

SENATE BILL No. 126

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-2-6-1; IC 36-1-24.

Synopsis: Government ethics. Provides that for the purposes of the state executive branch ethics statute, "employee" includes an individual who is an employee or a subcontractor of a person that contracts with an agency and performs personal services for the agency under that contract. Provides that an offeror, a contractor, and certain persons affiliated with an offeror or a contractor for contracts solicited by certain purchasing methods by a political subdivision may not make political contributions to an individual during certain periods while the solicitation is pending or after a contract has been awarded if: (1) the individual is also a member of the legislative or executive branch of that political subdivision that has final approval of the contract; and (2) the legislative or executive branch of that political subdivision had supervisory authority over the agency issuing the solicitation. Provides that only contributions that are reportable under Indiana campaign finance law are restricted.

Effective: July 1, 2017.

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January 4, 2017, read first time and referred to Committee on Elections.



First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

SENATE BILL No. 126

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 4-2-6-1, AS AMENDED BY P.L.123-2015,
2 SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 1. (a) As used in this chapter, and unless the
4 context clearly denotes otherwise:

5 (1) "Advisory body" means an authority, a board, a commission,
6 a committee, a task force, or other body designated by any name
7 of the executive department that is authorized only to make
8 nonbinding recommendations.

9 (2) "Agency" means an authority, a board, a branch, a bureau, a
10 commission, a committee, a council, a department, a division, an
11 office, a service, or other instrumentality of the executive,
12 including the administrative, department of state government. The
13 term includes a body corporate and politic set up as an
14 instrumentality of the state and a private, nonprofit, government
15 related corporation. The term does not include any of the
16 following:

17 (A) The judicial department of state government.



- 1 (B) The legislative department of state government.
 2 (C) A state educational institution.
 3 (D) A political subdivision.
 4 (3) "Appointing authority" means the following:
 5 (A) Except as provided in clause (B), the chief administrative
 6 officer of an agency. The term does not include a state officer.
 7 (B) For purposes of section 16 of this chapter, "appointing
 8 authority" means:
 9 (i) an elected officer;
 10 (ii) the chief administrative officer of an agency; or
 11 (iii) an individual or group of individuals who have the
 12 power by law or by lawfully delegated authority to make
 13 appointments.
 14 (4) "Assist" means to:
 15 (A) help;
 16 (B) aid;
 17 (C) advise; or
 18 (D) furnish information to;
 19 a person. The term includes an offer to do any of the actions in
 20 clauses (A) through (D).
 21 (5) "Business relationship" includes the following:
 22 (A) Dealings of a person with an agency seeking, obtaining,
 23 establishing, maintaining, or implementing:
 24 (i) a pecuniary interest in a contract or purchase with the
 25 agency; or
 26 (ii) a license or permit requiring the exercise of judgment or
 27 discretion by the agency.
 28 (B) The relationship a lobbyist has with an agency.
 29 (C) The relationship an unregistered lobbyist has with an
 30 agency.
 31 (6) "Commission" refers to the state ethics commission created
 32 under section 2 of this chapter.
 33 (7) "Compensation" means any money, thing of value, or financial
 34 benefit conferred on, or received by, any person in return for
 35 services rendered, or for services to be rendered, whether by that
 36 person or another.
 37 (8) "Direct line of supervision" means the chain of command in
 38 which the superior affects, or has the authority to affect, the terms
 39 and conditions of the subordinate's employment, including
 40 making decisions about work assignments, compensation,
 41 grievances, advancements, or performance evaluation.
 42 (9) "Employee" means an individual, other than a state officer,



1 who is employed by an agency on a full-time, a part-time, a
 2 temporary, an intermittent, or an hourly basis. The term includes
 3 an individual who:

4 (A) contracts with an agency for personal services; or

5 (B) is:

6 (i) an employee or a subcontractor of a person that
 7 contracts with an agency; and

8 (ii) performs personal services for the agency under that
 9 contract.

10 (10) "Employer" means any person from whom a state officer or
 11 employee or the officer's or employee's spouse received
 12 compensation.

13 (11) "Financial interest" means an interest:

14 (A) in a purchase, sale, lease, contract, option, or other
 15 transaction between an agency and any person; or

16 (B) involving property or services.

17 The term includes an interest arising from employment or
 18 prospective employment for which negotiations have begun. The
 19 term does not include an interest of a state officer or employee in
 20 the common stock of a corporation unless the combined holdings
 21 in the corporation of the state officer or the employee, that
 22 individual's spouse, and that individual's unemancipated children
 23 are more than one percent (1%) of the outstanding shares of the
 24 common stock of the corporation. The term does not include an
 25 interest that is not greater than the interest of the general public
 26 or any state officer or any state employee.

27 (12) "Information of a confidential nature" means information:

28 (A) obtained by reason of the position or office held; and

29 (B) which:

30 (i) a public agency is prohibited from disclosing under
 31 IC 5-14-3-4(a);

32 (ii) a public agency has the discretion not to disclose under
 33 IC 5-14-3-4(b) and that the agency has not disclosed; or

34 (iii) is not in a public record, but if it were, would be
 35 confidential.

36 (13) "Person" means any individual, proprietorship, partnership,
 37 unincorporated association, trust, business trust, group, limited
 38 liability company, or corporation, whether or not operated for
 39 profit, or a governmental agency or political subdivision.

40 (14) "Political subdivision" means a county, city, town, township,
 41 school district, municipal corporation, special taxing district, or
 42 other local instrumentality. The term includes an officer of a



- 1 political subdivision.
 2 (15) "Property" has the meaning set forth in IC 35-31.5-2-253.
 3 (16) "Relative" means any of the following:
 4 (A) A spouse.
 5 (B) A parent or stepparent.
 6 (C) A child or stepchild.
 7 (D) A brother, sister, stepbrother, or stepsister.
 8 (E) A niece or nephew.
 9 (F) An aunt or uncle.
 10 (G) A daughter-in-law or son-in-law.
 11 For purposes of this subdivision, an adopted child of an individual
 12 is treated as a natural child of the individual. For purposes of this
 13 subdivision, the terms "brother" and "sister" include a brother or
 14 sister by the half blood.
 15 (17) "Represent" means to do any of the following on behalf of a
 16 person:
 17 (A) Attend an agency proceeding.
 18 (B) Write a letter.
 19 (C) Communicate with an employee of an agency.
 20 (18) "Special state appointee" means a person who is:
 21 (A) not a state officer or employee; and
 22 (B) elected or appointed to an authority, a board, a
 23 commission, a committee, a council, a task force, or other
 24 body designated by any name that:
 25 (i) is authorized by statute or executive order; and
 26 (ii) functions in a policy or an advisory role in the executive
 27 (including the administrative) department of state
 28 government, including a separate body corporate and politic.
 29 (19) "State officer" means any of the following:
 30 (A) The governor.
 31 (B) The lieutenant governor.
 32 (C) The secretary of state.
 33 (D) The auditor of state.
 34 (E) The treasurer of state.
 35 (F) The attorney general.
 36 (G) The superintendent of public instruction.
 37 (20) The masculine gender includes the masculine and feminine.
 38 (21) The singular form of any noun includes the plural wherever
 39 appropriate.
 40 (b) The definitions in IC 4-2-7 apply throughout this chapter.
 41 SECTION 2. IC 36-1-24 IS ADDED TO THE INDIANA CODE AS
 42 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY



- 1, 2017]:
- 2 **Chapter 24. Political Contributions by Offerors and**
3 **Contractors**
- 4 **Sec. 1. This chapter applies only to:**
5 (1) an offer submitted to a political subdivision; and
6 (2) a contract awarded by a political subdivision;
7 after June 30, 2017.
- 8 **Sec. 2. As used in this chapter, "affiliated person" refers to any**
9 **of the following:**
- 10 (1) A person with any ownership interest or distributive share
11 of a business entity of more than five percent (5%).
12 (2) An executive employee of a business entity.
13 (3) The spouse of an individual described in subdivision (1) or
14 (2).
15 (4) The minor child of an individual described in subdivision
16 (1) or (2).
17 (5) A subsidiary of a business entity.
18 (6) A member of the same unitary business group as a
19 business entity.
20 (7) A subcontractor of a business entity.
21 (8) An organization recognized by the United States Internal
22 Revenue Service as a tax exempt organization described in
23 Section 501(c) of the Internal Revenue Code that is
24 established by:
- 25 (A) a business entity;
26 (B) a person described in subdivision (1), (2), (3), or (4); or
27 (C) an entity described in subdivision (5) or (6).
28 (9) A political action committee for which:
29 (A) a business entity; or
30 (B) any Section 501(c) organization described in
31 subdivision (8) related to that business entity;
32 is a sponsor.
- 33 **Sec. 3. As used in this chapter, "business entity" refers to any of**
34 **the following doing business for profit:**
- 35 (1) A sole proprietorship.
36 (2) A partnership.
37 (3) A limited liability partnership.
38 (4) A limited liability company.
39 (5) A corporation.
40 (6) Any other person doing business for profit, regardless of
41 the person's legal organization.
- 42 **Sec. 4. As used in this chapter, "contract" refers to a contract**



- 1 for:
- 2 (1) supplies or services, including professional services, under
- 3 IC 5-22; or
- 4 (2) a public works project under IC 36-1-12.
- 5 Sec. 5. As used in this chapter, "contract officer" refers to the:
- 6 (1) purchasing agent under IC 5-22; or
- 7 (2) officer, board, or employee responsible for awarding a
- 8 public works contract.
- 9 Sec. 6. As used in this chapter, "contractor" refers to a person
- 10 who has been awarded a contract.
- 11 Sec. 7. As used in this chapter, "contribution" refers to a
- 12 contribution as defined in IC 3-5-2-15, but only if the contribution
- 13 is reportable under IC 3-9.
- 14 Sec. 8. As used in this chapter, "executive employee" refers to
- 15 any of the following:
- 16 (1) The president of a business entity.
- 17 (2) The chairman of a business entity.
- 18 (3) The chief executive officer of a business entity.
- 19 (4) An employee of a business entity:
- 20 (A) who has executive decision making authority over the
- 21 long term and day to day affairs of the business entity; or
- 22 (B) whose compensation is determined directly, in whole or
- 23 in part, by the award of, or payment under, contracts
- 24 between the political subdivision and the business entity.
- 25 Sec. 9. As used in this chapter, "offer" means a response to a
- 26 solicitation.
- 27 Sec. 10. As used in this chapter, "offeror" means a person that
- 28 submits an offer.
- 29 Sec. 11. (a) As used in this chapter, subject to subsection (b),
- 30 "solicitation" means the procedure by which a political subdivision
- 31 invites persons to submit an offer to enter into a contract with the
- 32 political subdivision.
- 33 (b) For purposes of this chapter, "solicitation" refers only to the
- 34 following:
- 35 (1) A solicitation for purchase of services under IC 5-22-6.
- 36 (2) A request for proposals under IC 5-22-9.
- 37 (3) A solicitation for the provision of professional services for
- 38 a public works project.
- 39 (4) A solicitation for the provision of work or services for a
- 40 public works project under a contract that is awarded by
- 41 other than competitive bids.
- 42 Sec. 12. As used in this chapter, "sponsor" refers to an



1 individual or organization that contributes at least thirty-three
2 percent (33%) of the total funding of a political action committee.

3 Sec. 13. (a) During the period described in subsection (b), a
4 contractor and an affiliated person of the contractor may not make
5 a contribution to an individual who holds an elected office of the
6 political subdivision awarding the contract if both of the following
7 apply:

8 (1) The individual is also a member of the legislative or
9 executive branch of that political subdivision that has final
10 approval of the contract.

11 (2) The legislative or executive branch of that political
12 subdivision has supervisory authority over the agency issuing
13 the solicitation.

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

15 (1) begins on the date of the award of the contract; and

16 (2) ends on the earlier of the following:

17 (A) Two (2) years after the date that a contract is awarded.

18 (B) One (1) year after the date of the expiration or
19 termination of the contract.

20 Sec. 14. (a) As used in this section, "person" refers only to:

21 (1) a person that has no contracts but has an offer pending;
22 and

23 (2) an affiliated person of the person described in subdivision
24 (1).

25 (b) During the period described in subsection (c), a person may
26 not make a contribution to an individual who holds an elected
27 office of the political subdivision awarding the contract if both of
28 the following apply:

29 (1) The individual is also a member of the legislative or
30 executive branch of that political subdivision that has final
31 approval of the contract.

32 (2) The legislative or executive branch of that political
33 subdivision has supervisory authority over the agency issuing
34 the solicitation.

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

36 (1) begins on the date the solicitation is issued; and

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

38 Sec. 15. (a) Every:

39 (1) solicitation issued; and

40 (2) contract entered into;

41 by a political subdivision must contain a statement that the
42 contract is voidable under section 17 of this chapter if the offeror



1 or contractor violates section 13 or 14 of this chapter.

2 (b) Before a contract is awarded to an offeror in relation to a
3 solicitation under this chapter, the offeror must submit to the
4 contracting officer a statement given under the penalties for
5 perjury that neither the offeror nor an affiliated person of the
6 offeror has made a contribution in violation of section 14 of this
7 chapter.

8 Sec. 16. A violation of section 13 or 14 of this chapter is cured if,
9 not later than thirty (30) days after the prohibited contribution is
10 made, the offeror or contractor files with the contract officer a
11 statement given under the penalties for perjury containing the
12 following information:

- 13 (1) A statement that a prohibited contribution was made.
14 (2) The date of the prohibited contribution.
15 (3) The name of the person making the prohibited
16 contribution.
17 (4) The name of the elected official to whom the prohibited
18 contribution was made.
19 (5) A statement that the prohibited contribution has been
20 returned to the person making the contribution.
21 (6) The date that the prohibited contribution was returned.

22 Sec. 17. (a) This section applies to a contract with a person that
23 violates section 13 or 14 of this chapter.

24 (b) The contract officer shall void a contract described in
25 subsection (a) unless the contract officer makes a written
26 determination that voiding the contract would be contrary to the
27 best interests of the political subdivision. The written
28 determination must state the reasons why the contract officer
29 considers voiding the contract would be contrary to the best
30 interests of the political subdivision.

31 Sec. 18. (a) An offeror that violates section 13 of this chapter is
32 considered a nonresponsible offeror by the political subdivision for
33 a period of one (1) year beginning with the date of the award of the
34 contract.

35 (b) A contractor that violates section 14 of this chapter is
36 considered a nonresponsible offeror for a period of one (1) year
37 beginning with:

- 38 (1) the date the contract is voided under section 17 of this
39 chapter, if the contract is voided; and
40 (2) the end of the term of the contract if the contract officer
41 makes a written determination under section 17(b) of this
42 chapter.

