



Rep. Ann Williams

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1 AMENDMENT TO HOUSE BILL 345

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 345 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The State Officials and Employees Ethics Act is  
5 amended by changing Sections 5-45, 20-50, and 50-5 as follows:

6 (5 ILCS 430/5-45)

7 Sec. 5-45. Procurement; revolving door prohibition.

8 (a) No former officer, member, or State employee, or spouse  
9 or immediate family member living with such person, shall,  
10 within a period of one year immediately after termination of  
11 State employment, knowingly accept employment or receive  
12 compensation or fees for services from a person or entity if  
13 the officer, member, or State employee, during the year  
14 immediately preceding termination of State employment,  
15 participated personally and substantially in the award of State  
16 contracts, or the issuance of State contract change orders,

1 with a cumulative value of \$25,000 or more to the person or  
2 entity, or its parent or subsidiary.

3 (b) No former officer of the executive branch or State  
4 employee of the executive branch with regulatory or licensing  
5 authority, or spouse or immediate family member living with  
6 such person, shall, within a period of one year immediately  
7 after termination of State employment, knowingly accept  
8 employment or receive compensation or fees for services from a  
9 person or entity if the officer or State employee, during the  
10 year immediately preceding termination of State employment,  
11 participated personally and substantially in making a  
12 regulatory or licensing decision that directly applied to the  
13 person or entity, or its parent or subsidiary.

14 (c) Within 6 months after the effective date of this  
15 amendatory Act of the 96th General Assembly, each executive  
16 branch constitutional officer and legislative leader, the  
17 Auditor General, and the Joint Committee on Legislative Support  
18 Services shall adopt a policy delineating which State positions  
19 under his or her jurisdiction and control, by the nature of  
20 their duties, may have the authority to participate personally  
21 and substantially in the award of State contracts or in  
22 regulatory or licensing decisions. The Governor shall adopt  
23 such a policy for all State employees of the executive branch  
24 not under the jurisdiction and control of any other executive  
25 branch constitutional officer.

26 The policies required under subsection (c) of this Section

1 shall be filed with the appropriate ethics commission  
2 established under this Act or, for the Auditor General, with  
3 the Office of the Auditor General.

4 (d) Each Inspector General shall have the authority to  
5 determine that additional State positions under his or her  
6 jurisdiction, not otherwise subject to the policies required by  
7 subsection (c) of this Section, are nonetheless subject to the  
8 notification requirement of subsection (f) below due to their  
9 involvement in the award of State contracts or in regulatory or  
10 licensing decisions.

11 (e) The Joint Committee on Legislative Support Services,  
12 the Auditor General, and each of the executive branch  
13 constitutional officers and legislative leaders subject to  
14 subsection (c) of this Section shall provide written  
15 notification to all employees in positions subject to the  
16 policies required by subsection (c) or a determination made  
17 under subsection (d): (1) upon hiring, promotion, or transfer  
18 into the relevant position; and (2) at the time the employee's  
19 duties are changed in such a way as to qualify that employee.  
20 An employee receiving notification must certify in writing that  
21 the person was advised of the prohibition and the requirement  
22 to notify the appropriate Inspector General in subsection (f).

23 (f) Any State employee in a position subject to the  
24 policies required by subsection (c) or to a determination under  
25 subsection (d), but who does not fall within the prohibition of  
26 subsection (h) below, who is offered non-State employment

1 during State employment or within a period of one year  
2 immediately after termination of State employment shall, prior  
3 to accepting such non-State employment, notify the appropriate  
4 Inspector General. Within 10 business ~~calendar~~ days after  
5 receiving notification from an employee in a position subject  
6 to the policies required by subsection (c), such Inspector  
7 General shall make a determination as to whether the State  
8 employee is restricted from accepting such employment by  
9 subsection (a) or (b). In making a determination, in addition  
10 to any other relevant information, an Inspector General shall  
11 assess the effect of the prospective employment or relationship  
12 upon decisions referred to in subsections (a) and (b), based on  
13 the totality of the participation by the former officer,  
14 member, or State employee in those decisions. A determination  
15 by an Inspector General must be in writing, signed and dated by  
16 the Inspector General, and delivered to the subject of the  
17 determination within 10 calendar days or the person is deemed  
18 eligible for the employment opportunity. For purposes of this  
19 subsection, "appropriate Inspector General" means (i) for  
20 members and employees of the legislative branch, the  
21 Legislative Inspector General; (ii) for the Auditor General and  
22 employees of the Office of the Auditor General, the Inspector  
23 General provided for in Section 30-5 of this Act; and (iii) for  
24 executive branch officers and employees, the Inspector General  
25 having jurisdiction over the officer or employee. Notice of any  
26 determination of an Inspector General and of any such appeal

1 shall be given to the ultimate jurisdictional authority, the  
2 Attorney General, and the Executive Ethics Commission.

3 (g) An Inspector General's determination regarding  
4 restrictions under subsection (a) or (b) may be appealed to the  
5 appropriate Ethics Commission by the person subject to the  
6 decision or the Attorney General no later than the 10th  
7 business calendar day after the date of the determination.

8 On appeal, the Ethics Commission or Auditor General shall  
9 seek, accept, and consider written public comments regarding a  
10 determination. In deciding whether to uphold an Inspector  
11 General's determination, the appropriate Ethics Commission or  
12 Auditor General shall assess, in addition to any other relevant  
13 information, the effect of the prospective employment or  
14 relationship upon the decisions referred to in subsections (a)  
15 and (b), based on the totality of the participation by the  
16 former officer, member, or State employee in those decisions.  
17 The Ethics Commission shall decide whether to uphold an  
18 Inspector General's determination within 10 business calendar  
19 days or the person is deemed eligible for the employment  
20 opportunity.

21 (h) The following officers, members, or State employees  
22 shall not, within a period of one year immediately after  
23 termination of office or State employment, knowingly accept  
24 employment or receive compensation or fees for services from a  
25 person or entity if the person or entity or its parent or  
26 subsidiary, during the year immediately preceding termination

1 of State employment, was a party to a State contract or  
2 contracts with a cumulative value of \$25,000 or more involving  
3 the officer, member, or State employee's State agency, or was  
4 the subject of a regulatory or licensing decision involving the  
5 officer, member, or State employee's State agency, regardless  
6 of whether he or she participated personally and substantially  
7 in the award of the State contract or contracts or the making  
8 of the regulatory or licensing decision in question:

9 (1) members or officers;

10 (2) members of a commission or board created by the  
11 Illinois Constitution;

12 (3) persons whose appointment to office is subject to  
13 the advice and consent of the Senate;

14 (4) the head of a department, commission, board,  
15 division, bureau, authority, or other administrative unit  
16 within the government of this State;

17 (5) chief procurement officers, State purchasing  
18 officers, and their designees whose duties are directly  
19 related to State procurement; and

20 (6) chiefs of staff, deputy chiefs of staff, associate  
21 chiefs of staff, assistant chiefs of staff, and deputy  
22 governors.

23 (Source: P.A. 96-555, eff. 8-18-09.)

24 (5 ILCS 430/20-50)

25 Sec. 20-50. Investigation reports.

1           (a) If an Executive Inspector General, upon the conclusion  
2 of an investigation, determines that reasonable cause exists to  
3 believe that a violation has occurred, then the Executive  
4 Inspector General shall issue a summary report of the  
5 investigation. The report shall be delivered to the appropriate  
6 ultimate jurisdictional authority and to the head of each State  
7 agency affected by or involved in the investigation, if  
8 appropriate. The appropriate ultimate jurisdictional authority  
9 or agency head shall respond to the summary report within 20  
10 days, in writing, to the Executive Inspector General. The  
11 response shall include a description of any corrective or  
12 disciplinary action to be imposed.

13           (b) The summary report of the investigation shall include  
14 the following:

15           (1) A description of any allegations or other  
16 information received by the Executive Inspector General  
17 pertinent to the investigation.

18           (2) A description of any alleged misconduct discovered  
19 in the course of the investigation.

20           (3) Recommendations for any corrective or disciplinary  
21 action to be taken in response to any alleged misconduct  
22 described in the report, including but not limited to  
23 discharge.

24           (4) Other information the Executive Inspector General  
25 deems relevant to the investigation or resulting  
26 recommendations.

1           (c) Within 30 days after receiving a response from the  
2 appropriate ultimate jurisdictional authority or agency head  
3 under subsection (a), the Executive Inspector General shall  
4 notify the Commission and the Attorney General if the Executive  
5 Inspector General believes that a complaint should be filed  
6 with the Commission. If the Executive Inspector General desires  
7 to file a complaint with the Commission, the Executive  
8 Inspector General shall submit the summary report and  
9 supporting documents to the Attorney General. If the Attorney  
10 General concludes that there is insufficient evidence that a  
11 violation has occurred, the Attorney General shall notify the  
12 Executive Inspector General and the Executive Inspector  
13 General shall deliver to the Executive Ethics Commission a copy  
14 of the summary report and response from the ultimate  
15 jurisdictional authority or agency head. If the Attorney  
16 General determines that reasonable cause exists to believe that  
17 a violation has occurred, then the Executive Inspector General,  
18 represented by the Attorney General, may file with the  
19 Executive Ethics Commission a complaint. The complaint shall  
20 set forth the alleged violation and the grounds that exist to  
21 support the complaint. The complaint must be filed with the  
22 Commission within 18 months after the most recent act of the  
23 alleged violation or of a series of alleged violations except  
24 where there is reasonable cause to believe that fraudulent  
25 concealment has occurred. To constitute fraudulent concealment  
26 sufficient to toll this limitations period, there must be an



1 affirmative act or representation calculated to prevent  
2 discovery of the fact that a violation has occurred. If a  
3 complaint is not filed with the Commission within 6 months  
4 after notice by the Inspector General to the Commission and the  
5 Attorney General, then the Commission may set a meeting of the  
6 Commission at which the Attorney General shall appear and  
7 provide a status report to the Commission.

8 (c-5) Within 30 days after receiving a response from the  
9 appropriate ultimate jurisdictional authority or agency head  
10 under subsection (a), if the Executive Inspector General does  
11 not believe that a complaint should be filed, the Executive  
12 Inspector General shall deliver to the Executive Ethics  
13 Commission a statement setting forth the basis for the decision  
14 not to file a complaint and a copy of the summary report and  
15 response from the ultimate jurisdictional authority or agency  
16 head. An Inspector General may also submit a redacted version  
17 of the summary report and response from the ultimate  
18 jurisdictional authority if the Inspector General believes  
19 either contains information that, in the opinion of the  
20 Inspector General, should be redacted prior to releasing the  
21 report, may interfere with an ongoing investigation, or  
22 identifies an informant or complainant.

23 (c-10) If, after reviewing the documents, the Commission  
24 believes that further investigation is warranted, the  
25 Commission may request that the Executive Inspector General  
26 provide additional information or conduct further

1 investigation. The Commission may also appoint a Special  
2 Executive Inspector General to investigate or refer the summary  
3 report and response from the ultimate jurisdictional authority  
4 to the Attorney General for further investigation or review. If  
5 the Commission requests the Attorney General to investigate or  
6 review, the Commission must notify the Attorney General and the  
7 Inspector General. The Attorney General may not begin an  
8 investigation or review until receipt of notice from the  
9 Commission. If, after review, the Attorney General determines  
10 that reasonable cause exists to believe that a violation has  
11 occurred, then the Attorney General may file a complaint with  
12 the Executive Ethics Commission. If the Attorney General  
13 concludes that there is insufficient evidence that a violation  
14 has occurred, the Attorney General shall notify the Executive  
15 Ethics Commission and the appropriate Executive Inspector  
16 General.

17 (d) A copy of the complaint filed with the Executive Ethics  
18 Commission must be served on all respondents named in the  
19 complaint and on each respondent's ultimate jurisdictional  
20 authority in the same manner as process is served under the  
21 Code of Civil Procedure.

22 (e) A respondent may file objections to the complaint  
23 within 30 days after notice of the complaint ~~petition~~ has been  
24 served on the respondent.

25 (f) The Commission shall meet, either in person or by  
26 telephone, at least 30 days after the complaint is served on

1 all respondents in a closed session to review the sufficiency  
2 of the complaint. The Commission shall issue notice by  
3 certified mail, return receipt requested, to the Executive  
4 Inspector General, Attorney General, and all respondents of the  
5 Commission's ruling on the sufficiency of the complaint. If the  
6 complaint is deemed to sufficiently allege a violation of this  
7 Act, then the Commission shall include a hearing date scheduled  
8 within 4 weeks after the date of the notice, unless all of the  
9 parties consent to a later date. If the complaint is deemed not  
10 to sufficiently allege a violation, then the Commission shall  
11 send by certified mail, return receipt requested, a notice to  
12 the Executive Inspector General, Attorney General, and all  
13 respondents of the decision to dismiss the complaint.

14 (g) On the scheduled date the Commission shall conduct a  
15 closed meeting, either in person or, if the parties consent, by  
16 telephone, on the complaint and allow all parties the  
17 opportunity to present testimony and evidence. All such  
18 proceedings shall be transcribed.

19 (h) Within an appropriate time limit set by rules of the  
20 Executive Ethics Commission, the Commission shall (i) dismiss  
21 the complaint, (ii) issue a recommendation of discipline to the  
22 respondent and the respondent's ultimate jurisdictional  
23 authority, (iii) impose an administrative fine upon the  
24 respondent, (iv) issue injunctive relief as described in  
25 Section 50-10, or (v) impose a combination of (ii) through  
26 (iv).

1 (i) The proceedings on any complaint filed with the  
2 Commission shall be conducted pursuant to rules promulgated by  
3 the Commission.

4 (j) The Commission may designate hearing officers to  
5 conduct proceedings as determined by rule of the Commission.

6 (k) In all proceedings before the Commission, the standard  
7 of proof is by a preponderance of the evidence.

8 (l) Within 30 days after the issuance of a final  
9 administrative decision that concludes that a violation  
10 occurred, the Executive Ethics Commission shall make public the  
11 entire record of proceedings before the Commission, the  
12 decision, any recommendation, any discipline imposed, and the  
13 response from the agency head or ultimate jurisdictional  
14 authority to the Executive Ethics Commission.

15 (Source: P.A. 96-555, eff. 8-18-09.)

16 (5 ILCS 430/50-5)

17 Sec. 50-5. Penalties.

18 (a) A person is guilty of a Class A misdemeanor and subject  
19 to a fine of up to \$20,000 if that person intentionally  
20 violates any provision of Section 5-15, 5-30, 5-40, or 5-45 or  
21 Article 15.

22 (a-1) In addition to any other penalty that may apply,  
23 whether criminal or civil, an ~~An~~ ethics commission may levy an  
24 administrative fine for a violation of Section 5-45 of this Act  
25 of up to 3 times the total annual compensation that would have

1 been obtained in violation of Section 5-45.

2 (b) A person who intentionally violates any provision of  
3 Section 5-20, 5-35, 5-50, or 5-55 is guilty of a business  
4 offense subject to a fine of at least \$1,001 and up to \$5,000.

5 (c) A person who intentionally violates any provision of  
6 Article 10 is guilty of a business offense and subject to a  
7 fine of at least \$1,001 and up to \$5,000.

8 (d) Any person who intentionally makes a false report  
9 alleging a violation of any provision of this Act to an ethics  
10 commission, an inspector general, the State Police, a State's  
11 Attorney, the Attorney General, or any other law enforcement  
12 official is guilty of a Class A misdemeanor and subject to a  
13 fine of up to \$20,000.

14 (e) In addition to any other penalty that may apply,  
15 whether criminal or civil, an ~~An~~ ethics commission may levy an  
16 administrative fine of up to \$20,000 ~~\$5,000~~ against any person  
17 who violates this Act, who intentionally obstructs or  
18 interferes with an investigation conducted under this Act by an  
19 inspector general, or who intentionally makes a false,  
20 frivolous, or bad faith allegation.

21 (f) In addition to any other penalty that may apply,  
22 whether criminal or civil, a State employee who intentionally  
23 violates any provision of Section 5-5, 5-15, 5-20, 5-30, 5-35,  
24 5-45, or 5-50, Article 10, Article 15, or Section 20-90 or  
25 25-90 is subject to discipline or discharge by the appropriate  
26 ultimate jurisdictional authority.

1 (Source: P.A. 96-555, eff. 8-18-09.)

2 Section 10. The Illinois Procurement Code is amended by  
3 changing Section 50-60 and by adding Section 50-33 as follows:

4 (30 ILCS 500/50-33 new)

5 Sec. 50-33. Lawful and ethical conduct.

6 (a) No person shall enter into or perform a contract with a  
7 State agency or enter into or perform a subcontract under this  
8 Code if that person has engaged in conduct, alone or in concert  
9 with any other person, relating to the contract or subcontract  
10 which would constitute a violation of Section 17-9, Section  
11 17-10, Section 17-24, Article 33, Section 33C-4, or Article 33E  
12 of the Criminal Code of 1961, or any similar federal offense.

13 (b) Every bid submitted and contract executed by the State  
14 and every subcontract subject to Section 20-120 of this Code  
15 shall contain a certification by the bidder, contractor, or  
16 subcontractor, respectively, that the bidder, contractor, or  
17 subcontractor is not barred from bidding for, entering into, or  
18 performing a contract under subsection (a) of this Section and  
19 that he or she acknowledges that the chief procurement officer  
20 may declare the related contract void if any of the  
21 certifications completed pursuant to this subsection (b) are  
22 false.

23 (30 ILCS 500/50-60)

1           Sec. 50-60. Voidable contracts.

2           (a) If any contract or amendment thereto is entered into or  
3 purchase or expenditure of funds is made at any time in  
4 violation of this Code or any other law, the contract or  
5 amendment thereto may be declared void by the chief procurement  
6 officer or may be ratified and affirmed, provided the chief  
7 procurement officer determines that ratification is in the best  
8 interests of the State. If the contract is ratified and  
9 affirmed, it shall be without prejudice to the State's rights  
10 to any appropriate damages.

11           (b) If, during the term of a contract, the chief  
12 procurement officer determines that the contractor is  
13 delinquent in the payment of debt as set forth in Section 50-11  
14 of this Code, the chief procurement officer may declare the  
15 contract void if it determines that voiding the contract is in  
16 the best interests of the State. The Debt Collection Bureau  
17 shall adopt rules for the implementation of this subsection  
18 (b).

19           (c) If, during the term of a contract, the chief  
20 procurement officer determines that the contractor is in  
21 violation of Section 50-10.5 of this Code, the chief  
22 procurement officer shall declare the contract void.

23           (d) If, during the term of a contract, the contracting  
24 agency learns from an annual certification or otherwise  
25 determines that the contractor no longer qualifies to enter  
26 into State contracts by reason of Section 50-5, 50-10, 50-12,

1 50-14, ~~or~~ 50-14.5, or 50-33 of this Article, the chief  
2 procurement officer may declare the contract void if it  
3 determines that voiding the contract is in the best interests  
4 of the State.

5 (e) If, during the term of a contract, the chief  
6 procurement officer learns from an annual certification or  
7 otherwise determines that a subcontractor subject to Section  
8 20-120 no longer qualifies to enter into State contracts by  
9 reason of Section 50-5, 50-10, 50-10.5, 50-11, 50-12, 50-14, ~~or~~  
10 50-14.5, or 50-33 of this Article, the chief procurement  
11 officer may declare the related contract void if it determines  
12 that voiding the contract is in the best interests of the  
13 State.

14 (f) The changes to this Section made by Public Act 96-795  
15 apply to actions taken by the chief procurement officer on or  
16 after July 1, 2010.

17 (Source: P.A. 96-493, eff. 1-1-10; 96-795, eff. 7-1-10 (see  
18 Section 5 of P.A. 96-793 for the effective date of changes made  
19 by P.A. 96-795); 96-1000, eff. 7-2-10.)

20 Section 15. The Criminal Code of 1961 is amended by  
21 changing Sections 33-7, 33E-2, and 33E-7 as follows:

22 (720 ILCS 5/33-7)

23 Sec. 33-7. Public contractor misconduct.

24 (a) A public contractor; a person seeking a public contract



1 on behalf of himself, herself, or another; an employee of a  
2 public contractor; or a person seeking a public contract on  
3 behalf of himself, herself, or another commits public  
4 contractor misconduct when, in the performance of, or in  
5 connection with, a contract with the State, a unit of local  
6 government, or a school district or in obtaining or seeking to  
7 obtain such a contract he or she commits any of the following  
8 acts:

9 (1) intentionally or knowingly makes, uses, or causes  
10 to be made or used a false record or statement to conceal,  
11 avoid, or decrease an obligation to pay or transmit money  
12 or property;

13 (2) knowingly performs an act that he or she knows he  
14 or she is forbidden by law to perform;

15 (3) with intent to obtain a personal advantage for  
16 himself, herself, or another, he or she performs an act in  
17 excess of his or her contractual responsibility;

18 (4) solicits or offers or knowingly accepts or provides  
19 for the performance of any act a fee or reward that he or  
20 she knows is not authorized by law; or

21 (5) knowingly or intentionally seeks or receives  
22 compensation or reimbursement for goods and services he or  
23 she purported to deliver or render, but failed to do so  
24 pursuant to the terms of the contract, to the unit of State  
25 or local government or school district.

26 (b) Sentence. Any person who violates this Section commits

1 a Class 3 felony. Any person convicted of this offense or a  
2 similar offense in any state of the United States which  
3 contains the same elements of this offense shall be barred for  
4 10 years from the date of conviction from contracting with,  
5 employment by, or holding public office with the State or any  
6 unit of local government or school district. No corporation  
7 shall be barred as a result of a conviction under this Section  
8 of any employee or agent of such corporation if the employee so  
9 convicted is no longer employed by the corporation and (1) it  
10 has been finally adjudicated not guilty or (2) it demonstrates  
11 to the government entity with which it seeks to contract, and  
12 that entity finds, that the commission of the offense was  
13 neither authorized, requested, commanded, nor performed by a  
14 director, officer or high managerial agent on behalf of the  
15 corporation as provided in paragraph (2) of subsection (a) of  
16 Section 5-4 of this Code.

17 (c) The Attorney General or the State's Attorney in the  
18 county where the principal office of the unit of local  
19 government or school district is located may bring a civil  
20 action on behalf of any unit of State or local government to  
21 recover a civil penalty from any person who knowingly engages  
22 in conduct which violates subsection (a) of this Section in  
23 treble the amount of the monetary cost to the unit of State or  
24 local government or school district involved in the violation.  
25 The Attorney General or State's Attorney shall be entitled to  
26 recover reasonable attorney's fees as part of the costs

1 assessed to the defendant. This subsection (c) shall in no way  
2 limit the ability of any unit of State or local government or  
3 school district to recover moneys or damages regarding public  
4 contracts under any other law or ordinance. A civil action  
5 shall be barred unless the action is commenced within 6 years  
6 after the later of (1) the date on which the conduct  
7 establishing the cause of action occurred or (2) the date on  
8 which the unit of State or local government or school district  
9 knew or should have known that the conduct establishing the  
10 cause of action occurred.

11 (d) This amendatory Act of the 96th General Assembly shall  
12 not be construed to create a private right of action.

13 (Source: P.A. 96-575, eff. 8-18-09.)

14 (720 ILCS 5/33E-2) (from Ch. 38, par. 33E-2)

15 Sec. 33E-2. Definitions. In this Act:

16 (a) "Public contract" means any contract for goods,  
17 services or construction let to any person with or without bid  
18 by any unit of State or local government.

19 (b) "Unit of State or local government" means the State,  
20 any unit of state government or agency thereof, any county or  
21 municipal government or committee or agency thereof, or any  
22 other entity which is funded by or expends tax dollars or the  
23 proceeds of publicly guaranteed bonds.

24 (c) "Change order" means a change in a contract term other  
25 than as specifically provided for in the contract which

1 authorizes or necessitates any increase or decrease in the cost  
2 of the contract or the time to completion.

3 (d) "Person" means any individual, firm, partnership,  
4 corporation, joint venture or other entity, but does not  
5 include a unit of State or local government.

6 (e) "Person employed by any unit of State or local  
7 government" means any employee of a unit of State or local  
8 government and any person defined in subsection (d) who is  
9 authorized by such unit of State or local government to act on  
10 its behalf in relation to any public contract.

11 (f) "Sheltered market" has the meaning ascribed to it in  
12 Section 8b of the Business Enterprise for Minorities, Females,  
13 and Persons with Disabilities Act.

14 (g) "Kickback" means any money, fee, commission, credit,  
15 gift, gratuity, thing of value, or compensation of any kind  
16 which is provided, directly or indirectly, to any person  
17 employed by any unit of State or local government, prime  
18 contractor, prime contractor employee, subcontractor, or  
19 subcontractor employee for the purpose of improperly obtaining  
20 or rewarding favorable treatment in connection with a prime  
21 contract or in connection with a subcontract relating to a  
22 prime contract.

23 (h) "Prime contractor" means any person who has entered  
24 into a public contract.

25 (i) "Prime contractor employee" means any officer,  
26 partner, employee, or agent of a prime contractor.

1 (i-5) "Stringing" means knowingly structuring a contract  
2 or job order to avoid the contract or job order being subject  
3 to competitive bidding requirements.

4 (j) "Subcontract" means a contract or contractual action  
5 entered into by a prime contractor or subcontractor for the  
6 purpose of obtaining goods or services of any kind under a  
7 prime contract.

8 (k) "Subcontractor" (1) means any person, other than the  
9 prime contractor, who offers to furnish or furnishes any goods  
10 or services of any kind under a prime contract or a subcontract  
11 entered into in connection with such prime contract; and (2)  
12 includes any person who offers to furnish or furnishes goods or  
13 services to the prime contractor or a higher tier  
14 subcontractor.

15 (l) "Subcontractor employee" means any officer, partner,  
16 employee, or agent of a subcontractor.

17 (Source: P.A. 92-16, eff. 6-28-01.)

18 (720 ILCS 5/33E-7) (from Ch. 38, par. 33E-7)

19 Sec. 33E-7. Kickbacks. (a) A person, including a person  
20 employed by any unit of State or local government, violates  
21 this Section when he knowingly either:

22 (1) provides, attempts to provide or offers to provide any  
23 kickback;

24 (2) solicits, accepts or attempts to accept any kickback;

25 or

1 (3) includes, directly or indirectly, the amount of any  
2 kickback prohibited by paragraphs (1) or (2) of this subsection  
3 (a) in the contract price charged by a subcontractor to a prime  
4 contractor or a higher tier subcontractor or in the contract  
5 price charged by a prime contractor to any unit of State or  
6 local government for a public contract.

7 (b) Any person, including a person employed by any unit of  
8 State or local government, violates this Section when he has  
9 received an offer of a kickback, or has been solicited to make  
10 a kickback, and fails to report it to law enforcement  
11 officials, including but not limited to the Attorney General or  
12 the State's Attorney for the county in which the contract is to  
13 be performed.

14 (c) A violation of subsection (a) is a Class 3 felony. A  
15 violation of subsection (b) is a Class 4 felony.

16 (d) Any unit of State or local government may, in a civil  
17 action, recover a civil penalty from any person who knowingly  
18 engages in conduct which violates paragraph (3) of subsection  
19 (a) of this Section in twice the amount of each kickback  
20 involved in the violation. This subsection (d) shall in no way  
21 limit the ability of any unit of State or local government to  
22 recover monies or damages regarding public contracts under any  
23 other law or ordinance. A civil action shall be barred unless  
24 the action is commenced within 6 years after the later of (1)  
25 the date on which the conduct establishing the cause of action  
26 occurred or (2) the date on which the unit of State or local

1 government knew or should have known that the conduct  
2 establishing the cause of action occurred.

3 (Source: P.A. 85-1295.)

4 Section 20. The Illinois False Claims Act is amended by  
5 changing Section 4 as follows:

6 (740 ILCS 175/4) (from Ch. 127, par. 4104)

7 Sec. 4. Civil actions for false claims.

8 (a) Responsibilities of the Attorney General and the  
9 Department of State Police. The Attorney General or the  
10 Department of State Police shall diligently investigate a civil  
11 violation under Section 3. If the Attorney General finds that a  
12 person violated or is violating Section 3, the Attorney General  
13 may bring a civil action under this Section against the person.

14 The State shall receive an amount for reasonable expenses  
15 that the court finds to have been necessarily incurred by the  
16 Attorney General, including reasonable attorneys' fees and  
17 costs. All such expenses, fees, and costs shall be awarded  
18 against the defendant. The court may award amounts from the  
19 proceeds of an action or settlement that it considers  
20 appropriate to any governmental entity or program that has been  
21 adversely affected by a defendant. The Attorney General, if  
22 necessary, shall direct the State Treasurer to make a  
23 disbursement of funds as provided in court orders or settlement  
24 agreements.

1 (b) Actions by private persons.

2 (1) A person may bring a civil action for a violation  
3 of Section 3 for the person and for the State. The action  
4 shall be brought in the name of the State. The action may  
5 be dismissed only if the court and the Attorney General  
6 give written consent to the dismissal and their reasons for  
7 consenting.

8 (2) A copy of the complaint and written disclosure of  
9 substantially all material evidence and information the  
10 person possesses shall be served on the State. The  
11 complaint shall be filed in camera, shall remain under seal  
12 for at least 60 days, and shall not be served on the  
13 defendant until the court so orders. The State may elect to  
14 intervene and proceed with the action within 60 days after  
15 it receives both the complaint and the material evidence  
16 and information.

17 (3) The State may, for good cause shown, move the court  
18 for extensions of the time during which the complaint  
19 remains under seal under paragraph (2). Any such motions  
20 may be supported by affidavits or other submissions in  
21 camera. The defendant shall not be required to respond to  
22 any complaint filed under this Section until 20 days after  
23 the complaint is unsealed and served upon the defendant.

24 (4) Before the expiration of the 60-day period or any  
25 extensions obtained under paragraph (3), the State shall:

26 (A) proceed with the action, in which case the



1 action shall be conducted by the State; or

2 (B) notify the court that it declines to take over  
3 the action, in which case the person bringing the  
4 action shall have the right to conduct the action.

5 (5) When a person brings an action under this  
6 subsection (b), no person other than the State may  
7 intervene or bring a related action based on the facts  
8 underlying the pending action.

9 (c) Rights of the parties to Qui Tam actions.

10 (1) If the State proceeds with the action, it shall  
11 have the primary responsibility for prosecuting the  
12 action, and shall not be bound by an act of the person  
13 bringing the action. Such person shall have the right to  
14 continue as a party to the action, subject to the  
15 limitations set forth in paragraph (2).

16 (2) (A) The State may dismiss the action  
17 notwithstanding the objections of the person initiating  
18 the action if the person has been notified by the State of  
19 the filing of the motion and the court has provided the  
20 person with an opportunity for a hearing on the motion.

21 (B) The State may settle the action with the defendant  
22 notwithstanding the objections of the person initiating  
23 the action if the court determines, after a hearing, that  
24 the proposed settlement is fair, adequate, and reasonable  
25 under all the circumstances. Upon a showing of good cause,  
26 such hearing may be held in camera.

1           (C) Upon a showing by the State that unrestricted  
2 participation during the course of the litigation by the  
3 person initiating the action would interfere with or unduly  
4 delay the State's prosecution of the case, or would be  
5 repetitious, irrelevant, or for purposes of harassment,  
6 the court may, in its discretion, impose limitations on the  
7 person's participation, such as:

8           (i) limiting the number of witnesses the person may  
9 call:

10           (ii) limiting the length of the testimony of such  
11 witnesses;

12           (iii) limiting the person's cross-examination of  
13 witnesses; or

14           (iv) otherwise limiting the participation by the  
15 person in the litigation.

16           (D) Upon a showing by the defendant that unrestricted  
17 participation during the course of the litigation by the  
18 person initiating the action would be for purposes of  
19 harassment or would cause the defendant undue burden or  
20 unnecessary expense, the court may limit the participation  
21 by the person in the litigation.

22           (3) If the State elects not to proceed with the action,  
23 the person who initiated the action shall have the right to  
24 conduct the action. If the State so requests, it shall be  
25 served with copies of all pleadings filed in the action and  
26 shall be supplied with copies of all deposition transcripts

1 (at the State's expense). When a person proceeds with the  
2 action, the court, without limiting the status and rights  
3 of the person initiating the action, may nevertheless  
4 permit the State to intervene at a later date upon a  
5 showing of good cause.

6 (4) Whether or not the State proceeds with the action,  
7 upon a showing by the State that certain actions of  
8 discovery by the person initiating the action would  
9 interfere with the State's investigation or prosecution of  
10 a criminal or civil matter arising out of the same facts,  
11 the court may stay such discovery for a period of not more  
12 than 60 days. Such a showing shall be conducted in camera.  
13 The court may extend the 60-day period upon a further  
14 showing in camera that the State has pursued the criminal  
15 or civil investigation or proceedings with reasonable  
16 diligence and any proposed discovery in the civil action  
17 will interfere with the ongoing criminal or civil  
18 investigation or proceedings.

19 (5) Notwithstanding subsection (b), the State may  
20 elect to pursue its claim through any alternate remedy  
21 available to the State, including any administrative  
22 proceeding to determine a civil money penalty. If any such  
23 alternate remedy is pursued in another proceeding, the  
24 person initiating the action shall have the same rights in  
25 such proceeding as such person would have had if the action  
26 had continued under this Section. Any finding of fact or

1 conclusion of law made in such other proceeding that has  
2 become final shall be conclusive on all parties to an  
3 action under this Section. For purposes of the preceding  
4 sentence, a finding or conclusion is final if it has been  
5 finally determined on appeal to the appropriate court, if  
6 all time for filing such an appeal with respect to the  
7 finding or conclusion has expired, or if the finding or  
8 conclusion is not subject to judicial review.

9 (d) Award to Qui Tam plaintiff.

10 (1) If the State proceeds with an action brought by a  
11 person under subsection (b), such person shall, subject to  
12 the second sentence of this paragraph, receive at least 15%  
13 but not more than 25% of the proceeds of the action or  
14 settlement of the claim, depending upon the extent to which  
15 the person substantially contributed to the prosecution of  
16 the action. Where the action is one which the court finds  
17 to be based primarily on disclosures of specific  
18 information (other than information provided by the person  
19 bringing the action) relating to allegations or  
20 transactions in a criminal, civil, or administrative  
21 hearing, in a legislative, administrative, or Auditor  
22 General's report, hearing, audit, or investigation, or  
23 from the news media, the court may award such sums as it  
24 considers appropriate, but in no case more than 10% of the  
25 proceeds, taking into account the significance of the  
26 information and the role of the person bringing the action

1 in advancing the case to litigation. Any payment to a  
2 person under the first or second sentence of this paragraph  
3 (1) shall be made from the proceeds. Any such person shall  
4 also receive an amount for reasonable expenses which the  
5 court finds to have been necessarily incurred, plus  
6 reasonable attorneys' fees and costs. The State shall also  
7 receive an amount for reasonable expenses which the court  
8 finds to have been necessarily incurred by the Attorney  
9 General, including reasonable attorneys' fees and costs.  
10 All such expenses, fees, and costs shall be awarded against  
11 the defendant. The court may award amounts from the  
12 proceeds of an action or settlement that it considers  
13 appropriate to any governmental entity or program that has  
14 been adversely affected by a defendant. The Attorney  
15 General, if necessary, shall direct the State Treasurer to  
16 make a disbursement of funds as provided in court orders or  
17 settlement agreements.

18 (2) If the State does not proceed with an action under  
19 this Section, the person bringing the action or settling  
20 the claim shall receive an amount which the court decides  
21 is reasonable for collecting the civil penalty and damages.  
22 The amount shall be not less than 25% and not more than 30%  
23 of the proceeds of the action or settlement and shall be  
24 paid out of such proceeds. Such person shall also receive  
25 an amount for reasonable expenses which the court finds to  
26 have been necessarily incurred, plus reasonable attorneys'

1 fees and costs. All such expenses, fees, and costs shall be  
2 awarded against the defendant. The court may award amounts  
3 from the proceeds of an action or settlement that it  
4 considers appropriate to any governmental entity or  
5 program that has been adversely affected by a defendant.  
6 The Attorney General, if necessary, shall direct the State  
7 Treasurer to make a disbursement of funds as provided in  
8 court orders or settlement agreements.

9 (3) Whether or not the State proceeds with the action,  
10 if the court finds that the action was brought by a person  
11 who planned and initiated the violation of Section 3 upon  
12 which the action was brought, then the court may, to the  
13 extent the court considers appropriate, reduce the share of  
14 the proceeds of the action which the person would otherwise  
15 receive under paragraph (1) or (2) of this subsection (d),  
16 taking into account the role of that person in advancing  
17 the case to litigation and any relevant circumstances  
18 pertaining to the violation. If the person bringing the  
19 action is convicted of criminal conduct arising from his or  
20 her role in the violation of Section 3, that person shall  
21 be dismissed from the civil action and shall not receive  
22 any share of the proceeds of the action. Such dismissal  
23 shall not prejudice the right of the State to continue the  
24 action, represented by the Attorney General.

25 (4) If the State does not proceed with the action and  
26 the person bringing the action conducts the action, the

1 court may award to the defendant its reasonable attorneys'  
2 fees and expenses if the defendant prevails in the action  
3 and the court finds that the claim of the person bringing  
4 the action was clearly frivolous, clearly vexatious, or  
5 brought primarily for purposes of harassment.

6 (e) Certain actions barred.

7 (1) No court shall have jurisdiction over an action  
8 brought by a former or present member of the Guard under  
9 subsection (b) of this Section against a member of the  
10 Guard arising out of such person's service in the Guard.

11 (2) (A) No court shall have jurisdiction over an action  
12 brought under subsection (b) against a member of the  
13 General Assembly, a member of the judiciary, or an exempt  
14 official if the action is based on evidence or information  
15 known to the State when the action was brought.

16 (B) For purposes of this paragraph (2), "exempt  
17 official" means any of the following officials in State  
18 service: directors of departments established under the  
19 Civil Administrative Code of Illinois, the Adjutant  
20 General, the Assistant Adjutant General, the Director of  
21 the State Emergency Services and Disaster Agency, members  
22 of the boards and commissions, and all other positions  
23 appointed by the Governor by and with the consent of the  
24 Senate.

25 (3) In no event may a person bring an action under  
26 subsection (b) which is based upon allegations or

1 transactions which are the subject of a civil suit or an  
2 administrative civil money penalty proceeding in which the  
3 State is already a party.

4 (4) (A) The court shall dismiss an action or claim under  
5 this Section, unless opposed by the State, if substantially  
6 the same allegations or transactions as alleged in the  
7 action or claim were publicly disclosed: ~~No court shall~~  
8 have jurisdiction over an action under this Section based  
9 upon the public disclosure of allegations or transactions

10 (i) in a criminal, civil, or administrative  
11 hearing in which the State or its agent is a party; 7

12 (ii) in a legislative, administrative, ~~or~~ Auditor  
13 General, or other State General's report, hearing,  
14 audit, or investigation; 7 or

15 (iii) from the news media,

16 unless the action is brought by the Attorney General or the  
17 person bringing the action is an original source of the  
18 information.

19 (B) For purposes of this paragraph (4), "original  
20 source" means an individual who either (i) prior to a  
21 public disclosure under subsection (e) (4) (A), has  
22 voluntarily disclosed to the State the information on which  
23 allegations or transactions in a claim are based, or (ii)  
24 who has knowledge that is independent of and materially  
25 adds to the publicly disclosed allegations or  
26 transactions, and who has voluntarily provided the



1        information to the State before filing an action under this  
2        Section. ~~who has direct and independent knowledge of the~~  
3        ~~information on which the allegations are based and has~~  
4        ~~voluntarily provided the information to the State before~~  
5        ~~filing an action under this Section which is based on the~~  
6        ~~information.~~

7        (f) State not liable for certain expenses. The State is not  
8        liable for expenses which a person incurs in bringing an action  
9        under this Section.

10       (g) Relief from retaliatory actions.

11       (1) In general, any employee, contractor, or agent  
12       shall be ~~is~~ entitled to all relief necessary to make that  
13       employee, contractor, or agent whole, if that employee,  
14       contractor, or agent is discharged, demoted, suspended,  
15       threatened, harassed, or in any other manner discriminated  
16       against in the terms and conditions of employment because  
17       of lawful acts done by the employee, contractor, ~~or~~ agent  
18       ~~on behalf of the employee, contractor, or agent~~ or  
19       associated others in furtherance of an action under this  
20       Section or other efforts to stop one or more violations of  
21       this Act.

22       (2) Relief under paragraph (1) shall include  
23       reinstatement with the same seniority status that the  
24       employee, contractor, or agent would have had but for the  
25       discrimination, 2 times the amount of back pay, interest on  
26       the back pay, and compensation for any special damages

1           sustained as a result of the discrimination, including  
2           litigation costs and reasonable attorneys' fees. An action  
3           under this subsection (g) may be brought in the appropriate  
4           circuit court for the relief provided in this subsection  
5           (g).

6           (3) A civil action under this subsection may not be  
7           brought more than 3 years after the date when the  
8           retaliation occurred.

9           (Source: P.A. 96-1304, eff. 7-27-10.)

10           Section 99. Effective date. This Act takes effect upon  
11           becoming law."