

2022 Regular Session

HOUSE BILL NO. 141

BY REPRESENTATIVE MCCORMICK

CONTRACTS: Prohibits certain public contracts with companies that boycott fossil fuel companies

1 AN ACT

2 To amend and reenact R.S. 39:199.1 and to enact R.S. 38:2216.1, R.S. 39:200.1 and 1602.2,
3 and R.S. 48:251.1.1, relative to public contracts; to prohibit certain contracts with
4 companies that boycott fossil fuel companies; to provide for definitions; to provide
5 restrictions on applicability; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 38:2216.1 is hereby enacted to read as follows:

8 §2216.1. Prohibition on contracts with companies that boycott fossil fuel companies

9 A. As used in this Section, the following terms have the following meanings
10 unless the context clearly indicates otherwise:

11 (1) "Boycott fossil fuel company" means, without an ordinary business
12 purpose, refuse to deal with, terminate business activities with, or otherwise take any
13 action that is intended to penalize, inflict economic harm on, or limit commercial
14 relations with, a company because the company:

15 (a) Engages in the exploration, production, transportation, sale, or
16 manufacture of fossil fuel-based energy and does not commit or pledge to meet
17 environmental standards beyond applicable federal and state law; or

18 (b) Does business with a company described by Subparagraph (a) of this
19 Paragraph.

1 (2) "Company" means a for-profit organization, association, corporation,
2 partnership, joint venture, limited partnership, limited liability partnership, or limited
3 liability company, including a wholly owned subsidiary, majority-owned subsidiary,
4 parent company, or affiliate of those entities or associations, that exists to make a
5 profit. "Company" does not mean a sole proprietorship.

6 B.(1) Except as provided in Paragraph (2) of this Subsection, the provisions
7 of this Section apply to any contract with a value of one hundred thousand dollars
8 or more that meets all of the following criteria:

9 (a) Is to be paid partly or wholly from public funds.

10 (b) Is between a public entity and a company with at least ten full-time
11 employees.

12 (c) Is entered into on or after August 1, 2022.

13 (2) The provisions of this Section do not apply if either of the following
14 conditions are met:

15 (a) The contract is with a sole-source provider.

16 (b) The public entity determines the requirements of Subsection C of this
17 Section are inconsistent with the public entity's constitutional or statutory duties
18 related to the issuance, incurrence, or management of debt obligations or the deposit,
19 custody, management, borrowing, or investment of funds.

20 C. Except as otherwise provided in this Section, a public entity shall not
21 enter into a contract the letting of which is governed by the provisions of this
22 Chapter with a company for the purchase of goods or services unless the contract
23 contains a written verification from the company of both of the following:

24 (1) The company does not boycott fossil fuel companies.

25 (2) The company will not boycott fossil fuel companies during the term of
26 the contract.

27 Section 2. R.S. 39:199.1 is hereby amended and reenacted and R.S. 39:200.1 and
28 1602.2 are hereby enacted to read as follows:

1 §199.1. Alternative procedures

2 A. Notwithstanding any provision of law to the contrary, an agency shall not
3 be required to follow the procedures provided in this Part or the Louisiana
4 Procurement Code for procurement of software and the hardware used to support the
5 software if the alternative procedures to be used by the agency are approved by the
6 Joint Legislative Committee on Technology and Cybersecurity and the specific
7 procurement is approved by the Joint Legislative Committee on the Budget.

8 B. Notwithstanding any provision of this Section to the contrary, the
9 provisions of R.S. 39:200.1 apply to any contract entered into pursuant to the
10 provisions of this Section.

11 * * *

12 §200.1. Prohibition on contracts with companies that boycott fossil fuel companies

13 A. As used in this Section, the following terms have the following meanings
14 unless the context clearly indicates otherwise:

15 (1) "Boycott fossil fuel company" means, without an ordinary business
16 purpose, refuse to deal with, terminate business activities with, or otherwise take any
17 action that is intended to penalize, inflict economic harm on, or limit commercial
18 relations with, a company because the company:

19 (a) Engages in the exploration, production, transportation, sale, or
20 manufacture of fossil-fuel-based energy and does not commit or pledge to meet
21 environmental standards beyond applicable federal and state law; or

22 (b) Does business with a company described by Subparagraph (a) of this
23 Paragraph.

24 (2) "Company" means a for-profit organization, association, corporation,
25 partnership, joint venture, limited partnership, limited liability partnership, or limited
26 liability company, including a wholly owned subsidiary, majority-owned subsidiary,
27 parent company, or affiliate of those entities or associations that exists to make a
28 profit. "Company" does not mean a sole proprietorship.

1 B.(1) Except as provided in Paragraph (2) of this Subsection, the provisions
2 of this Section apply to any contract with a value of one hundred thousand dollars
3 or more that meets all of the following criteria:

4 (a) Is to be paid partly or wholly from public funds.

5 (b) Is between an agency and a company with at least ten full-time
6 employees.

7 (c) Is entered into on or after August 1, 2022.

8 (2) The provisions of this Section do not apply if either of the following
9 conditions are met:

10 (a) The contract is with a sole-source provider.

11 (b) The agency determines the requirements of Subsection C of this Section
12 are inconsistent with the agency's constitutional or statutory duties related to the
13 issuance, incurrence, or management of debt obligations or the deposit, custody,
14 management, borrowing, or investment of funds.

15 C. Except as otherwise provided in this Section, an agency shall not enter
16 into a contract the procurement of which is governed by the provisions of this Part
17 with a company for the purchase of goods or services unless the contract contains a
18 written verification from the company of both of the following:

19 (1) The company does not boycott fossil fuel companies.

20 (2) The company will not boycott fossil fuel companies during the term of
21 the contract.

22 * * *

23 §1602.2. Prohibition on contracts with companies that boycott fossil fuel companies

24 A. As used in this Section, the following terms have the following meanings
25 unless the context clearly indicates otherwise:

26 (1) "Boycott fossil fuel company" means, without an ordinary business
27 purpose, refuse to deal with, terminate business activities with, or otherwise take any
28 action that is intended to penalize, inflict economic harm on, or limit commercial
29 relations with, a company because the company:

1 (a) Engages in the exploration, production, transportation, sale, or
2 manufacture of fossil-fuel-based energy and does not commit or pledge to meet
3 environmental standards beyond applicable federal and state law; or

4 (b) Does business with a company described by Subparagraph (a) of this
5 Paragraph.

6 (2) "Company" means a for-profit organization, association, corporation,
7 partnership, joint venture, limited partnership, limited liability partnership, or limited
8 liability company, including a wholly owned subsidiary, majority-owned subsidiary,
9 parent company, or affiliate of those entities or associations that exists to make a
10 profit. "Company" does not mean a sole proprietorship.

11 (3) "Public entity" means any of the following:

12 (a) A department, office division, commission, council, board, bureau,
13 committee, institution, agency, government corporation, or other establishment or
14 official of the executive branch of state government entering into a procurement
15 contract pursuant to the provisions of this Chapter.

16 (b) A political subdivision that has adopted all or any part of this Chapter
17 and its accompanying regulations as authorized by R.S. 39:1554(E).

18 (c) A local public procurement unit participating in a cooperative purchasing
19 agreement pursuant to R.S. 39:1702.

20 B.(1) Except as provided in Paragraph (2) of this Subsection, the provisions
21 of this Section apply to any contract with a value of one hundred thousand dollars
22 or more that meets all of the following criteria:

23 (a) Is to be paid partly or wholly from public funds.

24 (b) Is between a public entity and a company with at least ten full-time
25 employees.

26 (c) Is entered into on or after August 1, 2022.

27 (2) The provisions of this Section do not apply if either of the following
28 conditions are met:

29 (a) The contract is with a sole-source provider.

1 (b) The public entity determines the requirements of Subsection C of this
2 Section are inconsistent with the public entity's constitutional or statutory duties
3 related to the issuance, incurrence, or management of debt obligations or the deposit,
4 custody, management, borrowing, or investment of funds.

5 C. Except as otherwise provided in this Section, a public entity may not enter
6 into a contract the procurement of which is governed by the provisions of this
7 Chapter with a company for the purchase of goods or services unless the contract
8 contains a written verification from the company of both of the following:

9 (1) The company does not boycott fossil fuel companies.

10 (2) The company will not boycott fossil fuel companies during the term of
11 the contract.

12 Section 3. R.S. 48:251.1.1 is hereby enacted to read as follows:

13 §251.1.1. Prohibition on contracts with companies that boycott fossil fuel
14 companies

15 A. As used in this Section, the following terms have the following meanings
16 unless the context clearly indicates otherwise:

17 (1) "Boycott fossil fuel company" means, without an ordinary business
18 purpose, refuse to deal with, terminate business activities with, or otherwise take any
19 action that is intended to penalize, inflict economic harm on, or limit commercial
20 relations with, a company because the company:

21 (a) Engages in the exploration, production, transportation, sale, or
22 manufacture of fossil-fuel-based energy and does not commit or pledge to meet
23 environmental standards beyond applicable federal and state law; or

24 (b) Does business with a company described by Subparagraph (a) of this
25 Paragraph.

26 (2) "Company" means a for-profit organization, association, corporation,
27 partnership, joint venture, limited partnership, limited liability partnership, or limited
28 liability company, including a wholly owned subsidiary, majority-owned subsidiary,

1 parent company, or affiliate of those entities or associations that exists to make a
2 profit. "Company" does not mean a sole proprietorship.

3 (3) "Department" means the Department of Transportation and
4 Development.

5 B.(1) Except as provided in Paragraph (2) of this Subsection, the provisions
6 of this Section apply to any contract with a value of one hundred thousand dollars
7 or more that meets all of the following criteria:

8 (a) Is to be paid partly or wholly from public funds.

9 (b) Is between the department and a company with at least ten full-time
10 employees.

11 (c) Is entered into on or after August 1, 2022.

12 (2) The provisions of this Section do not apply if either of the following
13 conditions are met:

14 (a) The contract is with a sole-source provider.

15 (b) The department determines the requirements of Subsection C of this
16 Section are inconsistent with its constitutional or statutory duties related to the
17 issuance, incurrence, or management of debt obligations or the deposit, custody,
18 management, borrowing, or investment of funds.

19 C. Except as otherwise provided in this Section, the department shall not
20 enter into a contract the letting of which is governed by the provisions of this Part
21 with a company for the purchase of goods or services unless the contract contains a
22 written verification from the company of both of the following:

23 (1) The company does not boycott fossil fuel companies.

24 (2) The company will not boycott fossil fuel companies during the term of
25 the contract.

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 141 Original

2022 Regular Session

McCormick

Abstract: Prohibits certain state and local entities from contracting with companies that boycott fossil fuel companies.

Proposed law creates certain restrictions with respect to the ability of the state and its political subdivisions to contract pursuant to: the Public Bid Law (R.S. 38:2181 et seq.), state information technology (IT) procurement laws (R.S. 39:196 et seq.), the La. Procurement Code (R.S. 39:1551 et seq.), and Dept. of Transportation and Development (DOTD) construction procurements (R.S. 48:250 et seq.).

PUBLIC BID LAW

Present law establishes the Public Bid Law to govern the letting of contracts for the erection, construction, alteration, improvement, or repair of any public facility or land owned, used, or leased by a public entity. Defines "public entity" to mean the state of La. or any agency, board, commission, department, or public corporation of the state, or any political subdivision of the state, and any public housing authority, public school board, or any public officer whether or not an officer of a public corporation or political subdivision. (Pursuant to present law, the term does not include a 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 adds an additional restriction to contracts let by public entities pursuant to present law. Prohibits a public entity from entering into a contract, the letting of which is governed by the provisions of present law, with a company for the purchase of goods or services unless the contract contains a written verification from the company of both of the following:

- (1) The company does not boycott fossil fuel companies.
- (2) The company will not boycott fossil fuel companies during the term of the contract.

Further defines the term "boycott fossil fuel companies" to mean , without an ordinary business purpose, refuse to deal with, terminate business activities with, or otherwise take any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (a) engages in the exploration, production, transportation, sale, or manufacture of fossil-fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law or (b) does business with such a company.

Further provides that proposed law applies only to a contract with a value of \$100,000 or more that meets all of the following criteria:

- (1) Is to be paid partly or wholly from public funds.
- (2) Is between a public entity and a company with at least 10 full-time employees.
- (3) Is entered into on or after Aug. 1, 2022.

Further establishes exceptions to proposed law for:

- (1) Sole-source provider contracts.
- (2) Circumstances where the public entity determines the requirements of proposed law are inconsistent with the public entity's constitutional or statutory duties related to the issuance, incurrence, or management of debt obligations or the deposit, custody, management, borrowing, or investment of funds.

STATE IT PROCUREMENT

Present law establishes special procurement mechanisms for all state agencies in the executive branch—except those of a statewide elected official—for the purchase, lease, and rental of IT equipment, related services, and software. Present law defines "agency" for the purposes of state IT procurement to mean the boards, commissions, departments, agencies, offices, officers, and other instrumentalities, or any or all of these, within the executive branch of state government pursuant to present law (Title 36) or transferred to and placed within the office of the governor as provided by present law.

Proposed law prohibits procurements pursuant to present law with a company that boycotts fossil fuel companies, with the same requirements and exemptions as provided in proposed law for the Public Bid Law.

Present law further allows an agency to use an alternative IT procurement procedure in certain circumstances. Proposed law requires any such alternative procedure to comply with proposed law's Procurement Code prohibition on contracting with a company that boycotts fossil fuel companies.

LOUISIANA PROCUREMENT CODE

Present law establishes the La. Procurement Code to govern buying, purchasing, renting, leasing, or otherwise obtaining supplies, services, or major repairs by any governmental body of the state. Present law defines "governmental body" as any department, office, division, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch of state government. Present law further authorizes political subdivisions to participate in certain contracts let pursuant to present law.

Present law (R.S. 39:2191 et seq.) establishes restrictions on contracting that apply to any bid or award resulting from present law (the La. Procurement Code). Proposed law adds an additional restriction for contracts let by public entities pursuant to the La. Procurement Code. Defines "public entity" as:

- (1) A department, office division, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch of state government.
- (2) A political subdivision who has adopted all or any part of this Chapter and its accompanying regulations as authorized by present law (R.S. 39:1554(E)).
- (3) A local public procurement unit participating in a cooperative purchasing agreement pursuant to present law (R.S. 39:1702).

Present law (R.S. 39:1556) defines "local public procurement unit" to mean any parish, city, town, governmental body, and any other subdivision of the state or public agency thereof, public authority, public educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the acquisition or leasing of supplies, services, major repairs, and construction, and any nonprofit corporation operating a charitable hospital.

Proposed law prohibits procurements pursuant to present law with a company that boycotts fossil fuel companies, with the same requirements and exemptions as provided in proposed law for the Public Bid Law.

DOTD CONSTRUCTION CONTRACTS

Present law provides authority, requirements, and restrictions relative exclusively to certain DOTD construction contracts. Proposed law prohibits procurements pursuant to present law with a company that boycotts fossil fuel companies, with the same requirements and exemptions as provided in proposed law for the Public Bid Law.

Effective August 1, 2022.

(Amends R.S. 39:199.1; Adds R.S. 38:2216.1, R.S. 39:200.1 and 1602.2, and R.S. 48:251.1.1)