

## Union Calendar No. 384

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2008

[Report No. 112-536]

To amend title 41, United States Code, to prohibit inserting politics into the Federal acquisition process by prohibiting the submission of political contribution information as a condition of receiving a Federal contract.

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### IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2011

Mr. ISSA (for himself, Mr. COLE, Mr. GRAVES of Missouri, Mr. AMASH, Mr. GOWDY, Mr. LANKFORD, Mr. ROSS of Florida, Mr. MCHENRY, Mr. WALBERG, and Mr. KELLY) introduced the following bill; which was referred to the Committee on Oversight and Government Reform

JUNE 15, 2012

Additional sponsors: Mrs. ELLMERS, Mr. LABRADOR, Mr. HANNA, and Mr. ROKITA

JUNE 15, 2012

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

# **A BILL**

To amend title 41, United States Code, to prohibit inserting politics into the Federal acquisition process by prohibiting the submission of political contribution information as a condition of receiving a Federal contract.

1       *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Keeping Politics Out  
5 of Federal Contracting Act of 2011”.

6 **SEC. 2. PROHIBITION ON CERTAIN USES OF POLITICAL IN-**  
7 **FORMATION.**

8       (a) IN GENERAL.—Chapter 47 of title 41, United  
9 States Code, is amended by adding at the end the fol-  
10 lowing new section:

11 **“§ 4712. Prohibition on certain uses of political infor-**  
12 **mation**

13       “(a) PROHIBITION ON REQUIRING SUBMISSION OF  
14 POLITICAL INFORMATION.—The head of an executive  
15 agency may not require a contractor to submit political  
16 information related to the contractor or a subcontractor  
17 at any tier, or any partner, officer, director, or employee  
18 of the contractor or subcontractor—

19               “(1) as part of a solicitation, request for bid,  
20 request for proposal, or any other form of commu-  
21 nication designed to solicit offers in connection with  
22 the award of a contract for procurement of property  
23 or services;

1           “(2) during the course of contract performance  
2           as part of the process associated with modifying a  
3           contract or exercising a contract option; or

4           “(3) any time prior to contract completion and  
5           final contract closeout.

6           “(b) PROHIBITION ON USE OF POLITICAL INFORMA-  
7           TION.—The head of an executive agency may not use po-  
8           litical information, whether obtained from a contractor or  
9           prospective contractor or from an independent public or  
10          nonpublic source, as a factor or consideration in the source  
11          selection process used to award a competitive or non-com-  
12          petitive contract at any value or in making any decision  
13          associated with the modification of a contract or the exer-  
14          cise of a contract option.

15          “(c) PROHIBITION ON INCLUSION OF POLITICAL IN-  
16          FORMATION IN CONTRACTING DATABASES.—

17                 “(1) IN GENERAL.—Except as provided under  
18                 paragraph (2), an executive agency may not include  
19                 political information in the contracting past per-  
20                 formance database or any database designed to pro-  
21                 vide information to a contracting officer for pur-  
22                 poses of supporting the responsibility determination  
23                 by such officer.

24                 “(2) EXCEPTION FOR DISCLOSURE OF CERTAIN  
25                 VIOLATIONS.—

1           “(A) EXCEPTION.—Data required as of  
2           the date of the enactment of the Keeping Poli-  
3           tics Out of Federal Contracting Act of 2011 to  
4           be included in the database maintained under  
5           section 2313 of this title are not subject to the  
6           prohibition under paragraph (1).

7           “(B) RULE OF CONSTRUCTION.—Notwith-  
8           standing subparagraph (A), this paragraph  
9           shall not be construed as authorizing the inclu-  
10          sion of political information pursuant to sub-  
11          section (c)(6) of such section.

12          “(d) APPLICABILITY.—The prohibitions under this  
13          section apply to the procurement of commercial items, the  
14          procurement of commercial off-the-shelf items, and the  
15          non-commercial procurement of supplies, property, serv-  
16          ices, and manufactured items, irrespective of contract ve-  
17          hicle, including contracts, purchase orders, task or deliver  
18          orders under indefinite delivery/indefinite quantity con-  
19          tracts, blanket purchase agreements, and basic ordering  
20          agreements.

21          “(e) RULE OF CONSTRUCTION.—Nothing in this sec-  
22          tion shall be construed as waiving, superseding, restrict-  
23          ing, or limiting the application of the Federal Election  
24          Campaign Act of 1971 (2 U.S.C. 431 et seq.) or pre-

1 venting Federal regulatory or law enforcement agencies  
2 from collecting or receiving information authorized by law.

3 “(f) DEFINITIONS.—In this section:

4 “(1) ACQUISITION.—The term ‘acquisition’ has  
5 the meaning given the term in section 131 of this  
6 title.

7 “(2) CONTRACTOR.—The term ‘contractor’ in-  
8 cludes contractors, bidders, and offerors, and indi-  
9 viduals and legal entities who would reasonably be  
10 expected to submit offers or bids for Federal Gov-  
11 ernment contracts.

12 “(3) EXECUTIVE AGENCY.—The term ‘executive  
13 agency’ has the meaning given the term in section  
14 133 of this title.

15 “(4) POLITICAL INFORMATION.—The term ‘po-  
16 litical information’ means information relating to po-  
17 litical spending, including any payment consisting of  
18 a contribution, expenditure, independent expendi-  
19 ture, or disbursement for an electioneering commu-  
20 nication that is made by the contractor, any of its  
21 partners, officers, directors or employees, or any of  
22 its affiliates or subsidiaries to a candidate or on be-  
23 half of a candidate for election for Federal office, to  
24 a political committee, to a political party, to a third-  
25 party entity with the intention or reasonable expect-

1       tation that it would use the payment to make inde-  
2       pendent expenditures or electioneering communica-  
3       tions, or that is otherwise made with respect to any  
4       election for Federal office, party affiliation, and vot-  
5       ing history. Each of the terms ‘contribution’, ‘ex-  
6       penditure’, ‘independent expenditure’, ‘candidate’,  
7       ‘election’, ‘electioneering communication’, and ‘Fed-  
8       eral office’ has the meaning given the term in the  
9       Federal Campaign Act of 1971 (2 U.S.C. 431 et  
10      seq.).”.

11      (b) CLERICAL AMENDMENT.—The table of sections  
12      at the beginning of chapter 47 of title 41, United States  
13      Code, is amended by inserting after the item relating to  
14      section 4711 the following new item:

“4712. Prohibition on Certain Uses of Political Information.”

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