



January 29, 2016

SENATE BILL No. 367

DIGEST OF SB 367 (Updated January 27, 2016 3:59 pm - DI 87)

Citations Affected: IC 36-1.

Synopsis: Local government contracts. 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, 2016.

Brown L

January 11, 2016, read first time and referred to Committee on Local Government.
January 28, 2016, amended, reported favorably — Do Pass.

SB 367—LS 6710/DI 75



January 29, 2016

Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

SENATE BILL No. 367

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-1-24 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2016]:

4 **Chapter 24. Political Contributions by Offerors and**
5 **Contractors**

6 **Sec. 1. This chapter applies only to:**

7 **(1) an offer submitted to a political subdivision; and**

8 **(2) a contract awarded by a political subdivision;**

9 **after June 30, 2016.**

10 **Sec. 2. As used in this chapter, "affiliated person" refers to any**
11 **of the following:**

12 **(1) A person with any ownership interest or distributive share**
13 **of a business entity of more than five percent (5%).**

14 **(2) An executive employee of a business entity.**

15 **(3) The spouse of an individual described in subdivision (1) or**

16 **(2).**

17 **(4) The minor child of an individual described in subdivision**

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- 1 (1) or (2).
 2 (5) A subsidiary of a business entity.
 3 (6) A member of the same unitary business group as a
 4 business entity.
 5 (7) A subcontractor of a business entity.
 6 (8) An organization recognized by the United States Internal
 7 Revenue Service as a tax exempt organization described in
 8 Section 501(c) of the Internal Revenue Code that is
 9 established by:
 10 (A) a business entity;
 11 (B) a person described in subdivision (1), (2), (3), or (4); or
 12 (C) an entity described in subdivision (5) or (6).
 13 (9) A political action committee for which:
 14 (A) a business entity; or
 15 (B) any Section 501(c) organization described in
 16 subdivision (8) related to that business entity;
 17 is a sponsor.
- 18 **Sec. 3.** As used in this chapter, "business entity" refers to any of
 19 the following doing business for profit:
 20 (1) A sole proprietorship.
 21 (2) A partnership.
 22 (3) A limited liability partnership.
 23 (4) A limited liability company.
 24 (5) A corporation.
 25 (6) Any other person doing business for profit, regardless of
 26 the person's legal organization.
- 27 **Sec. 4.** As used in this chapter, "contract" refers to a contract
 28 for:
 29 (1) supplies or services, including professional services, under
 30 IC 5-22; or
 31 (2) a public works project under IC 36-1-12.
- 32 **Sec. 5.** As used in this chapter, "contract officer" refers to the:
 33 (1) purchasing agent under IC 5-22; or
 34 (2) officer, board, or employee responsible for awarding a
 35 public works contract.
- 36 **Sec. 6.** As used in this chapter, "contractor" refers to a person
 37 who has been awarded a contract.
- 38 **Sec. 7.** As used in this chapter, "contribution" refers to a
 39 contribution as defined in IC 3-5-2-15 but only if the contribution
 40 is reportable under IC 3-9.
- 41 **Sec. 8.** As used in this chapter, "executive employee" refers to
 42 any of the following:



- 1 (1) The president of a business entity.
 2 (2) The chairman of a business entity.
 3 (3) The chief executive officer of a business entity.
 4 (4) An employee of a business entity:
 5 (A) who has executive decision making authority over the
 6 long term and day to day affairs of the business entity; or
 7 (B) whose compensation is determined directly, in whole or
 8 in part, by the award of, or payment under, contracts
 9 between the political subdivision and the business entity.
- 10 Sec. 9. As used in this chapter, "offer" means a response to a
 11 solicitation.
- 12 Sec. 10. As used in this chapter, "offeror" means a person who
 13 submits an offer.
- 14 Sec. 11. (a) As used in this chapter, subject to subsection (b),
 15 "solicitation" means the procedure by which a political subdivision
 16 invites persons to submit an offer to enter into a contract with the
 17 political subdivision.
- 18 (b) For purposes of this chapter, "solicitation" refers only to the
 19 following:
 20 (1) A solicitation for purchase of services under IC 5-22-6.
 21 (2) A request for proposals under IC 5-22-9.
 22 (3) A solicitation for the provision of professional services for
 23 a public works project.
 24 (4) A solicitation for the provision of work or services for a
 25 public works project under a contract that is awarded by
 26 other than competitive bids.
- 27 Sec. 12. As used in this chapter, "sponsor" refers to an
 28 individual or organization that contributes at least thirty-three
 29 percent (33%) of the total funding of a political action committee.
- 30 Sec. 13. (a) During the period described in subsection (b), a
 31 contractor and an affiliated person of the contractor may not make
 32 a contribution to an individual who holds an elected office of the
 33 political subdivision awarding the contract if both of the following
 34 apply:
 35 (1) The individual is also a member of the legislative or
 36 executive branch of that political subdivision that has final
 37 approval of the contract.
 38 (2) The legislative or executive branch of that political
 39 subdivision has supervisory authority over the agency issuing
 40 the solicitation.
- 41 (b) The prohibition on contributions under this section:
 42 (1) begins on the date of the award of the contract; and



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

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

3 (B) One (1) year after the date of the expiration or
4 termination of the contract.

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

6 (1) a person who has no contracts but has an offer pending;
7 and

8 (2) an affiliated person of the person described in subdivision
9 (1).

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

14 (1) The individual is also a member of the legislative or
15 executive branch of that political subdivision that has final
16 approval of the contract.

17 (2) The legislative or executive branch of that political
18 subdivision has supervisory authority over the agency issuing
19 the solicitation.

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

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

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

23 Sec. 15. (a) Every:

24 (1) solicitation issued; and

25 (2) contract entered into;

26 by a political subdivision must contain a statement that the
27 contract is voidable under section 17 of this chapter if the offeror
28 or contractor violates section 13 or 14 of this chapter.

29 (b) Before a contract is awarded to an offeror in relation to a
30 solicitation under this chapter, the offeror must submit to the
31 contracting officer a statement given under the penalties for
32 perjury that neither the offeror nor an affiliated person of the
33 offeror has made a contribution in violation of section 14 of this
34 chapter.

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

40 (1) A statement that a prohibited contribution was made.

41 (2) The date of the prohibited contribution.

42 (3) The name of the person making the prohibited



1 **contribution.**
2 **(4) The name of the elected official to whom the prohibited**
3 **contribution was made.**
4 **(5) A statement that the prohibited contribution has been**
5 **returned to the person making the contribution.**
6 **(6) The date that the prohibited contribution was returned.**
7 **Sec. 17. (a) This section applies to a contract with a person who**
8 **violates section 13 or 14 of this chapter.**
9 **(b) The contract officer shall void a contract described in**
10 **subsection (a) unless the contract officer makes a written**
11 **determination that voiding the contract would be contrary to the**
12 **best interests of the political subdivision. The written**
13 **determination must state the reasons why the contract officer**
14 **considers voiding the contract would be contrary to the best**
15 **interests of the political subdivision.**
16 **Sec. 18. (a) An offeror that violates section 13 of this chapter**
17 **shall be considered a nonresponsible offeror by the political**
18 **subdivision for a period of two (2) years beginning with the date of**
19 **the award of the contract.**
20 **(b) A contractor that violates section 14 of this chapter shall be**
21 **considered a nonresponsible offeror for a period of two (2) years**
22 **beginning with:**
23 **(1) the date the contract is voided under section 17 of this**
24 **chapter, if the contract is voided; and**
25 **(2) the end of the term of the contract if the contract officer**
26 **makes a written determination under section 17(b) of this**
27 **chapter.**



COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 367, 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 2, delete lines 38 through 39, begin a new paragraph and insert:

"Sec. 7. As used in this chapter, "contribution" refers to a contribution as defined in IC 3-5-2-15 but only if the contribution is reportable under IC 3-9."

Page 3, delete lines 29 through 33, begin a new paragraph and insert:

"Sec. 13. (a) During the period described in subsection (b), a contractor and an affiliated person of the contractor may not make a contribution to an individual who holds an elected office of the political subdivision awarding the 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 agency issuing the solicitation."**

Page 3, line 36, delete "later" and insert "earlier".

Page 3, line 37, delete "Four (4)" and insert "Two (2)".

Page 3, delete lines 41 through 42, begin a new paragraph and insert:

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

- (1) a person who has no contracts but has an offer pending;**
- and**
- (2) an affiliated person of the person described in subdivision (1).**

(b) During the period described in subsection (c), a person may not make a contribution to an individual who holds an elected office of the political subdivision awarding the 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 agency issuing the solicitation."**



Page 4, delete lines 1 through 5.

Page 4, line 6, delete "(b)" and insert "(c)".

Page 5, line 4, delete "three (3)" and insert "**two (2)**".

Page 5, line 7, delete "nonresponsive" and insert "**nonresponsible**".

Page 5, line 7, delete "three (3)" and insert "**two (2)**".

and when so amended that said bill do pass.

(Reference is to SB 367 as introduced.)

HEAD, Chairperson

Committee Vote: Yeas 8, Nays 0.

