

SENATE BILL No. 266

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, cities, or counties or who bid on contracts with state government, cities, or counties and certain persons affiliated with the contractors and bidders may not make political contributions to an individual who holds a state, city, or county office or is a candidate for a state, city, or county office. Requires persons who have contracts with state, city, or county government or who bid on contracts with state, city, or county 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 of state government who have purchasing or procurement authority may not solicit political contributions unless the soliciting individual is a candidate for public office.

Effective: July 1, 2012.

**Arnold, Breaux, Broden, Hume,
Lanane, Mrvan, Randolph, Rogers,
Simpson, Skinner, Tallian, Taylor,
Young R**

January 4, 2012, read first time and referred to Committee on Tax and Fiscal Policy.



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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 2011 Regular Session of the General Assembly.

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SENATE BILL No. 266



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, 2012]:

4 **Chapter 2.5. Registration by Certain State, City, or County**
5 **Contractors**

6 **Sec. 1. The definitions in IC 4-13-2.5 apply throughout this**
7 **chapter.**

8 **Sec. 2. (a) The following apply throughout this chapter:**

- 9 (1) A person with any ownership interest in or distributive
- 10 share of a business entity of more than seven and one-half
- 11 percent (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) A minor child of an individual described in subdivision (1)
 2 or (2) is an "affiliated person" of the business entity of which
 3 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 of 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 (b) For purposes of section 7 of this chapter:

26 (1) a business entity's "annual aggregate offers for contracts"
 27 is the total amount of money that the business entity would be
 28 paid under the contracts for which the business entity is
 29 making offers in a certain year; and

30 (2) a business entity's "annual aggregate total value of
 31 contracts" is the total amount of money that the business
 32 entity is paid in a certain year under the contracts that the
 33 business entity has entered into.

34 Sec. 3. As used in this chapter, "business entity" refers to any of
 35 the following:

36 (1) A:

37 (A) sole proprietorship;

38 (B) partnership;

39 (C) limited liability partnership;

40 (D) limited liability company; or

41 (E) corporation;

42 doing business for profit.

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- 1 (2) Any other person doing business for profit, regardless of
- 2 the person's legal organization.
- 3 Sec. 4. As used in this chapter, "executive employee" refers to
- 4 any of the following:
- 5 (1) The president of a business entity.
- 6 (2) The chairman of a business entity.
- 7 (3) The chief executive officer of a business entity.
- 8 (4) An employee of a business entity:
- 9 (A) who has executive decision making authority over the
- 10 long term and day to day affairs of the business entity; or
- 11 (B) whose compensation is determined directly, in whole or
- 12 in part, by:
- 13 (i) the awarding of contracts by the state, a city, or a
- 14 county to the business entity; or
- 15 (ii) payments made under contracts awarded by the
- 16 state, a city, or a county to the business entity.
- 17 Sec. 5. As used in this chapter, "registrant" refers to a person
- 18 registered under this chapter.
- 19 Sec. 6. As used in this chapter, "sponsor" refers to an individual
- 20 or organization that contributes at least thirty-three percent (33%)
- 21 of the total funding of a political action committee.
- 22 Sec. 7. (a) This section applies to the following:
- 23 (1) A business entity whose annual aggregate offers for
- 24 contracts with the state exceed one hundred thousand dollars
- 25 (\$100,000).
- 26 (2) A business entity whose annual aggregate offers for
- 27 contracts with the state, combined with the business entity's
- 28 annual aggregate total value of contracts with the state,
- 29 exceed one hundred thousand dollars (\$100,000).
- 30 (3) A business entity whose annual aggregate total value of
- 31 contracts with the state exceeds one hundred thousand dollars
- 32 (\$100,000).
- 33 (4) A business entity whose annual aggregate offers for
- 34 contracts with a city or county exceed fifty thousand dollars
- 35 (\$50,000).
- 36 (5) A business entity whose annual aggregate officers for
- 37 contracts with a city or county, combined with the business
- 38 entity's annual aggregate total value of contracts with a city
- 39 or county, exceed fifty thousand dollars (\$50,000).
- 40 (6) A business entity whose annual aggregate total value of
- 41 contracts with a city or county exceed fifty thousand dollars
- 42 (\$50,000).

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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 making an offer that will cause the business
4 entity to meet the description set forth in subsection (a)(1), (a)(2),
5 (a)(4), or (a)(5) shall register with the department before
6 submitting the offer whose value causes the business entity to meet
7 the description set forth in subsection (a)(1), (a)(2), (a)(4), or (a)(5).

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

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

12 (2) ends on the day after the date the contract for which the
13 business entity made the offer is awarded.

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

18 (e) A business entity described in subsection (a)(3) or (a)(6) shall
19 maintain the business entity's registration under this chapter and
20 has a continuing duty to ensure that the registration is accurate for
21 the longer of the following:

22 (1) Four (4) years after the date of the award of any contract
23 awarded to the business entity while the business entity met
24 the description set forth in subsection (a)(3) or (a)(6).

25 (2) One (1) year after the expiration or termination of any
26 contract awarded to the business entity while the business
27 entity met the description set forth in subsection (a)(3) or
28 (a)(6).

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

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

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

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

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

42 (2) any other material change.

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1 **Sec. 8. (a) This section applies to a business entity that, on July**
 2 **1, 2012, is described by section 7(a) of this chapter.**

3 **(b) A business entity described in subsection (a) on July 1, 2012,**
 4 **shall register as provided in this chapter not later than September**
 5 **1, 2012.**

6 **(c) This section expires January 1, 2014.**

7 **Sec. 9. (a) The registration required under this chapter and any**
 8 **changes to that registration must be made electronically. The**
 9 **department may adopt rules under IC 4-22-2 providing for**
 10 **electronic registration and electronic changes in registration under**
 11 **this chapter.**

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

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

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

18 **(c) The individual:**

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

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

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

25 **(d) The department shall provide a registration certificate to a**
 26 **person that registers under this chapter.**

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

29 **(1) electronic;**

30 **(2) accessible to the registrant through the department's web**
 31 **site; and**

32 **(3) protected by a password.**

33 **Sec. 10. (a) For purposes of this section, a data base maintained**
 34 **under this section is "searchable" if the data base can be searched**
 35 **for the following terms:**

36 **(1) Affiliated person.**

37 **(2) Registrant.**

38 **(3) State agency.**

39 **(4) City or county.**

40 **(b) The department shall provide for information that**
 41 **registrants are required to report in registering under this chapter**
 42 **to be posted on the Indiana transparency portal and to be kept in**

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1 a searchable data base containing all information required to be
2 submitted to the department under this chapter.

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

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

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

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

13 Sec. 11. A registrant shall provide a copy of the registration
14 certificate provided by the department under section 9(d) of this
15 chapter to each affiliated person of the registrant whose identity is
16 required to be disclosed under this chapter. A registrant shall
17 provide a copy of the registration certificate to an affiliated person
18 under this section by first class mail or hand delivery not later than
19 ten (10) days after the registrant's registration under this chapter.

20 Sec. 12. (a) At the time a registrant makes a contribution to a
21 political action committee, the registrant shall inform the political
22 action committee that the person is registered with the department
23 under this chapter.

24 (b) An affiliated person of a registrant shall notify any political
25 action committee to which the affiliated person makes a
26 contribution that the affiliated person is an affiliated person of a
27 registrant under this chapter.

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

29 (1) a registrant who has a contract; and

30 (2) affiliated persons of the registrant described in subdivision
31 (1);

32 shall not make a contribution to an individual who holds a state,
33 city, or county office or is a candidate for a state, city, or county
34 office.

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

36 (1) begins on the date on which the contract is awarded to the
37 registrant; and

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

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

41 (B) One (1) year after the date of the expiration or
42 termination of the contract.

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1 **Sec. 14. (a) During the period described in subsection (b):**
 2 **(1) a registrant who has no contracts but has an offer for a**
 3 **contract pending; and**
 4 **(2) affiliated persons of the registrant described in subdivision**
 5 **(1);**
 6 **shall not make a contribution to an individual who holds a state,**
 7 **city, or county office or is a candidate for a state, city, or county**
 8 **office.**

9 **(b) The prohibition on contributions under this section:**
 10 **(1) begins on the date of issuance of the solicitation to which**
 11 **the registrant responded in submitting the offer; and**
 12 **(2) ends on the day after the date on which the contract for**
 13 **which the registrant submitted the offer is awarded.**

14 **Sec. 15. (a) A candidate or a candidate's committee that receives**
 15 **a contribution from a person who is prohibited from making a**
 16 **contribution under section 13 or 14 of this chapter shall pay an**
 17 **amount equal to the value of the contribution to the election**
 18 **division not later than thirty (30) days after receiving the**
 19 **contribution.**

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

23 SECTION 2. IC 4-2-6-10.2 IS ADDED TO THE INDIANA CODE
 24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 25 1, 2012]: **Sec. 10.2. The following may not solicit political**
 26 **contributions on behalf of a candidate for public office, unless the**
 27 **soliciting individual is the candidate for public office:**

- 28 **(1) An appointing authority.**
 29 **(2) An employee who has purchasing or procurement**
 30 **authority on behalf of the agency that employs the employee.**

31 SECTION 3. IC 4-13-2.5 IS ADDED TO THE INDIANA CODE
 32 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2012]:

34 **Chapter 2.5. Political Contributions of Offerors and**
 35 **Contractors**

36 **Sec. 1. This chapter applies to:**
 37 **(1) every offer submitted to a state agency, a city, or a county;**
 38 **and**
 39 **(2) every contract awarded by a state agency, a city, or a**
 40 **county;**

41 **after June 30, 2012.**

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

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1 **contract for:**

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

6 awarded by a state agency, city, or county.

7 (b) A contract awarded by a state agency, a city, or a county
 8 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, "city" has the meaning set forth
 16 in IC 36-1-2-3.

17 **Sec. 4.** As used in this chapter, "contract officer" refers to:

- 18 (1) an individual who is a purchasing agent under IC 5-22;
 19 (2) the state officer or employee responsible for awarding a
 20 contract; or
 21 (3) the city or county officer or employee responsible for
 22 awarding a contract.

23 **Sec. 5.** As used in this chapter, "contractor" refers to a person
 24 who has been awarded a contract with a state agency, a city, or a
 25 county.

26 **Sec. 6.** As used in this chapter, "department" refers to the
 27 Indiana department of administration established by IC 4-13-1-2.

28 **Sec. 7. (a)** As used in this chapter, "offer" means a response to
 29 a solicitation.

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

31 **Sec. 8.** As used in this chapter, "offeror" means a person who
 32 submits an offer to a state agency, a city, or a county.

33 **Sec. 9. (a)** As used in this chapter, "solicitation" means the
 34 procedure by which a state agency, a city, or a county invites
 35 persons to submit an offer to enter into a contract with the state
 36 agency, city, or county.

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

39 **Sec. 10.** As used in this chapter, "state agency" refers to any of
 40 the following:

- 41 (1) A state agency (as defined in IC 4-13-1-1(b)).
 42 (2) An entity that was established by the general assembly as

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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. 11. Every offer submitted to a state agency, a city, or a
county, and every contract entered into by a state agency, a city, or
a county 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 acknowledging that the contract is voidable
under section 13 or 14 of this chapter for the offeror's or
contractor's failure to comply with this chapter or IC 3-9-2.5.

Sec. 12. (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 3-9-2.5-9.

(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. 13. 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
contract officer if the contract officer considers the voiding of
the contract to be in the best interest of the state, city, or
county.

Sec. 14. (a) This section applies to a contract with a person who
violates IC 3-9-2.5-13 or IC 3-9-2.5-14.

(b) A contract with the state, a city, or a county that is described

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1 in subsection (a) is voidable by the contract officer of the state, city,
2 or county if the contract officer considers the voiding of the
3 contract to be in the best interest of the state, city, or county.
4 (c) If the person referred to in subsection (a) violates
5 IC 3-9-2.5-13 or IC 3-9-2.5-14 more than two (2) times:
6 (1) the contract described in subsection (a) is terminated by
7 operation of law; and
8 (2) the person referred to in subsection (a) is considered a
9 nonresponsible offeror for three (3) years after the date of the
10 person's latest violation of IC 3-9-2.5-13 or IC 3-9-2.5-14.

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