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*Bill Analysis*  
Legislative Service Commission

## **Sub. H.B. 694**

126th General Assembly  
(As Reported by H. Finance and Appropriations)

**Reps. DeWine, Calvert, Trakas, Peterson, R. McGregor, Dolan, Webster, Raga, Flowers, Martin, C. Evans**

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### **BILL SUMMARY**

- Prohibits an executive agency from awarding, or submitting to the Controlling Board, a contract that will involve the spending or investing or more than \$1 million unless the Attorney General first reviews and approves that contract.
- Requires the Attorney General to post on the Attorney General's web site any such contract that the Attorney General reviews and approves.
- Prohibits the holder of the public office with ultimate responsibility for the award of a state contract from soliciting a contribution from, or from directing a contribution by, the holder of that contract, or the family member of the holder of that contract to any (1) candidate or campaign committee, (2) political party, (3) ballot issue committee or political action committee or other entity the primary purpose of which is to support or oppose any statewide ballot issue.
- Prohibits, the Speaker of the House and the President of the Senate from soliciting a contribution from, or from directing a contribution by, the holder of a state contract or the family member of the holder of a state contract to a legislative campaign fund if the applicable officer awards the contract.
- Specifies that the previously described prohibitions begin on the date the contract is awarded and extend until one year following the conclusion of the contract.
- Specifies that the previously described prohibitions do not apply to solicitations made by the applicable official for contributions to the person's own campaign committee.

- Expands the prohibition against awarding a state contract to an organization if specified persons responsible for that organization make a contribution exceeding \$1,000 to the holder of the public office with ultimate responsibility for the award of the contract to also prohibit a contract from being awarded if such a contribution is made by any child aged seven to 17 years of such a person, and to any combination of those persons, their spouses, and children aged seven to 17 years.
- Specifies that the prohibition against awarding a contract if contributions exceeding \$1,000 were made by a child of a person responsible for the organization seeking the award of the contract or by a combination of responsible persons, their spouses, and children, does not apply to contributions made before January 1, 2007.
- Subject to specified exceptions, prohibits specified persons responsible for an organization that has been awarded a state contract, their spouses, and children aged seven to 17 years, and any combination of those persons from making a contribution exceeding \$1,000 to the holder of the public office with ultimate responsibility for the award of the contract from the time the contract is awarded until one year after the conclusion of the contract.
- Expands the definition of the "holder of the public office" to also limit contributions made to a candidate for that office.
- Establishes penalties for violations of these state contractor contribution limits.

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## CONTENT AND OPERATION

### *Approval of executive agency contracts in excess of \$1 million*

The bill prohibits an executive agency from awarding a contract that will involve the spending or investing of more than \$1 million of the funds in the agency's custody unless the Attorney General has first reviewed and approved the contract. No contract that is required to be reviewed and approved by the Attorney General may be submitted to the Controlling Board before it has been reviewed and approved by the Attorney General. The Attorney General is required to post on the Attorney General's web site a copy of each contract that the Attorney General reviews and approves.

"Executive agency" means the office of an elected executive official, each administrative department, or any other state agency, department, board, or commission controlled or directed by an elected executive official or otherwise subject to the authority of an elected executive official. "Executive agency" does not include any court, the General Assembly, or the Controlling Board. (R.C. 109.96.)

### *Solicitations of political contributions from state contractors*

#### *Prohibited solicitations*

Beginning on the date that a state contract is awarded and extending until one year following the conclusion of that contract, the bill prohibits the holder of the public office with ultimate responsibility for the award of the contract from soliciting a contribution from or directing a contribution by the holder of the state contract or a family member of the holder of the state contract to any of the following (R.C. 3517.093(B)):<sup>1</sup>

- Any candidate or the campaign committee of any candidate;
- A political party;

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<sup>1</sup> "State contract" means a contract awarded by any agency or department of this state, the Administrator of Workers' Compensation, or the employees of the Bureau of Workers' Compensation, other than a contract awarded by competitive bidding or a contract incidental to such contract or which is by force account, for the purchase of goods costing more than \$500 or services costing more than \$500 (R.C. 3517.093(A)).

- A ballot issue committee or a political action committee or other entity the primary purpose of which is to support or oppose any ballot issue or question that will be presented to voters throughout the entire state;
- A legislative campaign fund, if the holder of the public office with ultimate responsibility for the award of the contract is the President of the Senate or the Speaker of the House of Representatives.

The "holder of the public office with ultimate responsibility for the award of the contract" means all of the following (R.C. 3517.093(A)(2)):

(1) The Governor and Lieutenant Governor, if the contract is awarded by the office of the Governor;

(2) The Governor, if the Governor appoints a public officer who is responsible for the award of the contract, whether or not the appointment is subject to the advice and consent of the Senate;

(3) The Secretary of State, Auditor of State, Treasurer of State, and Attorney General, if the contract is awarded by the respective office;

(4) The President of the Senate, if the contract is awarded by the Senate;

(5) The Speaker of the House of Representatives, if the contract is awarded by the House of Representatives.

The list of holders of a state contract who may not be solicited and whose contributions may not be directed under this provision includes all of the following: an individual who has been awarded a state contract; any partner or owner of a partnership or other unincorporated business that has been awarded a state contract; any shareholder of an association, including a professional association, that has been awarded a state contract; any administrator of an estate that has been awarded a state contract; any executor of an estate that has been awarded a state contract; any trustee of a trust that has been awarded a state contract; and any owner of more than 20% of a corporation or business trust, except a professional association, that has been awarded a state contract. In addition to these owners, the bill prohibits the specified state officers from soliciting contributions from or directing contributions by any of the spouses or children between the ages of seven and 17 years of the contract holders.<sup>2</sup> (R.C. 3517.093(A)(1) and (3).)

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<sup>2</sup> Under continuing law, children under seven years of age are prohibited from making political contributions (R.C. 3517.102(B)(1)(c)).

In addition to prohibiting the specified state officers from soliciting or directing contributions, the bill also prohibits certain entities from knowingly accepting contributions that were solicited or directed in violation of its provisions. Under the bill, no candidate, campaign committee, political party, ballot issue committee, political action committee, legislative campaign fund, or other entity is permitted to knowingly accept a contribution that was solicited or directed in violation of the prohibition. (R.C. 3517.093(C).)

### **Exceptions**

The previously described prohibition against soliciting or directing contributions does not apply to solicitations made by the holder of the public office with ultimate responsibility for the award of the contract for contributions to the person's own campaign committee (R.C. 3517.093(D)).

Additionally, the prohibition does not apply to solicitations of contributions from or the directing of contributions by the holder of a state contract or the family member of the holder of a state contract before the holder of the state contract became a partner, owner, shareholder, administrator, executor, trustee, or owner or after the person ceased to hold any of those positions. Furthermore, it does not apply to a spouse of the holder of the state contract before the two were married, after the granting of a decree of divorce, dissolution of marriage, or annulment, or after the granting of an order in an action brought solely for legal separation. (R.C. 3517.093(E).)

### **Penalties**

If the holder of the public office with ultimate responsibility for the award of a contract solicits or directs a contribution in violation of the prohibition, the office holder is guilty of a misdemeanor of the first degree (R.C. 3517.992(EE)(1)). A misdemeanor of the first degree is punishable by a definite jail term of not more than 180 days, a fine of not more than \$1,000, a community control sanction, or a combination of these penalties.

A candidate, campaign committee, political party, ballot issue committee, political action committee, legislative campaign fund, or other entity that knowingly accepts a contribution that has been so solicited or directed is required to return to the contributor any amount so accepted (R.C. 3517.992(EE)(2)).

### **Political contributions by state contractors**

#### **Contribution limits before a contract is awarded**

Existing law prohibits an agency or department of the state from awarding a state contract to any individual, partnership, association, estate, trust, corporation,

or business trust if any of the following has made, within the previous two calendar years, one or more contributions in excess of \$1,000 to the holder of the public office having ultimate authority for the award of the contract:

- The individual;
- Any partner of the partnership;<sup>3</sup>
- Any shareholder of the association;
- Any administrator of the estate;
- Any executor of the estate;
- Any trustee of the trust;
- Any owner of more than 20% of the corporation or business trust;
- Any spouse of any person previously identified.

Similar language prohibits the Administrator of Workers' Compensation and the employees of the Bureau of Workers' Compensation from conducting business with or awarding any contract to these entities if any of the specified persons has made, within the previous two calendar years, one or more contributions in excess of \$1,000 to the campaign committee of the Governor or Lieutenant Governor, or to the campaign committee of any candidate for the office of Governor or Lieutenant Governor. (R.C. 3517.13(I), (J), (Y), and (Z).)

The bill retains these existing prohibitions and also expands them to prohibit a contract from being awarded to the organization if such a contribution was made (1) by a child aged seven through 17 years of any of the specified persons or (2) by any combination of the specified persons. (R.C. 3517.13(I)(1), (J)(1), (Y)(1), and (Z)(1).)

#### **Contribution limits after a state contract is awarded**

In addition to expanding contribution limits applicable before a contract is awarded, the bill establishes contribution limits applicable from the time the contract is awarded until one year following the conclusion of the contract. Under the bill, once an organization has been awarded a state contract, any of the

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<sup>3</sup> Existing law prohibits a contract from being awarded if a partner of a partnership makes certain contributions to the holder of the public office with ultimate responsibility for the award of the contract. The bill expands this reference to apply to a partner or owner of a partnership or other unincorporated business (R.C. 3517.13).

specified persons responsible for that organization, the spouse or child aged seven to 17 years of any of those persons, and any combination of those persons, spouses, and children is prohibited from making one or more contributions totaling in excess of \$1,000 to the holder of the public office having ultimate responsibility for the award of that contract from the time the contract is awarded until one year following the conclusion of the contract. The bill applies these same provisions to an organization that is seeking to do business with or that has been awarded a contract by the Administrator of Workers' Compensation or the employees of the Bureau of Workers' Compensation. (R.C. 3517.13(I)(2), (J)(2), (Y)(2), and (Z)(2).) (See **COMMENT.**)

The following chart identifies the contribution limits applicable under the bill to the persons responsible for an organization that is seeking or that has been awarded a state contract, to the spouses and children aged seven to 17 years of those persons, and to any combination of those persons, spouses, and children.

	<b>State contracts, generally</b>	<b>Bureau of Workers' Compensation</b>
Two years preceding the award of the contract	\$1,000 from any of the specified persons or the spouses or children of those persons and \$1,000 combined from all such persons and family members to the holder of the public office having ultimate responsibility for the award of a contract.	\$1,000 from any of the specified persons or the spouses or children of those persons and \$1,000 combined from all such persons and family members to the campaign committee of the Governor or Lieutenant Governor, or to the campaign committee of any candidate for the office of Governor or Lieutenant Governor. <sup>4</sup>
From the award of the contract until one year after the conclusion of the contract	\$1,000 from any of the specified persons or the spouses or children of those persons and \$1,000 combined from all such persons and family members to the holder of the public office having ultimate responsibility for the award of the contract.	\$1,000 from any of the specified persons or the spouses or children of those persons and \$1,000 combined from all such persons and family members to the campaign committee of the Governor or Lieutenant Governor, or to the campaign committee

<sup>4</sup> Limit also applies for two years before conducting business with the organization, even if no contract is awarded (R.C. 3517.13(Y) and (Z)).

	State contracts, generally	Bureau of Workers' Compensation
		of any candidate for the office of Governor or Lieutenant Governor. <sup>5</sup>

Under the bill, the contribution limits applicable to persons responsible for organizations that are seeking or that have been awarded a state contract do not apply to contributions made by a political action committee that is established by or affiliated with that organization (R.C. 3517.13(L)).

**Penalty for violations of the contribution limits**

Under existing law, if any of the specified persons or the spouse of any of those persons makes a contribution in excess of the \$1,000 limit, the state agency or department awarding the contract in violation of the prohibition must be fined not more than \$1,000. Whenever a person is found guilty of violating this prohibition, the contract awarded in violation of it must be rescinded if the contract's terms have not yet been performed. The bill retains this penalty for state contracts, generally, and also applies it to contracts awarded by the Administrator of Workers' Compensation and employees of the Bureau of Workers' Compensation.

Under the bill, if a specified person responsible for an organization that has been awarded a state contract, the spouse or child aged seven to 17 years of such a person, or any combination of those persons, spouses, and children makes a prohibited contribution after a contract has been awarded, the person or persons must be fined three times the amount contributed in excess of the amount permitted. And, any contract that makes the person subject to contribution limit may be rescinded at the discretion of the Elections Commission. (R.C. 3517.992(R).)

**Public officer with ultimate responsibility for the award of a contract**

As previously mentioned, the contribution limits applicable to state contractors restrict the amount of contributions that may be given to the holder of the public office having ultimate responsibility for the award of the contract. Under existing law, this applies to contributions made to the holder of the public office, or to the public officer's campaign committee, during the time the person holds the office and during any time the person was a candidate for that office.

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<sup>5</sup> Limit also applies for two years before conducting business with the organization, even if no contract is awarded (R.C. 3517.13(Y) and (Z)).



The bill retains this definition and expands it to also apply to contributions made to, or to the campaign committee of, a candidate for the public office having ultimate responsibility for the award of the contract during any time the person is a candidate for that office. A person becomes a candidate for the office when the person files a declaration of candidacy, a declaration of intent to be a write-in candidate, or a nominating petition, the person is nominated at a primary election, or the person becomes a candidate through the filling of a vacancy. The bill also applies this revised provision to the limitation applicable to the Administrator of Workers' Compensation and employees of the Bureau of Workers' Compensation. (R.C. 3517.13(N).)

**Applicability of contribution limits to contracts awarded by boards and commissions**

Under existing law, the limitation on contributions made to the public officer with ultimate responsibility for the award of a contract does not apply to contracts awarded by boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities created by law if they act collectively in the award of the contract. Additionally, under existing law, the office of the Governor is not considered to be the public officer responsible for the award of a contract if the contract is awarded by members of boards, commissions, committees, authorities, councils, boards of trustees, task forces, and other such entities that are appointed by the Governor. The bill eliminates both of these exceptions.

Thus, under the bill, a board, commission, committee, authority, council, board of trustees, task force, or other such entity may not award a contract to an organization if any of the persons responsible for the organization, the spouses or children aged seven to 17 years of those persons, or any combination of those persons, spouses, and children has made one or more contributions in violation of the applicable contribution limit. If an organization has been awarded a contract by a board, commission, committee, authority, council, board of trustees, task force, or other such entity, the persons responsible for the organization, the spouses or children aged seven to 17 years of those persons, and any combination of those persons, spouses, and children will be subject to the contribution limit for one year following the award of that contract.

If a board, commission, committee, authority, council, board of trustees, task force, or other such entity awards a contract, and if the Governor appoints members of that entity, the office of the Governor will be considered to have ultimate responsibility for the award of a contract. (R.C. 3517.13(K) and (M)(1).)

**Applicability of contribution limits to contracts submitted to the Controlling Board**

Existing law specifies that the current state contractor contribution limits do not apply to actions of the Controlling Board. The bill eliminates this exception and, instead, specifies that contracts approved by the Controlling Board must be considered to be awarded solely by the agency or department that submitted the contract to the Controlling Board. Thus, under the bill, contracts submitted to the Controlling Board will be subject to the contribution limits. To determine whether a contribution violates those limits, the holder of the public office with ultimate responsibility for the award of the contract must be determined based on the agency that awarded the contract. (R.C. 3517.13(M)(2).)

**Award of contracts based on contributions received before January 1, 2007**

The bill specifies that no agency or department of the state or any political subdivision is prohibited from awarding a state contract to an individual, partnership or other unincorporated business, association, estate, trust, corporation, or business trust as a result of contributions made by a child aged seven to 17 years of a person responsible for the organization or by a combination of persons responsible for the organization, their spouses, and children aged seven to 17 years before January 1, 2007. Contributions made by a person responsible for the organization or by that person's spouse prior to January 1, 2007, may still disqualify an organization from receiving a contract, as under existing law. (Section 3.)

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**COMMENT**

The limitation on contributions by a combination of specified persons and family members of an organization that has been awarded a state contract might, in practice, raise issues under the First Amendment to the United States Constitution. The United States Supreme Court has indicated that making political contributions is a form of political speech and political association. *Buckley v. Valeo* (1976), 424 U.S. 1; *McConnell v. FEC* (2003), 540 U.S. 93. Although the constitution permits the amount of contributions made to be limited, the right to make a contribution is protected because it allows the contributor to associate with the candidate of the contributor's choice. It seems possible, for example, that one partner of a partnership that has received a state contract might make a \$1,000 contribution to the holder of the public office with ultimate responsibility for the award of the contract. In such a case, any other partner, as well as any partner's spouse or child, would be prohibited from making any contribution to the holder of that public office. It also seems possible that, under the bill, a business owner could inadvertently violate the contribution limit, as one partner might not be

aware of contributions made by other partners or by the family members of other partners.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	11-29-06
Reported, H. Finance & Appropriations	12-07-06

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