

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WITHDRAWN	Noes _____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

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 322 be amended to read as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning state
- 3 offices and administration.
- 4 Page 1, between the enacting clause and line 1, begin a new
- 5 paragraph and insert:
- 6 "SECTION 1. IC 3-9-2.5 IS ADDED TO THE INDIANA CODE AS
- 7 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 8 1, 2012]:
- 9 **Chapter 2.5. Prohibition of Contributions by Certain State**
- 10 **Contractors**
- 11 **Sec. 1. The definitions in IC 4-13-2.5 apply throughout this**
- 12 **chapter.**
- 13 **Sec. 2. As used in this chapter, "affiliated person" refers to any**
- 14 **of the following:**
- 15 **(1) A person with any ownership interest or distributive share**
- 16 **of a business entity of more than seven and one-half percent**
- 17 **(7.5%).**
- 18 **(2) An executive employee of a business entity.**
- 19 **(3) The spouse of an individual described in subdivision (1) or**
- 20 **(2).**
- 21 **(4) The minor child of an individual described in subdivision**
- 22 **(1) or (2).**
- 23 **(5) A subsidiary of a business entity.**
- 24 **(6) A member of the same unitary business group as a**

- 1           **business entity.**  
 2           **(7) An organization recognized by the United States Internal**  
 3           **Revenue Service as a tax exempt organization described in**  
 4           **Section 501(c) of the Internal Revenue Code that is**  
 5           **established by:**  
 6               **(A) a business entity;**  
 7               **(B) a person described in subdivision (1), (2), (3), or (4); or**  
 8               **(C) an entity described in subdivision (5) or (6).**  
 9           **(8) A political action committee for which:**  
 10               **(A) a business entity; or**  
 11               **(B) any Section 501(c) organization described in**  
 12               **subdivision (7) related to that business entity;**  
 13           **is a sponsor.**  
 14           **Sec. 3. As used in this chapter, "business entity" refers to any of**  
 15           **the following doing business for profit:**  
 16               **(1) A sole proprietorship.**  
 17               **(2) A partnership.**  
 18               **(3) A limited liability partnership.**  
 19               **(4) A limited liability company.**  
 20               **(5) A corporation.**  
 21               **(6) Any other person doing business for profit, regardless of**  
 22               **the person's legal organization.**  
 23           **Sec. 4. As used in this chapter, "executive employee" refers to**  
 24           **any of the following:**  
 25               **(1) The president of a business entity.**  
 26               **(2) The chairman of a business entity.**  
 27               **(3) The chief executive officer of a business entity.**  
 28               **(4) An employee of a business entity:**  
 29                   **(A) who has executive decision making authority over the**  
 30                   **long term and day to day affairs of the business entity; or**  
 31                   **(B) whose compensation is determined directly, in whole or**  
 32                   **in part, by the award of, or payment under, contracts with**  
 33                   **the state to the business entity.**  
 34           **Sec. 5. As used in this chapter, "registrant" refers to a person**  
 35           **registered under this chapter.**  
 36           **Sec. 6. As used in this chapter, "sponsor" refers to an individual**  
 37           **or organization that contributes at least thirty-three percent (33%)**  
 38           **of the total funding of a political action committee.**  
 39           **Sec. 7. (a) This section applies to the following:**  
 40               **(1) A business entity whose annual aggregate offers for**  
 41               **contracts total more than one hundred thousand dollars**  
 42               **(\$100,000).**  
 43               **(2) A business entity whose aggregate offers for contracts**  
 44               **combined with the business entity's aggregate annual total**  
 45               **value of contracts exceed one hundred thousand dollars**  
 46               **(\$100,000).**  
 47               **(3) A business entity whose contracts, in the aggregate,**

- 1           annually total more than one hundred thousand dollars  
2           (\$100,000).
- 3           (b) A business entity described in subsection (a) shall register  
4 with the department as provided in this chapter.
- 5           (c) A business entity described in subsection (a)(1) or (a)(2) shall  
6 register with the department before submitting an offer whose  
7 value causes the business entity to fall within the description of  
8 subsection (a)(1) or (a)(2).
- 9           (d) A business entity described in subsection (a)(1) or (a)(2) has  
10 a continuing duty to ensure that the registration is accurate during  
11 the period that:
- 12           (1) begins on the date of registration; and  
13           (2) ends on the day after the date the contract is awarded.
- 14 A change in information must be reported to the department not  
15 later than two (2) business days following the change.
- 16           (e) A business entity whose contracts, in the aggregate, annually  
17 total more than one hundred thousand dollars (\$100,000) shall  
18 maintain registration under this chapter and has a continuing duty  
19 to ensure that the registration is accurate for:
- 20           (1) four (4) years after the date of the award of the contract;  
21           or  
22           (2) one (1) year after the expiration or termination of the  
23 contract;
- 24 whichever is longer.
- 25           (f) A change in information must be reported to the department  
26 not later than ten (10) days following the change. However, if a  
27 business entity required to register under this section has a pending  
28 offer, a change in information must be reported to the department  
29 not later than two (2) business days after the change.
- 30           (g) A business entity's continuing duty under this chapter to  
31 ensure the accuracy of the business entity's registration includes  
32 the requirement that the business entity notify the department of  
33 any changes in information relating to affiliated persons or any  
34 other material changes.
- 35           Sec. 7.1. (a) This section applies to a business entity that on July  
36 1, 2012, is described by section 7(a) of this chapter.
- 37           (b) A business entity described in subsection (a) shall register as  
38 provided in this chapter not later than September 1, 2012.
- 39           (c) This section expires January 1, 2014.
- 40           Sec. 8. (a) The registration required under this chapter and any  
41 changes to that registration must be made electronically. The  
42 department may provide for the details of electronic registration  
43 by a rule adopted under IC 4-22-2 that is not inconsistent with this  
44 chapter.
- 45           (b) A registration must contain substantially the following  
46 information:
- 47           (1) The registrant's name and business address.

- 1           **(2) The name and address of each of the registrant's affiliated**  
 2           **persons with a description of the affiliation for each person.**
- 3           **(c) A registration and any changes to a registration must be**  
 4           **certified, under the penalties for perjury, that, to the best of the**  
 5           **person's knowledge and belief, the information stated is true.**
- 6           **(d) The department shall provide a registration certificate to a**  
 7           **person that registers under this chapter.**
- 8           **(e) A registration certificate must be:**
- 9           **(1) electronic;**  
 10           **(2) accessible to the registrant through the department's**  
 11           **Internet web site; and**  
 12           **(3) protected by a password.**
- 13           **Sec. 9. (a) For purposes of this section, a data base maintained**  
 14           **by the department is "searchable" if the data base can be searched**  
 15           **by the following terms:**
- 16           **(1) Affiliated person.**  
 17           **(2) Registrant.**  
 18           **(3) State agency.**
- 19           **(b) The department shall maintain on its Internet web site a**  
 20           **searchable data base containing all information required to be**  
 21           **submitted to the department under this chapter.**
- 22           **(c) The data base must contain links to any searchable data base**  
 23           **of state contracts maintained by the state, searchable by registrant.**
- 24           **(d) The data base must be fully accessible to the election division**  
 25           **as determined by the election division and the department.**
- 26           **(e) The name of a minor child may not be placed in a location in**  
 27           **the data base that is accessible to the public. Public information**  
 28           **relating to a minor child must:**
- 29           **(1) be designated as relating to a minor child; and**  
 30           **(2) provide a link to all contributions made by anyone**  
 31           **reporting the same residential address as the minor child.**
- 32           **Sec. 10. A registrant shall provide a copy of the registration**  
 33           **certificate:**
- 34           **(1) by first class mail or hand delivery;**  
 35           **(2) not later than ten (10) days after registration; and**  
 36           **(3) to each affiliated person whose identity is required to be**  
 37           **disclosed under this chapter.**
- 38           **Sec. 11. (a) A registrant shall notify any political action**  
 39           **committee to which the registrant makes a contribution, at the time**  
 40           **of the contribution, that the person is registered with the**  
 41           **department under this chapter.**
- 42           **(b) An affiliated person of a registrant shall notify any political**  
 43           **action committee to which the affiliated person makes a**  
 44           **contribution that the affiliated person is affiliated with a registrant.**
- 45           **Sec. 12. (a) During the period described in subsection (b):**
- 46           **(1) a registrant who has a contract; and**  
 47           **(2) affiliated persons of the registrant described in subdivision**

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

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

1 calculated as the first day. The civil penalty under this subsection may  
2 not exceed one thousand dollars (\$1,000) plus any investigative costs  
3 incurred and documented by the election division. The civil penalty  
4 limit under this subsection applies to each report separately.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **(B) fails to provide material information on a registration**  
 21 **required by IC 3-9-2.5; or**

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

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

26 **plus any investigative costs incurred and documented by the**  
 27 **election division.**

28 **(⊕) (m)** All civil penalties collected under this section shall be  
 29 deposited with the treasurer of state in the campaign finance  
 30 enforcement account.

31 **(~~m~~) (n)** Proceedings of the commission under this section are  
 32 subject to IC 4-21.5.

33 SECTION 3. IC 3-14-1-17 IS ADDED TO THE INDIANA CODE  
 34 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 35 1, 2012]: **Sec. 17. A person who recklessly, knowingly, or**  
 36 **intentionally makes a contribution in violation of IC 3-9-2.5**  
 37 **commits a Class B misdemeanor.**

38 SECTION 4. IC 4-13-2.5 IS ADDED TO THE INDIANA CODE  
 39 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 40 JULY 1, 2012]:

41 **Chapter 2.5. Political Contributions of Offerors and**  
 42 **Contractors**

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

44 **(1) offer submitted to a state agency; and**

45 **(2) contract awarded by a state agency;**

46 **after June 30, 2012.**

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

- 3           (1) goods;  
 4           (2) services, including professional services;  
 5           (3) a public works project; or  
 6           (4) a highway project;

7 **awarded by a state agency.**

8           **(b) A contract awarded by a state agency under:**

- 9           (1) IC 4-13.6;  
 10          (2) IC 5-22;  
 11          (3) IC 5-23;  
 12          (4) IC 8-23; or  
 13          (5) any other statute;

14 **is considered a contract for purposes of this chapter.**

15           **Sec. 3. As used in this chapter, "contract officer" refers to the:**

- 16          (1) purchasing agent under IC 5-22; or  
 17          (2) state officer or employee responsible for awarding a  
 18          contract.

19           **Sec. 4. As used in this chapter, "contractor" refers to a person**  
 20 **who has been awarded a contract with a state agency.**

21           **Sec. 5. As used in this chapter, "department" refers to the**  
 22 **Indiana department of administration established by IC 4-13-1-2.**

23           **Sec. 6. (a) As used in this chapter, "offer" means a response to**  
 24 **a solicitation.**

25          **(b) The term includes a bid, proposal, and quote.**

26           **Sec. 7. As used in this chapter, "offeror" means a person who**  
 27 **submits an offer to a state agency.**

28           **Sec. 8. (a) As used in this chapter, "solicitation" means the**  
 29 **procedure by which a state agency invites persons to submit an**  
 30 **offer to enter into a contract with the state agency.**

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

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

- 35          (1) A state agency (as defined in IC 4-13-1-1(b)).  
 36          (2) An entity established by the general assembly as a body  
 37          corporate and politic that is governed by a body that has a  
 38          member who is:

- 39           (A) the governor; or  
 40           (B) appointed by the governor.

41           **Sec. 10. Every offer submitted to, and contract entered into by,**  
 42 **a state agency must contain the following:**

- 43          (1) A certification by the offeror or contractor that either:  
 44           (A) the offeror or contractor is not required to register  
 45           with the department under IC 3-9-2.5; or  
 46           (B) the offeror or contractor has registered with the  
 47           department under IC 3-9-2.5 and acknowledges a

1 continuing duty to update the registration.  
2 (2) A statement that the contract is voidable under section 12  
3 or 13 of this chapter for the offeror's or contractor's failure  
4 to comply with this chapter or IC 3-9-2.5.  
5 Sec. 11. (a) A copy of an offeror's registration certificate must  
6 accompany an offer by a person required to register under this  
7 chapter.  
8 (b) A contracting officer may not accept an offer unless the  
9 offeror's registration certificate is submitted with the offer.  
10 Sec. 12. In addition to any penalty under this chapter or  
11 IC 3-9-2.5, the knowing or intentional failure to disclose material  
12 information required for registration renders:  
13 (1) the offeror nonresponsible; or  
14 (2) a contract voidable by the contract officer if the contract  
15 officer considers it to be in the best interest of the state.  
16 Sec. 13. (a) This section applies to a contract with a person who  
17 violates IC 3-9-2.5-12 or IC 3-9-2.5-13.  
18 (b) A contract described in subsection (a) is voidable by the  
19 contract officer if the contract officer considers it to be in the best  
20 interest of the state.  
21 (c) A contract described in subsection (a) is terminated by  
22 operation of law if the affected person violates IC 3-9-2.5-12 or  
23 IC 3-9-2.5-13 more than two (2) times. The affected person is also  
24 considered a nonresponsible offeror for three (3) years after the  
25 date of the most recent violation."  
26 Renumber all SECTIONS consecutively.  
(Reference is to ESB 322 as printed February 21, 2012.)

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Representative Pelath