
The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Jay R. Lueckel.

DIGEST

Adley (SB 547)

Proposed law provides that for any governmental agreements with private parties that are not subject to review by the office of contractual review and under which the total value is greater than \$50,000, the following provisions shall apply:

- (1) Such agreements are inequitable and contrary to the public policy of the state if they fail to specify: an expiration date that is fixed in time, contingent on the occurrence of a specific event, or contingent on the nonoccurrence of a specific event by a specific date; the maximum dollar amount payable under such agreement or in the case of a contingency agreement, the percentages payable in the event of recovery; or the scope of the services to be rendered or products to be provided.
- (2) Provisions in such agreements are inequitable and contrary to the public policy of this state if they purport to: authorize the private party to take unilateral action on behalf of the state, any political subdivision of the state, or agency thereof outside the scope of the services to be rendered or products to be provided; authorize the private party to unilaterally file, institute, or pursue any claim or cause of action on behalf of the state, political subdivision of the state, or any agency thereof; condition liability of the state, any political subdivision of the state, or any agency thereof for liquidated damages or the amount thereof on the action or inaction of any other person; or provide for liquidated damages payable by the state, any political subdivision of the state, or any agency thereof without stating a specific dollar amount, or specific rate per hour or per item from which the amount can be calculated.
- (3) Such agreements are contrary to the public policy of this state if, when the agreement is executed, the contracting governmental entity does not possess or reasonably anticipate availability of funds sufficient to pay its liability under the agreement in full at the time or times required under the agreement, including but not limited to any contingent liability and any liquidated damages.

Proposed law provides the legislature would declare null, void, unenforceable, and against public policy, any agreement referenced under such provisions; however, any agreement may be amended to bring it into compliance with the provisions. Proposed law provides that any such amendment shall be effective retroactively as of the date on which the agreement became effective.

Proposed law provides the legislature would declare null, void, unenforceable, and against public policy, any agreement referenced under these provisions. In the event a suit is filed, a court shall give effect to certain provisions containing violations of proposed law.

Proposed law also provides that the attorney general or in the case of a political subdivision of the state, the district attorney or other interested person for the parish in which the political subdivisions is domiciled may enforce the provisions of this Act. However, the attorney general, the district attorney, or other interested party shall provide written notice via certified mail, return receipt requested 60 days to amend the agreement to bring it into compliance. After 60 days from the date of receipt of written notice, said officials may bring an action to enforce the provisions of proposed law in the district court for the parish in which the entity is domiciled.

Proposed law further provides no payment is or may be due or paid for services rendered under any agreement that is null and void under the provisions of proposed law, other than in quantum meruit. If an action is filed, any action or claim for quantum meruit may be brought only within the action to enforce such provision.

Proposed law states it is the intent of the legislature that these provisions are interpretive and procedural in nature, and shall apply both prospectively and retroactively. It is further the intent of the legislature to clarify that those agreements and provisions in proposed law are and have always been contrary to the public policy of this state and void ab initio.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 9:2778.1)