

Regular Session, 2014

SENATE BILL NO. 548

BY SENATOR BROOME

PUBLIC CONTRACTS. Requires verification of equal pay practices in public contracts.
(8/1/14)

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AN ACT

To enact Part VI of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, to be
comprised of R.S. 38:2301, relative to public contracts; to provide with respect to
equal pay in public contracts; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Part VI of Chapter 10 of Title 38 of the Louisiana Revised Statutes of
1950, comprised of R.S. 38:2301, is hereby enacted to read as follows:

PART VI. EQUAL PAY IN PUBLIC CONTRACTS

§2301. Equal pay in public contracts; verification; requirements

**A. As used in this Section unless the context clearly indicates otherwise,
the following terms shall mean:**

**(1) "Private employer" means a person, association, legal or commercial
entity, receiving services from an employee and, in return, giving compensation
of any kind to an employee, who employs twenty or more employees within this
state for each working day in each of twenty or more calendar weeks in the
current or preceding calendar year.**

(2) "Public entity" means and includes the state of Louisiana, or any

1 agency, board, commission, department, or public corporation of the state,
2 created by the constitution or statute or pursuant thereto, or any political
3 subdivision of the state, local governmental subdivision, or municipality as
4 defined in Article VI Section 44 of the Constitution of Louisiana, any public
5 housing authority, public school board, or any public officer whether or not an
6 officer of a public corporation or political subdivision, and any public body or
7 officer where the particular transaction of the public body or officer is governed
8 by the provisions of the model procurement code.

9 B. No private employer shall bid on or otherwise contract with a public
10 entity for the performance of services, the purchase of materials and supplies,
11 or public works within the state of Louisiana unless the private employer attests
12 to all of the following in a sworn affidavit:

13 (1) The private employer complies with the same pay practices provided
14 in R.S. 23:661 through 669 for state employees.

15 (2) The private employer shall continue, during the term of the contract,
16 to comply with such pay practices.

17 (3) The private employer shall require all subcontractors to submit to the
18 employer a sworn affidavit verifying that they are also in compliance with
19 Paragraphs (1) and (2) of the Subsection.

20 (4) The private employer shall maintain and make available to the public
21 entity its records as provided in R.S. 23:668 upon reasonable notice and during
22 normal working hours.

23 C.(1) If a public entity discovers that a private employer has not
24 complied with or is otherwise in violation of the provisions of this Section, he
25 shall send written notice to such private employer requiring the private
26 employer to comply with the provisions of this Section or remedy such violation
27 not later than sixty days from the date of such notice. Such private employer
28 who fails to comply with or remedy such violation within the sixty day period
29 may be subject to cancellation of any of the private employer's public contracts

1 and may be declared ineligible to enter into any public contract for a period of
2 not more than three years from the date of the discovery of the violation.

3 (2) Any private employer shall be liable for any additional costs incurred
4 by a public entity occasioned by the cancellation of a contract pursuant to this
5 Section and may be subject to the loss of any license or permit to do business in
6 the state.

7 (3) Any private employer penalized in accordance with this Section shall
8 have the right to appeal to the appropriate agency, department, or other public
9 entity sanctioning the employer or to a court of competent jurisdiction.

10 (4) No person, contractor, or employer shall be penalized under the
11 provisions of this Section for the actions of a subcontractor unless such person,
12 contractor, or employer had actual knowledge of such subcontractor's failure
13 to comply with the provisions of this Section.

14 D. The provisions of this Section shall apply only to contracts entered
15 into or bids offered on or after January 1, 2015.

16 E. The provision of this Section shall apply to any private employer as
17 defined in this Section who enters into a contract with any public entity as
18 defined in this Section.

19 F. The provisions of this Section are supplemental and they are not
20 intended to supercede any provision provided for in Chapter 3-A of Title 23 of
21 the Louisiana Revised Statutes of 1950, the "Louisiana Employment
22 Discrimination Act", which prohibits discrimination based upon sex regardless
23 of whether the employer is a state entity, a private business, or other employer.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Sharon F. Lyles.

DIGEST

Broome (SB 548)

Proposed law provides definitions for the terms "private employer" and "public entity".

Proposed law defines "private employer" to mean a person, association, legal or commercial entity, receiving services from an employee and, in return, giving compensation of any kind to an employee, who employs 20 or more employees within this state for each working day

in each of twenty or more calendar weeks in the current or preceding calendar year.

Proposed law defines "public entity" to mean and include the state of Louisiana, or any agency, board, commission, department, or public corporation of the state, created by the constitution or statute or pursuant thereto, or any political subdivision of the state, local governmental subdivision, or municipality as defined in Article VI Section 44 of the Constitution of Louisiana, any public housing authority, public school board, or any public officer whether or not an officer of a public corporation or political subdivision, and any public body or officer where the particular transaction of the public body or officer is governed by the provisions of the model procurement code.

Proposed law provides that a private employer shall not bid on or otherwise contract with a public entity for the performance of services, the purchase of materials and supplies, and public works within the state of Louisiana unless the private employer verifies in a sworn affidavit attesting to all of the following

- (1) The private employer shall comply with the same pay practices provided in R.S. 23:661 through 669 for state employees.
- (2) The private employer shall continue, during the term of the contract, to comply with such pay practices.
- (3) The private employer shall require all subcontractors to submit to the employer a sworn affidavit verifying compliance with Paragraphs (1) and (2).
- (4) The private employer shall maintain and make available to the public entity its records as provided in R.S. 23:668 upon reasonable notice and during normal working hours.

Proposed law requires a public entity which discovers that a private employer has not complied with or is otherwise in violation of the provisions of the proposed law to send written notice to such private employer requiring him to comply or remedy the violation not later than 60 days from the date of the notice. A private employer who fails to comply with or remedy the violation within the 60-day period may be subject to cancellation of any of his public contracts and may be declared ineligible to enter into any public contract for a period of not more than three years from the date of the discovery of the violation.

Proposed law further provides that the private employer shall be liable for any additional costs incurred by a public entity, occasioned by the cancellation of a contract or loss of any license or permit to do business in the state.

Proposed law provides that a private employer penalized in accordance with its provisions shall have the right to appeal to the appropriate agency, department, or other public entity sanctioning the person or to the court of competent jurisdiction.

Proposed law provides that no person, contractor, or employer shall be penalized under its provisions for actions of a subcontractor unless such person, contractor, or employer had actual knowledge of such subcontractor's failure to comply with its provisions.

Proposed law applies only to contracts entered into or bids offered on or after Jan. 1, 2015.

Proposed law applies to any private employer as defined in proposed law who enters into a contract with any public entity as defined in proposed law.

Proposed law provides that its provisions are supplemental and not intended to supercede any provision of the "Louisiana Employment Discrimination Act", which prohibits discrimination based upon sex regardless of whether the employer is a state entity, a private business, or other employer.

SLS 14RS-820

ORIGINAL
SB NO. 548

Effective August 1, 2014.

(Adds R.S. 38:2301)