

2016 Regular Session

HOUSE BILL NO. 558

BY REPRESENTATIVE JAY MORRIS

FISCAL CONTROLS: Requires certain contracting entities to submit information to the legislative auditor prior to contracting with a state agency or receiving state monies

1 AN ACT

2 To enact R.S. 24:525 and R.S. 39:366.7, relative to certain state contracts; to require certain
3 contracting entities to submit certain information to the legislative auditor; to provide
4 for public access to such information; to provide for the duties of the legislative
5 auditor relative to such requirement; to provide for certain procedures and
6 requirements to be subject to the approval of the Legislative Audit Advisory Council;
7 to provide for certain restrictions and contract prohibitions for failure to comply; and
8 to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 24:525 is hereby enacted to read as follows:

11 §525. Contracting entities; documentation; submission to the legislative auditor;
12 contract prohibition

13 A. For purposes of this Section, the following terms shall have the following
14 meanings unless the context clearly indicates otherwise:

15 (1) "Contract" shall mean an agreement by two or more parties whereby
16 obligations are created, modified, or extinguished. "Contract" shall not include any
17 of the following:

18 (a) A waiver, agreement to suspend prescription, installment agreement,
19 settlement agreement, collateral agreement, offer in compromise, or any other
20 document filed, entered into, or executed for the assessment, collection,

1 administration, and enforcement of taxes, fees, licenses, penalties, interest, and other
2 charges due the state that have been delegated to the secretary of the Department of
3 Revenue.

4 (b) A contract entered into pursuant to R.S. 47:337.26.

5 (c) A nondisclosure agreement entered into pursuant to R.S. 44:22.

6 (d) A contract or agreement entered into by the Department of Economic
7 Development with the exception of the following:

8 (i) Contracts funded from the Louisiana Mega-Project Development Fund
9 pursuant to R.S. 51:2365.

10 (ii) Contracts funded from the Rapid Response Fund pursuant to R.S.
11 51:2361.

12 (iii) Agreements for the allocation of retention and modernization tax credits
13 pursuant to R.S. 51:2399.1 et seq.

14 (iv) Contracts for professional, personal, consulting, or social services.

15 (v) Contracts subject to the Louisiana Procurement Code.

16 (e) A contract valued at ten thousand dollars or less.

17 (2) "Contracting entity" shall mean any person who enters or seeks to enter
18 into a contract with a state agency. "Contracting entity" shall not include any
19 governmental entity; public, private, or parochial school, college, or university; or
20 any electric power cooperative or provider or investor owned public utility that is
21 regulated by the Louisiana Public Service Commission or by the governing authority
22 of the city of New Orleans.

23 (3) "Governmental entity" shall mean the state or any political subdivision
24 of the state.

25 (4) "Person" means a natural person or legal entity other than a governmental
26 entity or an agency thereof.

27 (5) "State agency" shall have the same meaning as "agency" as defined in
28 R.S. 39:2.

1 B.(1) Prior to entering into or renewing a contract with a state agency, a
2 contracting entity shall submit information and documentation to the legislative
3 auditor and be approved in the manner provided in this Section. The contracting
4 entity shall submit the following information to the legislative auditor:

5 (a)(i) If a legal entity, the official name and domicile address of the
6 contracting entity as reflected in documentation submitted to the secretary of state's
7 office.

8 (ii) If a natural person, the full name and physical address of the contracting
9 entity.

10 (b) If a legal entity, a complete and accurate listing of the owners of the
11 contracting entity, whether in title or beneficial, unless it is a publicly traded entity,
12 and a complete and accurate listing of the board of directors or equivalent governing
13 body, if any, and officers, if any, of the contracting entity.

14 (c) Information regarding the percentage of minority, women, veteran, and
15 Louisiana-based ownership of the contracting entity, unless it is a publicly traded
16 entity.

17 (d) A certification that all applicable federal, state, and payroll taxes owed
18 by the contracting entity have been paid and are current.

19 (e) If the contracting entity is a nonprofit organization, a certification that the
20 contracting entity has filed a current Form 990, as required by the Internal Revenue
21 Code, along with a copy of its most recent Form 990.

22 (f) Information indicating the type or nature of the contract with the state
23 agency, including whether the contract was publicly bid, competitively bid,
24 competitively negotiated, or let through a noncompetitive process; the value of the
25 contract; and the name of each state agency which is or would be a party to the
26 contract.

27 (g) If the contracting entity is currently subject to the reporting requirements
28 of R.S. 24:513, a certification that the contracting entity has submitted the required
29 reports to the legislative auditor.

1 (h) The names and addresses of all agents, registered lobbyists, and other
2 persons lobbying, as "lobbying" is defined in R.S. 24:51 or R.S. 49:72, on behalf of
3 the contracting entity relative to a contract or potential contract with the state or an
4 appropriation or grant.

5 (2) Notwithstanding the provisions of the introductory paragraph of
6 Paragraph (1) of this Subsection, for contracts entered into by the Department of
7 Economic Development regarding specific economic development projects, the
8 contracting entity shall submit the information required by Paragraph (1) of this
9 Subsection no later than thirty days after the execution of the contract.

10 (3) If any of the information submitted by a contracting entity pursuant to
11 this Section changes, the contracting entity shall submit updated information to the
12 legislative auditor no later than thirty days after the change.

13 (4) The legislative auditor shall post all requirements of this Section on his
14 website.

15 C.(1) The legislative auditor shall compile the information submitted
16 pursuant to this Section and make a determination regarding whether the information
17 is complete. If the legislative auditor determines that the information submitted by
18 the contracting entity is complete, he shall immediately place the name of the
19 contracting entity on a list of approved contracting entities that have complied with
20 the requirements of Subsection B of this Section and shall post and keep an updated
21 list of approved contracting entities on his website.

22 (2) The legislative auditor shall develop recommended criteria to remove a
23 contracting entity from the list of approved contracting entities and shall submit
24 those recommendations to the Legislative Audit Advisory Council for approval. If
25 the recommended criteria are approved by the Legislative Audit Advisory Council,
26 the legislative auditor shall utilize and post the criteria on his website.

27 (3) A contracting entity that is removed from the list of approved contracting
28 entities may appeal its removal to the Legislative Audit Advisory Council. If the
29 Legislative Audit Advisory Council receives such an appeal, it shall conduct a public

1 hearing on the matter. If the Legislative Audit Advisory Council determines that the
2 contracting entity was wrongfully removed from the list of approved contracting
3 entities, the legislative auditor shall immediately place the contracting entity on the
4 list of approved contracting entities.

5 D.(1) A contracting entity that appears on the list of approved contracting
6 entities on the legislative auditor's website shall be eligible, pursuant to this Section,
7 to request and receive state monies pursuant to a contract, subject to compliance with
8 any other applicable regulations and laws.

9 (2) A contracting entity shall resubmit the information required pursuant to
10 this Section at least once every two years. If a contracting entity fails to resubmit the
11 information as required, the legislative auditor shall remove the contracting entity
12 from the list of approved contracting entities.

13 (3) Any contracting entity which does not appear on the list of approved
14 contracting entities on the legislative auditor's website shall be ineligible to request
15 or receive state monies pursuant to a contract.

16 E.(1) Except as otherwise provided in Paragraph (B)(2) of this Section, no
17 state agency shall contract with any contracting entity which does not appear on the
18 list of approved contracting entities on the legislative auditor's website.

19 (2) No state agency shall pay monies to a contracting entity which does not
20 appear on the list of approved contracting entities on the legislative auditor's website.

21 (3) No contracting entity or state agency shall enter into separate or
22 successive contracts valued at ten thousand dollars or less as a subterfuge to avoid
23 the disclosures required by this Section and the prohibitions contained in this Section
24 and R.S. 39:366.7.

25 F.(1) All submissions of information by a contracting entity as required by
26 this Section shall be made in an electronic format designated by the legislative
27 auditor.

28 (2) The legislative auditor shall maintain the information submitted pursuant
29 to this Section on his website and shall provide for the ability for the public to easily

1 obtain information regarding each contracting entity, including links to any relevant
2 appropriation or capital outlay information and relevant contract information
3 maintained by the commissioner of administration pursuant to R.S. 39:6.

4 (3) The legislative auditor shall work with the commissioner of
5 administration as necessary to ensure compliance with this Section and R.S.
6 39:366.7.

7 G. Nothing in this Section shall be construed or interpreted as a limitation
8 on any power or authority granted to the attorney general pursuant to Article IV,
9 Section 8 of the Constitution of Louisiana.

10 Section 2. R.S. 39:366.7 is hereby enacted to read as follows:

11 §366.7. Contracting entities requesting or receiving state monies; documentation
12 and approval; contract prohibition

13 A. No contracting entity as defined in R.S. 24:525 shall receive or have
14 transferred to it any monies pursuant to a contract from any agency unless the
15 contracting entity is on the list of approved contracting entities on the legislative
16 auditor's website as provided in R.S. 24:525.

17 B.(1) No agency shall pay monies pursuant to a contract to a contracting
18 entity as defined in R.S. 24:525 unless the contracting entity is on the list of
19 approved contracting entities on the legislative auditor's website as provided in R.S.
20 24:525.

21 (2) Except as otherwise provided by R.S. 24:525(B)(2), no agency shall
22 contract with a contracting entity as defined in R.S. 24:525 unless the contracting
23 entity is on the list of approved contracting entities on the legislative auditor's
24 website as provided in R.S. 24:525.

25 C. No contracting entity or state agency shall enter into separate or
26 successive contracts valued at ten thousand dollars or less as a subterfuge to avoid
27 prohibitions contained in this Section and the disclosures required by and the
28 prohibitions in R.S. 24:525.

1 Section 3.(A) The requirements for contracting entities contained in Section 1 of this
2 Act shall become effective on January 1, 2017, and shall apply to contracts and renewals of
3 contracts executed on or after January 1, 2017. The prohibitions on contracting entities and
4 state agencies contained in Section 1 and Section 2 of this Act shall become effective on July
5 1, 2017. The legislative auditor, the Legislative Audit Advisory Council, and the
6 commissioner of administration shall take all actions necessary to provide for the orderly
7 implementation of this Act prior to January 1, 2017, including but not limited to notice of
8 the requirements of this Act to each state agency.

9 (B) Except as otherwise provided in Subsection A of this Section, this Act shall
10 become effective on July 1, 2016.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 558 Reengrossed

2016 Regular Session

Jay Morris

Abstract: Requires a contracting entity to submit information and documents to the legislative auditor prior to entering into a contract with a state agency. Prohibits contracting entities from receiving monies and prohibits state agencies paying monies to or entering into contracts with contracting entities unless requirements are met.

Proposed law requires each contracting entity, prior to entering into or renewing a contract with a state agency, to submit the following information to the legislative auditor in an electronic format designated by the legislative auditor:

- (1) If a legal entity, the official name and domicile address of the contracting entity as reflected in documentation submitted to the secretary of state's office or if a natural person, the full name and address of the contracting entity.
- (2) If a legal entity, a complete and accurate listing of the owners of the contracting entity, whether in title or beneficial (unless it is publicly traded), and a complete and accurate listing of the board of directors or equivalent governing body, if any, and officers, if any, of the contracting entity.
- (3) Information on the percentage of minority, women, veteran, and Louisiana-based ownership of the contracting entity (unless it is publicly traded).
- (4) A certification that all applicable federal, state, and payroll taxes owed by the contracting entity have been paid and are current.
- (5) If the contracting entity is a nonprofit organization, a certification that the contracting entity has filed a current Form 990 as required by the Internal Revenue Code along with a copy of its most recent Form 990.

- (6) Information indicating the type or nature of the contract with the state agency, including how the contract was let, the value of the contract, and the name of each state agency which is a party to the contract.
- (7) If the contracting entity is currently subject to the audit requirements of present law (R.S. 24:513), a certification that the contracting entity has submitted the required reports to the legislative auditor.
- (8) The names and addresses of all agents, registered lobbyists, and persons lobbying (as defined pursuant to the present law regarding executive branch and legislative branch lobbying) on behalf of the contracting entity relative to a contract or potential contract with the state or an appropriation or grant.

Proposed law requires the legislative auditor to compile the information submitted and determine whether the information submitted by a contracting entity is complete. Provides that if it is, he shall immediately place the name of the entity on the list of approved contracting entities and shall post and keep an updated list on his website. Provides that any changes shall be submitted by the contracting entity within 30 days after the change. Proposed law further requires the legislative auditor to develop recommended criteria to remove a contracting entity from the list of approved contracting entities and submit such to the Legislative Audit Advisory Council for approval, and if approved, to utilize it and post it on his website. Proposed law further authorizes a contracting entity that is removed of the list of approved contracting entities to appeal its removal at a public hearing of the Legislative Audit Advisory Council, and if council determines the entity was wrongfully removed, shall be added back to the list.

Proposed law provides that a contracting entity which appears on the list of approved contracting entities on the legislative auditor's website shall be eligible to request and receive state monies if in compliance with all other applicable regulations and laws and any entity which is not on the list is ineligible. Proposed law prohibits an agency from paying monies pursuant to a contract to a contracting entity unless the contracting entity is on the list of approved contracting entities on the legislative auditor's website. Further prohibits an agency from contracting with a contracting entity, unless the entity is on the list of approved contracting entities on the legislative auditor's website (provides a limited exception for certain contracts with the Dept. of Economic Development).

Proposed law prohibits a contracting entity or state entity from entering into separate or successive contracts valued at \$10,000 or less as a subterfuge to avoid disclosure requirements and prohibitions in proposed law.

Proposed law requires a contracting entity to resubmit the information required at least every two years. Further requires the legislative auditor to remove the contracting entity from the list of approved contracting entities if the entity does not resubmit the required information.

Proposed law defines "state agency", "contract", "contracting entity", "governmental entity", and "person" for its purposes. Specifically excludes governmental entities; any public, private, or parochial school, college, or university; and any electric power cooperative or provider or investor owned public utility that is regulated by the Public Service Commission (PSC) or by the governing authority of the city of New Orleans from the term "contracting entity". Specifically excludes from the term "contract" specified contracts entered into by the Dept. of Revenue and the Dept. of Economic Development and contracts valued at \$10,000 or less.

Proposed law requires the legislative auditor to maintain the information submitted pursuant to proposed law on his website and to provide for the ability for the public to easily obtain information regarding each contracting entity, including links to any relevant appropriation or capital outlay information and relevant contract information maintained by the commissioner of administration's website pursuant to present law (R.S. 39:6). Further

requires the legislative auditor to work with the commissioner of administration as necessary to ensure compliance with proposed law. Specifies nothing in proposed law (R.S. 24:525) shall be construed or interpreted as a limitation on any power or authority granted to the attorney general pursuant to present constitution (Article IV, Section 8 of the Constitution of Louisiana).

Effective July 1, 2016; except provides that the requirements on contracting entities contained in proposed law shall become effective on Jan. 1, 2017, and shall apply to contracts and renewals of contracts executed on or after Jan. 1, 2017; the prohibitions on contracting entities and state agencies contained in proposed law shall become effective on July 1, 2017. Provides that the legislative auditor, Legislative Audit Advisory Council, and the commissioner of administration shall take all actions necessary to provide for the orderly implementation of proposed law prior to Jan. 1, 2017.

(Adds R.S. 24:525 and R.S. 39:366.7)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the original bill:

1. Change required content of submission to include a certification, rather than "document certifying", of information regarding the status of payment of taxes owed, of whether a current Form 990 has been filed, and of whether required reports to the legislative auditor have been submitted.

The Committee Amendments Proposed by House Committee on Appropriations to the engrossed bill:

1. Exclude contracts valued at \$10,000 or less from the definition of "contracts".
2. Add prohibition on entering into separate or successive contracts valued at \$10,000 or less as a subterfuge to avoid requirements of proposed law.
3. Add requirement that the contracting entity submit updated information within 30 days of any change in required information.
4. Add authority of a contracting entity to appeal its removal from the list of approved contracting entities at a public hearing of the Legislative Audit Advisory Council.
5. Change required content of submission to information regarding, instead of documentation of, the percentage of minority, women, veteran, and Louisiana-based ownership.
6. Add requirement that a contracting entity shall resubmit the required information at least once every two years and that an entity that fails to resubmit the required information shall be removed from the list of approved contracting entities.