

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

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

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

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

28 B.(1) Prior to entering into or renewing a contract with a state agency, a
29 contracting entity shall submit information and documentation to the legislative

1 auditor and be approved in the manner provided in this Section. The contracting
2 entity shall submit the following information to the legislative auditor:

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

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

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

12 (c) Documentation of the percentage of minority, women, veteran, and
13 Louisiana-based ownership of the contracting entity, unless it is a publicly traded
14 entity.

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

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

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

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

28 (h) The names and addresses of all agents, registered lobbyists, and other
29 persons lobbying, as "lobbying" is defined in R.S. 24:51 or R.S. 49:72, on behalf of

1 the contracting entity relative to a contract or potential contract with the state or an
2 appropriation or grant.

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

8 (3) The legislative auditor shall post all requirements of this Section on his
9 website.

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

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

22 D. A contracting entity that appears on the list of approved contracting
23 entities on the legislative auditor's website shall be eligible, pursuant to this Section,
24 to request and receive state monies pursuant to a contract, subject to compliance with
25 any other applicable regulations and laws. Any contracting entity which does not
26 appear on the list of approved contracting entities on the legislative auditor's website
27 shall be ineligible to request or receive state monies pursuant to a contract.

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

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

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

9 (2) The legislative auditor shall maintain the information submitted pursuant
10 to this Section on his website and shall provide for the ability for the public to easily
11 obtain information regarding each contracting entity, including links to any relevant
12 appropriation or capital outlay information and relevant contract information
13 maintained by the commissioner of administration pursuant to R.S. 39:6.

14 (3) The legislative auditor shall work with the commissioner of
15 administration as necessary to ensure compliance with this Section and R.S.
16 39:366.7.

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

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

21 §366.7. Contracting entities requesting or receiving state monies; documentation
22 and approval; contract prohibition

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

27 B.(1) No agency shall pay monies pursuant to a contract to a contracting
28 entity as defined in R.S. 24:525 unless the contracting entity is on the list of

1 approved contracting entities on the legislative auditor's website as provided in R.S.
2 24:525.

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

7 Section 3.(A) The requirements for contracting entities contained in Section 1 of this
8 Act shall become effective on January 1, 2017, and shall apply to contracts and renewals of
9 contracts executed on or after January 1, 2017. The prohibitions on contracting entities and
10 state agencies contained in Section 1 and Section 2 of this Act shall become effective on July
11 1, 2017. The legislative auditor, the Legislative Audit Advisory Council, and the
12 commissioner of administration shall take all actions necessary to provide for the orderly
13 implementation of this Act prior to January 1, 2017, including but not limited to notice of
14 the requirements of this Act to each state agency.

15 (B) Except as otherwise provided in Subsection A of this Section, this Act shall
16 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 Engrossed

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) Documentation of 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. 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 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 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.

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.