

Regular Session, 2010

SENATE BILL NO. 71

BY SENATOR APPEL

PUBLIC CONTRACTS. Requires state and local contractors to disclose the full disposition, splitting, or sharing of contract commissions, fees, or other consideration by an "affidavit of notice of fee disposition" if the contract is let without bid. (7/1/10)

1 AN ACT

2 To amend and reenact R.S. 39:1767 and R.S. 48:251.8, and to enact R.S. 38:2196.1, R.S.
3 39:200(N), 1493.1, and Part X of Chapter 17 of Subtitle III of Title 39 of the
4 Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:1758, relative to
5 public contracts; to require certain contractors to disclose the full disposition,
6 splitting, or sharing of contract commissions, fees, or other consideration by
7 affidavit; to provide for the form of the affidavit; to provide for nullification of
8 contracts in certain circumstances; to provide for criminal penalties; and to provide
9 for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 38:2196.1 is hereby enacted to read as follows:

12 **§2196.1. Public contracts; disclosure of disposition of commission, fee, or other**
13 **consideration; penalties**

14 **A.(1)(a) Notwithstanding any other provision of law to the contrary or**
15 **any limitation of the applicability of any of this Part or Chapter in any other**
16 **provision of law, when any person or other entity enters into any contract**
17 **awarded without bidding with a public entity in which a commission, fee, or**

1 other consideration is paid to the contractor for the contractor to sell to or
2 provide to the public entity any commodity, goods, brokerage service or other
3 service of any kind, insurance, or anything of value, then the full disposition,
4 splitting, or sharing of such commission, fee, or other consideration shall be
5 disclosed to the public entity by the contractor in writing by an affidavit of
6 notice of fee disposition in the manner provided for in this Section.

7 (b) For purposes of this Section, "public entity" means the state or any
8 political subdivision of the state, or any agency, department, office, or other
9 instrumentality of the state or political subdivision.

10 (2) The affidavit of notice of fee disposition shall be on a form which shall
11 be prescribed by the Board of Ethics and shall be notarized as to its
12 authenticity. The affidavit of notice of fee disposition shall include the full value
13 of the commission, fee, or other consideration to be paid, the names of all
14 parties to receive dispositions, splits, or shares of the commission, fee, or other
15 consideration, and the signature of the party authorized to commit the entity
16 receiving the commission, fee, or other consideration to the contract, who shall
17 attest to the truth of the facts set forth in the affidavit. The affidavit of notice
18 of fee disposition shall be attached to and made a part of the contract for which
19 the commission, fee, or other consideration is paid and shall be recorded in the
20 public record.

21 B. If at any time the disposition, splitting, or sharing of the commission,
22 fee, or other consideration changes, or the amount of the commission, fee, or
23 other consideration changes, then a new affidavit reflecting the changes from
24 the first affidavit shall be prepared, executed, notarized, and recorded by the
25 contractor in the public record.

26 C.(1) If for any reason the information on the recorded affidavit shall
27 be found to be incorrect, then the contract shall become null and void and all
28 payments of the commission, fee, or other consideration shall be rebated to the
29 public entity which entered into the contract.

1 A. All lease-purchase contracts entered into pursuant to this Chapter shall
2 contain an annual appropriation dependency requirement to the effect that renewal
3 and continuation of such contract is contingent upon the appropriation of funds to
4 fulfill the requirements of the contract and if the legislature, after a diligent and good
5 faith effort, fails to appropriate sufficient monies to provide for the continuation of
6 a contract, or if such appropriation can not be effected, the contract shall terminate
7 in accordance with the terms of the lease on the last day of the last fiscal year for
8 which funds were appropriated, provided the equipment is returned to the nonprofit
9 lessor or his agent, as provided in the equipment-lease-purchase contract and such
10 contract shall not be a long-term debt of the state or the applicable purchasing
11 agency. In addition, in such equipment-lease-purchase contracts, the nonprofit lessor
12 shall covenant and agree to indemnify and hold the lessee harmless against any loss,
13 damage, liability, cost, penalty, or expense, including attorney fees, which is not
14 otherwise agreed to by the lessee in the equipment-lease-purchase contract and
15 which is incurred and arises upon a failure of the legislature to appropriate funds in
16 the manner described above for a continuation of the contract or the exercise of the
17 option to purchase the selected equipment.

18 **B. Notwithstanding any limitation of the applicability of this Part or**
19 **Chapter in any other provision of law, the provisions of R.S. 38:2196.1**
20 **regarding the requirement for an affidavit of notice of fee disposition shall be**
21 **required of all contracts awarded without bidding.**

22 Section 3. R.S. 48:251.8 is hereby amended and reenacted to read as follows:

23 §251.8. Public contracts; certain provisions invalid; **requirement for affidavit of**
24 **notice of fee disposition**

25 A. The legislature hereby declares null and void and unenforceable as against
26 public policy any provision in a department contract which requires either of the
27 following:

28 (1) That a suit or arbitration proceeding must be brought in a forum or
29 jurisdiction outside of this state, instead of being pursued in accordance with the laws

1 of this state governing such actions.

2 (2) That the agreement must be interpreted according to the laws of another
3 jurisdiction.

4 **B. Notwithstanding any limitation of the applicability of this Part or**
5 **Chapter in any other provision of law, the provisions of R.S. 38:2196.1**
6 **regarding the requirement for an affidavit of notice of fee disposition shall be**
7 **required of all contracts awarded without bidding.**

8 Section 4. This Act shall become effective on July 1, 2010; if vetoed by the governor
9 and subsequently approved by the legislature, this Act shall become effective on July 1,
10 2010, or on the day following such approval by the legislature, whichever is later.

The original instrument was prepared by Riley Boudreaux. The following digest, which does not constitute a part of the legislative instrument, was prepared by Tammy Crain Waldrop.

DIGEST

Appel (SB 71)

Proposed law requires any person or other entity who enters into any contract awarded without bidding with a "public entity" in which a commission, fee, or other consideration is paid to the contractor for the contractor to sell to or provide to the public entity any commodity, goods, brokerage service or other service of any kind, insurance, or anything of value, to disclose the full disposition, splitting, or sharing of such commission, fee, or other consideration to the "public entity" in writing by an "affidavit of notice of fee disposition".

"Public entity" is defined as the state or any political subdivision of the state, or any agency, department, office, or other instrumentality of the state or political subdivision.

The "affidavit of notice of fee disposition" must be on a form prescribed by the Board of Ethics and must be notarized as to its authenticity; must include the full value of the commission, fee, or other consideration to be paid, the names of all parties to receive dispositions, splits, or shares of the commission, fee, or other consideration, and the signature of the party authorized to commit the entity to the contract, who must attest to the truth of the facts set forth in the affidavit. The affidavit of notice of fee disposition must be attached to and made a part of the contract for which the commission, fee, or other consideration is paid and must be recorded in the public record.

Requires the contractor to prepare, execute, notarize, and record in the public record new affidavit reflecting changes in the disposition, splitting, or sharing of the commission, fee, or other consideration or changes in the amount.

If for any reason the information on the recorded affidavit is found to be incorrect, then the contract is null and void and all payments of the commission, fee, or other consideration must be rebated to the public entity. Intentional misrepresentation of the facts on an affidavit subjects the party attesting to the facts to the penalties provided for filing or maintaining false public records - imprisonment for not more than 5 years with or without hard labor or a fine of not more than \$5,000, or both.

Effective July 1, 2010.

(Amends R.S. 39:1767 and R.S. 48:251.8; adds R.S. 38:2196.1, R.S. 39:200(N), 1493.1 and 1758)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill.

1. Changes who prescribes the form for the affidavit of notice of fee disposition from the public entity to the state Board of Ethics.
2. Technical changes.

Senate Floor Amendments to engrossed bill.

1. Technical amendments.