

Calendar No. 570

112TH CONGRESS
2^D SESSION

S. 1100

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.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2011

Ms. COLLINS (for herself, Mr. MCCONNELL, Mr. KYL, Mr. ALEXANDER, Mr. PORTMAN, Mr. BROWN of Massachusetts, Mr. JOHNSON of Wisconsin, Mr. MORAN, Mr. HATCH, Mr. GRASSLEY, Mr. ENZI, Mr. CORNYN, Mr. BURR, Mr. ISAKSON, Mr. VITTER, Mr. THUNE, Mr. BARRASSO, Mr. WICKER, Mr. JOHANNES, Mr. COATS, Ms. AYOTTE, Mr. BLUNT, and Mr. ROBERTS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

DECEMBER 19, 2012

Reported by Mr. LIEBERMAN, with an amendment

[Omit the part struck through and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. PROHIBITION ON CERTAIN USES OF POLITICAL IN-**
5 **FORMATION.**

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

9 **“§ 4712. Prohibition on certain uses of political infor-**
10 **mation**

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

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

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

25 “(3) any time prior to contract completion and
26 final contract closeout.

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

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

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

19 “(2) EXCEPTION FOR DISCLOSURE OF CERTAIN
20 VIOLATIONS.—

21 “(A) EXCEPTION.—Data required as of
22 the date of the enactment of the Keeping Poli-
23 tics Out of Federal Contracting Act of 2011 to
24 be included in the database maintained under

1 section 2313 of this title are not subject to the
 2 prohibition under paragraph (1).

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

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

17 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-
 18 tion shall be ~~construed as waiving, superseding, restrict-~~
 19 ~~ing, or limiting the application of the Federal Election~~
 20 ~~Campaign Act of 1971 (2 U.S.C. 431 et seq.) or pre-~~
 21 ~~venting Federal regulatory or law enforcement agencies~~
 22 ~~from collecting or receiving information authorized by law.~~
 23 *construed as—*

24 “(1) *waiving, superseding, restricting, or lim-*
 25 *iting the application of the Federal Election Cam-*

1 *paign Act of 1971 (2 U.S.C. 431 et seq.) or pre-*
2 *venting Federal regulatory or law enforcement agen-*
3 *cies from collecting or receiving information author-*
4 *ized by law; or*

5 *“(2) precluding the Defense Contract Audit*
6 *Agency or other auditor from accessing and reviewing*
7 *certain information, including political information,*
8 *for the purpose of identifying unallowable costs and*
9 *administering cost principles established pursuant to*
10 *chapter 43 of this title.*

11 “(f) DEFINITIONS.—In this section:

12 “(1) ACQUISITION.—The term ‘acquisition’ has
13 the meaning given the term in section 131 of this
14 title.

15 “(2) CONTRACTOR.—The term ‘contractor’ in-
16 cludes contractors, bidders, and offerors, and indi-
17 viduals and legal entities who would reasonably be
18 expected to submit offers or bids for Federal Gov-
19 ernment contracts.

20 “(3) EXECUTIVE AGENCY.—The term ‘executive
21 agency’ has the meaning given the term in section
22 133 of this title.

23 “(4) POLITICAL INFORMATION.—The term ‘po-
24 litical information’ means information relating to po-
25 litical spending, including any payment consisting of

1 a contribution, expenditure, independent expendi-
2 ture, or disbursement for an electioneering commu-
3 nication that is made by the contractor, any of its
4 partners, officers, directors or employees, or any of
5 its affiliates or subsidiaries to a candidate or on be-
6 half of a candidate for election for Federal office, to
7 a political committee, to a political party, to a third
8 party entity with the intention or reasonable expect-
9 ation that it would use the payment to make inde-
10 pendent expenditures or electioneering communica-
11 tions, or that is otherwise made with respect to any
12 election for Federal office, party affiliation, and vot-
13 ing history. Each of the terms ‘contribution’, ‘ex-
14 penditure’, ‘independent expenditure’, ‘candidate’,
15 ‘election’, ‘electioneering communication’, and ‘Fed-
16 eral office’ has the meaning given the term in the
17 Federal Campaign Act of 1971 (2 U.S.C. 431 et
18 seq.).”.

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

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

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