of law if the affected person violates IC 3-9-2.5-12 or**
26 **IC 3-9-2.5-13 more than two (2) times. The affected person is also**
27 **considered a nonresponsible offeror for three (3) years after the**
28 **date of the most recent violation."**
29 Renumber all SECTIONS consecutively.
 (Reference is to ESB 179 as printed February 17, 2012.)

Representative Pelath