



H.B. 511

126th General Assembly
(As Introduced)

**Reps. Cassell, Boccieri, Skindell, Hartnett, Koziura, Garrison, S. Patton,
Yuko, Harwood, Mitchell**

BILL SUMMARY

- Expands the law governing the award by state agencies and departments and political subdivisions of non-competitively bid contracts for the purchase of goods or services costing more than \$500, so as to include every organized body, office, and agency established by the laws of the state for the exercise of any function of state government.
- Eliminates from that law the current exceptions for the Controlling Board, the Board of Commissioners of the Sinking Fund, municipal legislative authorities, boards of education, boards of county commissioners, boards of township trustees, and other boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other similar entities created by law.
- Prohibits state agencies and political subdivisions from awarding a non-competitively bid contract for the purchase of goods or services costing more than \$500 to an individual, partnership, association, estate, trust, corporation, or business trust until it receives a written certification from that individual or business entity affirming that the individual or certain persons associated with that individual or business entity have not made certain campaign contributions within the two previous calendar years.
- Eliminates, in relation to the general rule that the Governor's office is considered "having ultimate responsibility for the award of a contract" when the Governor appoints the public officer who awards the contract, the exception for public officers who are members of boards, commissions, committees, authorities, councils, boards of trustees, task forces, or other similar entities appointed by the Governor.

- Eliminates, in relation to the general rule that the office of an elected chief executive officer of a municipal corporation or of a county operating under an alternative form of county government or a county charter is considered "having ultimate responsibility for the award of a contract" when the chief executive officer appoints the public officer who awards the contract, the exception for public officers who are members of boards, commissions, committees, authorities, councils, boards of trustees, task forces, or other similar entities appointed by the chief executive officer.

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CONTENT AND OPERATION

Existing law

In general

Current law establishes several prohibitions regarding campaign contributions as they relate to individuals and business entities that desire to be awarded a contract from a state agency or department or a political subdivision. These prohibitions can be divided into two groups--(1) those concerning individuals, partnerships, associations, estates, and trusts and (2) those concerning corporations and business trusts.

Prohibitions

Individuals, partnerships, associations, estates, and trusts. Current law generally prohibits a state agency or department or a political subdivision from awarding any contract--other than one let by competitive bidding or a contract that is incidental to one let by competitive bidding or that is by force account--for the

purchase of goods or services costing more than \$500 to any individual, any partnership, any association, including a professional association, any estate, or any trust if the individual or the individual's spouse has made, or any partner, shareholder, administrator, executor, or trustee or the spouse of any of them has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000 to either the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee (R.C. 3517.13(I)).¹

Corporations and business trusts. A similar prohibition also applies to corporations and business trusts. Specifically, a state agency or department or a political subdivision generally may not award a contract--other than one let by competitive bidding or a contract that is incidental to one let by competitive bidding or that is by force account--for the purchase of goods or services costing more than \$500 to any corporation or business trust if the owner of more than 20% of the corporation or business trust or the spouse of that person has made, as an individual, within the two previous calendar years--taking into consideration only owners for all of that period--one or more contributions totaling in excess of \$1,000 to either the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee (R.C. 3517.13(J)).

Exceptions

Existing law exempts from the prohibitions outlined above the actions of the Controlling Board as well as contracts for goods or services awarded by any of the following entities, provided that the members of that entity act collectively in the award of the contract (R.C. 3517.13(M)(1) and (2)):

- The Board of Commissioners of the Sinking Fund.
- Municipal legislative authorities.
- Boards of education.
- Boards of county commissioners.

¹ *"Professional association" means an association organized for the sole purpose of rendering professional services of certified public accountants, licensed professional accountants, architects, attorneys, dentists, nurses, optometrists, pharmacists, physician assistants, physicians, limited branches of medicine practitioners, psychologists, professional engineers, professional surveyors, chiropractors, veterinarians, occupational therapists, physical therapists, etc. (see R.C. 1785.01(B)--not in the bill).*

- Boards of township trustees.
- Other boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities created by (1) law, (2) the Supreme Court, (3) courts of appeals, (4) county courts consisting of more than one judge, (5) courts of common pleas consisting of more than one judge, (6) municipal courts consisting of more than one judge, or (7) a division of any court if the division consists of more than one judge.

Public officer with ultimate responsibility for contract award--special rules

Current law provides that, for purposes of the prohibitions outlined above, if the public officer who is responsible for the award of a contract is a gubernatorial appointee, the Governor's office generally is considered to have ultimate responsibility for the award of the contract. However, this rule does not apply if the public officer in question is a member of a board, commission, committee, authority, council, board of trustees, task force, or other similar entity appointed by the Governor. (R.C. 3517.13(K).)

Likewise, current law generally provides that, if the public officer who is responsible for the award of a contract is appointed by the elected chief executive officer of a municipal corporation or the elected chief executive officer of a county operating under an alternative form of county government or a county charter, the office of that chief executive officer is considered to have ultimate responsibility for the award of the contract. However, as with gubernatorial appointments, this rule does not apply if the public officer in question is a member of a board, commission, committee, authority, council, board of trustees, task force, or other similar entity appointed by the chief executive officer. (R.C. 3517.13(L).)

Changes proposed by the bill

Expansion of scope

Under current law, as noted previously, the prohibitions outlined above apply to "state agencies and departments" and political subdivisions. "State agencies and departments" arguably do not include any of the constitutionally created executive branch offices, such as those of the Attorney General and Secretary of State.

For purposes of both the continuing prohibitions outlined above as well as new prohibitions the bill proposes (see below), the bill replaces "state agencies and departments" with the more expansive term "state agency." This term is

specifically defined, by cross-reference, to include every organized body, office, or agency established by the laws of the state for the exercise of any function of state government. (R.C. 3517.13(I), (J), and (AA) and R.C. 1.60--not in the bill.)

Exceptions

The bill also revises the exceptions to the prohibitions of continuing law outlined above. Specifically, it eliminates the exceptions for the Controlling Board, the Board of Commissioners of the Sinking Fund, municipal legislative authorities, boards of education, boards of county commissioners, boards of township trustees, and other boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other similar entities created by law--thus subjecting them to both continuing law's prohibitions as well as the new prohibitions the bill proposes (see below). (R.C. 3517.13(M)(1) and (2).)

Proposed prohibitions

Individuals, partnerships, associations, estates, and trusts. The bill's first new prohibition prohibits a state agency or a political subdivision from awarding any contract--other than one let by competitive bidding or a contract that is incidental to one let by competitive bidding or that is by force account--for the purchase of goods or services costing more than \$500 to any individual, any partnership, any association, including a professional association, any estate, or any trust *until* it receives a *written certification* from the applicable individual, partnership, association, estate, or trust affirming that the individual and the individual's spouse have not made, or any partner, shareholder, administrator, executor, or trustee or the spouse of any of them has not made, as an individual, within the two previous calendar years one or more contributions totaling in excess of \$1,000 to the holder of the public office having ultimate responsibility for the award of the contract or to the public officer's campaign committee (R.C. 3517.13(I)(2)).

Corporations and business trusts. The bill's second, similar prohibition applies to corporations and business trusts. Specifically, state agencies and political subdivisions are prohibited from awarding any contract--other than one let by competitive bidding or a contract that is incidental to one let by competitive bidding or that is by force account--for the purchase of goods or services costing more than \$500 to a corporation or business trust *until* they receive a *written certification* from the applicable corporation or business trust affirming that no owner of more than 20% of the corporation or business trust and no spouse of such an owner has made, as an individual, within the two previous calendar years--taking into consideration only owners for all of that period--one or more contributions totaling in excess of \$1,000 to the holder of the public office having

ultimate responsibility for the award of the contract or to the public officer's campaign committee (R.C. 3517.13(J)(2)).

Public officer with ultimate responsibility for contract award--special rules

The bill also revises the special rules concerning the determination of the public officer having ultimate responsibility for the award of a contract--rules which apply to both the continuing law prohibitions as well as the new prohibitions outlined above. Specifically, it *eliminates current law's exemptions* (1) of public officers who are members of boards, commissions, committees, authorities, councils, boards of trustees, task forces, or other similar entities because of a gubernatorial appointment from the general rule that the Governor's office is considered to have ultimate responsibility for the award of the contract if the Governor appointed the public officer in question and (2) of public officers who are members of any of those types of entities because of appointment by an elected chief executive officer of a municipal corporation or of a county operating under an alternative form of county government or a county charter from the general rule that the chief executive officer's office is considered to have ultimate responsibility for the award of the contract if the chief executive officer appointed the public officer in question. Thus, the two general rules of ultimate responsibility would apply under the bill, respectively, to the Governor's office with respect to the contracts awarded by *all* gubernatorial appointees and to a municipal corporation or county elected chief executive officer with respect to contracts awarded by *all* of that officer's appointees. (R.C. 3517.13(K) and (L).)

HISTORY

ACTION	DATE
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