
The original instrument was prepared by Jay Lueckel. The following digest, which does not constitute a part of the legislative instrument, was prepared by Cathy R. Wells.

DIGEST

Adley (SB 547)

Proposed law provides that agreements between private parties and governmental entities that are subject to the APA and represented by the attorney general when called to do so and not subject to review by the office of contractual review and under which the total value is greater than \$50,000, all of 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; and 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 that is subject to the APA and represented by the attorney general when called upon to do so 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 that is subject to the APA and represented by the attorney general when called upon to do so; condition liability of the state, any political subdivision of the state, or any agency thereof that is subject to the APA and represented by the attorney general when called upon to do so 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 that is subject to the APA and represented by the attorney general when called upon to do so 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 that it does not apply to contracts, permits, or servitudes with member owned electric cooperatives or investor owned utilities regulated by the La. Public Service Commission or the City Council of New Orleans.

Proposed law provides the legislature declares 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 declares 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 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 proposed law. However, the attorney general, the district attorney, or other interested party shall provide written notice via certified mail, return receipt requested to all parties of the agreement of the violation and provide 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 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)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the original bill

1. Provides that proposed law does not apply to contracts, permits, or servitudes with member owned electric cooperatives or investor owned utilities regulated by the La. Public Service Commission or the City Council of New Orleans.

Senate Floor Amendments to engrossed bill

1. Makes technical changes.
2. Makes proposed law applicable to agreements of a governmental entity that are subject to the APA and represented by the attorney general when called to do so and not subject to review by the office of contractual review.
3. Removes provision that states proposed law is interpretive and procedural in nature.