



February 21, 2017

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## SENATE BILL No. 126

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DIGEST OF SB 126 (Updated February 20, 2017 11:58 am - DI 102)

**Citations Affected:** IC 5-16; noncode.

**Synopsis:** Government ethics and procurement of certain services. Requires a political subdivision to comply with certain procedures when acquiring the services of architects, engineers, and land surveyors. (Under current law, the procedures are not mandatory.) Requires a public agency awarding a contract for the services of architects, engineers, and land surveyors to publicly post, for each firm that submits a statement of qualifications for a project, the public agency's evaluation of the firm for the project. Provides that a firm may not make a contribution to an individual who holds an elected office of the political subdivision awarding a contract for the services of architects, engineers, and land surveyors during the period after the notice or solicitation is issued and before a contract is 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 has supervisory authority over the public agency issuing the notice for the contract. Provides that a violation is cured if the prohibited contribution is returned to the firm making the contribution, or the contract officer makes a written determination that awarding the contract to the firm is in the best interests of the public agency. Provides that, if a firm makes a prohibited contribution and the violation is not cured, the firm is considered nonresponsible by the public agency for a period of one year beginning with the date of the award of the contract. Provides that only contributions that are reportable under Indiana campaign finance law are restricted. Urges the legislative council to assign to an appropriate interim study committee the topic of political contributions made to an individual holding a state elected office by offerors and contractors awarded, or submitting offers or bids for possible award of, contracts for supplies or services, including professional services, or a public works project in response to solicitations issued by the state.

**Effective:** July 1, 2017.

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January 4, 2017, read first time and referred to Committee on Elections.  
February 20, 2017, amended, reported favorably — Do Pass.

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SB 126—LS 6602/DI 75





February 21, 2017

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 5-16-11.1-4 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) When  
3 professional services are required for a project, a public agency ~~may~~  
4 **shall do at least one (1) of the following:**  
5 (1) Publish notice in accordance with IC 5-3-1.  
6 (2) Provide for notice (other than notice in accordance with  
7 IC 5-3-1) as it determines is reasonably calculated to inform those  
8 performing professional services of a proposed project.  
9 (3) Provide for notice in accordance with both subdivisions (1)  
10 and (2). ~~or~~  
11 ~~(4) Determine not to provide any notice.~~  
12 (b) ~~If~~ **When** the public agency provides for notice under subsection  
13 (a)(1), (a)(2), or (a)(3), each notice must include **all of the following:**  
14 (1) The location of the project.  
15 (2) A general description of the project.  
16 (3) The general criteria to be used in selecting professional  
17 services firms for the project.

SB 126—LS 6602/DI 75



1 (4) The place where any additional project description or  
2 specifications are on file.

3 (5) The hours of business of the public agency. ~~and~~

4 (6) The last date for accepting statements of qualifications from  
5 interested parties.

6 SECTION 2. IC 5-16-11.1-5 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. **(a)** A public agency  
8 ~~may~~ **shall** make all contracts for professional services on the basis of  
9 competence and qualifications for the type of services to be performed  
10 and negotiate compensation that the public agency determines to be  
11 reasonable.

12 **(b) After the award of a contract for professional services for a**  
13 **project under this chapter, the public agency awarding the**  
14 **contract shall publicly post, for each firm that submitted a**  
15 **statement of qualifications for the project, the public agency's**  
16 **evaluation of the firm using the criteria listed in the notice made**  
17 **under section 4(b)(3) of this chapter and any additional criteria**  
18 **used to select a firm for the project.**

19 SECTION 3. IC 5-16-11.1-6 IS ADDED TO THE INDIANA CODE  
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
21 1, 2017]: Sec. 6. **(a)** As used in this section, "contract officer" refers  
22 to the:

23 **(1) purchasing agent (as defined by IC 5-22-2-26); or**

24 **(2) officer, board, or employee responsible for awarding a**  
25 **contract.**

26 **(b) As used in this section, "contribution" refers to a**  
27 **contribution as defined in IC 3-5-2-15, but only if the contribution**  
28 **is reportable under IC 3-9.**

29 **(c) During the period described in subsection (d), a professional**  
30 **services firm may not make a contribution to an individual who**  
31 **holds an elected office of the political subdivision awarding a**  
32 **contract if both of the following apply:**

33 **(1) The individual is also a member of the legislative or**  
34 **executive branch of that political subdivision that has final**  
35 **approval of the contract.**

36 **(2) The legislative or executive branch of that political**  
37 **subdivision has supervisory authority over the public agency**  
38 **issuing the notice described in section 4 of this chapter or a**  
39 **solicitation for the contract.**

40 **(d) The prohibition on contributions under this section:**

41 **(1) begins on the earlier of:**

42 **(A) the date the notice described in section 4 of this chapter**



- 1           **is provided; or**  
 2           **(B) the date the solicitation for the professional services is**  
 3           **issued; and**  
 4           **(2) ends on the day after the date the contract is awarded.**  
 5       **(e) A violation of subsection (c) is cured if:**  
 6           **(1) the prohibited contribution is returned to the firm making**  
 7           **the contribution; or**  
 8           **(2) the contract officer makes a written determination that**  
 9           **awarding the contract to the firm is in the best interests of the**  
 10           **public agency. The written determination is a public record**  
 11           **under IC 5-14-3 and must state the reasons why the contract**  
 12           **officer considers the award of the contract to the firm is in the**  
 13           **best interests of the public agency.**  
 14       **(f) If a firm violates subsection (c), and the violation is not cured**  
 15       **under subsection (e), the firm is considered nonresponsible by the**  
 16       **public agency for a period of one (1) year beginning with the date**  
 17       **of the award of the contract.**  
 18       SECTION 4. [EFFECTIVE JULY 1, 2017] **(a) As used in this**  
 19       **SECTION, "contract" refers to a contract for:**  
 20           **(1) supplies or services, including professional services, under**  
 21           **IC 5-22; or**  
 22           **(2) a public works project under IC 36-1-12.**  
 23       **(b) As used in this SECTION, "contractor" refers to a person**  
 24       **who has been awarded a contract.**  
 25       **(c) As used in this SECTION, "contribution" refers to a**  
 26       **contribution as defined in IC 3-5-2-15, but only if the contribution**  
 27       **is reportable under IC 3-9.**  
 28       **(d) As used in this SECTION, "offeror" means a person that**  
 29       **submits an offer.**  
 30       **(e) As used in this SECTION, subject to subsection (f),**  
 31       **"solicitation" means the procedure by which the state invites**  
 32       **persons to submit an offer to enter into a contract with the state.**  
 33       **(f) For purposes of this SECTION, "solicitation" refers only to**  
 34       **the 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       **(g) The general assembly urges the legislative council to assign**



1 to an appropriate interim study committee the topic of political  
2 contributions made to an individual holding a state elected office  
3 by offerors and contractors awarded, or submitting offers or bids  
4 for possible award of, contracts for supplies or services, including  
5 professional services, or a public works project in response to  
6 solicitations issued by the state.

7 (h) If the legislative council assigns the topic described in  
8 subsection (g) to an appropriate interim study committee, the study  
9 committee shall complete the study required by this SECTION and  
10 report its findings and recommendations, if any, including any  
11 recommended legislation, to the legislative council in an electronic  
12 format under IC 5-14-6 not later than November 1, 2017.

13 (i) This SECTION expires January 1, 2018.



## COMMITTEE REPORT

Madam President: The Senate Committee on Elections, to which was referred Senate Bill No. 126, 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, begin a new paragraph and insert:

"SECTION 1. IC 5-16-11.1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4. (a) When professional services are required for a project, a public agency ~~may~~ **shall do at least one (1) of the following:**

- (1) Publish notice in accordance with IC 5-3-1.
- (2) Provide for notice (other than notice in accordance with IC 5-3-1) as it determines is reasonably calculated to inform those performing professional services of a proposed project.
- (3) Provide for notice in accordance with both subdivisions (1) and (2). ~~or~~

~~(4) Determine not to provide any notice.~~

(b) ~~If~~ **When** the public agency provides for notice under subsection (a)(1), (a)(2), or (a)(3), each notice must include **all of the following:**

- (1) The location of the project.
- (2) A general description of the project.
- (3) The general criteria to be used in selecting professional services firms for the project.
- (4) The place where any additional project description or specifications are on file.
- (5) The hours of business of the public agency. ~~and~~
- (6) The last date for accepting statements of qualifications from interested parties.

SECTION 2. IC 5-16-11.1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) A public agency ~~may~~ **shall** make all contracts for professional services on the basis of competence and qualifications for the type of services to be performed and negotiate compensation that the public agency determines to be reasonable.

**(b) After the award of a contract for professional services for a project under this chapter, the public agency awarding the contract shall publicly post, for each firm that submitted a statement of qualifications for the project, the public agency's evaluation of the firm using the criteria listed in the notice made under section 4(b)(3) of this chapter and any additional criteria used to select a firm for the project.**



SECTION 3. IC 5-16-11.1-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 6. (a) As used in this section, "contract officer" refers to the:**

- (1) purchasing agent (as defined by IC 5-22-2-26); or**
- (2) officer, board, or employee responsible for awarding a contract.**

**(b) As used in this section, "contribution" refers to a contribution as defined in IC 3-5-2-15, but only if the contribution is reportable under IC 3-9.**

**(c) During the period described in subsection (d), a professional services firm may not make a contribution to an individual who holds an elected office of the political subdivision awarding a contract if both of the following apply:**

- (1) The individual is also a member of the legislative or executive branch of that political subdivision that has final approval of the contract.**
- (2) The legislative or executive branch of that political subdivision has supervisory authority over the public agency issuing the notice described in section 4 of this chapter or a solicitation for the contract.**

**(d) The prohibition on contributions under this section:**

- (1) begins on the earlier of:**
  - (A) the date the notice described in section 4 of this chapter is provided; or**
  - (B) the date the solicitation for the professional services is issued; and**
- (2) ends on the day after the date the contract is awarded.**

**(e) A violation of subsection (c) is cured if:**

- (1) the prohibited contribution is returned to the firm making the contribution; or**
- (2) the contract officer makes a written determination that awarding the contract to the firm is in the best interests of the public agency. The written determination is a public record under IC 5-14-3 and must state the reasons why the contract officer considers the award of the contract to the firm is in the best interests of the public agency.**

**(f) If a firm violates subsection (c), and the violation is not cured under subsection (e), the firm is considered nonresponsible by the public agency for a period of one (1) year beginning with the date of the award of the contract."**

Delete pages 2 through 4.





Page 5, delete lines 1 through 41.

Page 5, line 42, delete "Sec. 4.", begin a new paragraph and insert:  
"SECTION 4. [EFFECTIVE JULY 1, 2017] **(a)**".

Page 5, line 42, delete "chapter," and insert "SECTION,".

Page 6, delete lines 5 through 8.

Page 6, line 9, delete "Sec. 6." and insert "**(b)**".

Page 6, line 9, delete "chapter," and insert "SECTION,".

Page 6, line 11, delete "Sec. 7." and insert "**(c)**".

Page 6, line 11, delete "chapter," and insert "SECTION,".

Page 6, delete lines 14 through 26.

Page 6, line 27, delete "Sec. 10." and insert "**(d)**".

Page 6, line 27, delete "chapter," and insert "SECTION,".

Page 6, line 29, delete "Sec. 11. (a)" and insert "**(e)**".

Page 6, line 29, delete "chapter," and insert "SECTION,".

Page 6, line 29, delete "(b)," and insert "**(f)**".

Page 6, line 30, delete "a political subdivision" and insert "**the state**".

Page 6, line 32, delete "political subdivision." and insert "**state**".

Page 6, line 33, delete "(b)" and insert "**(f)**".

Page 6, line 33, delete "chapter," and insert "SECTION,".

Page 6, delete line 42, begin a new paragraph and insert:

**"(g) The general assembly urges the legislative council to assign to an appropriate interim study committee the topic of political contributions made to an individual holding a state elected office by offerors and contractors awarded, or submitting offers or bids for possible award of, contracts for supplies or services, including professional services, or a public works project in response to solicitations issued by the state.**

**(h) If the legislative council assigns the topic described in subsection (g) to an appropriate interim study committee, the study committee shall complete the study required by this SECTION and report its findings and recommendations, if any, including any recommended legislation, to the legislative council in an electronic format under IC 5-14-6 not later than November 1, 2017.**



**(i) This SECTION expires January 1, 2018."**

Delete pages 7 through 8.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 126 as introduced.)

WALKER, Chairperson

Committee Vote: Yeas 7, Nays 2.

