

SENATE SUMMARY OF HOUSE AMENDMENTS

SB 242 By Senator Appel**KEYWORD AND SUMMARY AS RETURNED TO THE SENATE**

PUBLIC CONTRACTS. Requires recording of certain public work and material and supplies contracts and certain amendments, revisions, and change orders; increases fines and criminal penalties for splitting profits, fees, and commissions. (8/15/11)

SUMMARY OF HOUSE AMENDMENTS TO THE SENATE BILL

1. Removes provisions of proposed law (R.S. 31:126), relative to capital outlay projects, which require that each change order to a contract for a capital outlay project which adds an amount of 10% or more of the original contract amount and which additional amount is at least \$10,000 or all change orders to a contract aggregating to an amount of 20% or more of the original contract amount and which amount is at least \$10,000 must be recorded by the agency which entered into the contract in the office of the recorder of mortgages in the parish where the work is to be done.

DIGEST OF THE SENATE BILL AS RETURNED TO THE SENATE

Present law (R.S. 14:141) prohibits the splitting of profits, fees or commissions in certain instances. Defines "splitting of profits, fees or commissions" as the giving, offering to give, receiving or offering to receive, directly or indirectly, anything of apparent present or prospective value by or to a public officer or public employee or to any fund or fiduciary existing for the benefit of or use by such public officer or employee, when such value is derived from any agreement or contract to which the state or any subdivision thereof is a party.

Present law defines "public officer," and "public employee" to apply to any executive, ministerial, administrative, judicial, or legislative officer, office, employee or position of authority respectively, of the state or any parish, municipality, district, or other political subdivision thereof, or of any agency, board, commission, department or institution of said state, parish, municipality, district, or other political subdivision.

Proposed law clarifies that the prohibition is also applicable to political subdivisions.

Present law provides that there shall be no splitting of profits, fees or commissions, past or present, derived from the sale of any commodity, goods, services, insurance, or anything of value to the state or any subdivision thereof from which a public official or employee, representing the state in his official capacity in the contract negotiations, receives or offers to receive a portion of the profits, fees and/or commissions, unless the amount thereof and the conditions therefor are included in detail in the contract of sale or the insurance contract and said contract is filed by the public official or employee with the secretary of state at least 10 days prior to execution of said contract. Requires that 10-day filing period be waived in the event of an emergency in which the filing is not reasonable. Upon the filing, the secretary of state shall immediately release to the news media the details of such contract and, upon written request, furnish a copy of such contract to the news media.

Proposed law clarifies that the provision also applies to political subdivisions, and that the contract itself is a public record. Also deletes provisions in present law which authorize including such profits, fees, and/or commissions in a contract of sale or insurance if the details of such contracts are filed with the secretary of state 10 days prior to execution (waived in an emergency) and required to be released to news media. Also specifies that the contract is a public record.

Present law provides that whoever commits the crime of failure to report the splitting of profits, fees or commissions, and to contain such fee arrangement in the contract of sale or

in the insurance contract shall upon conviction be fined not more than \$1,000 or shall be imprisoned, with or without hard labor, for not more than two years, or both.

Proposed law changes present law and provides that whoever receives or offers to receive a portion of profits, fees or commissions shall upon conviction be fined not more than \$10,000 or shall be imprisoned, with or without hard labor, for not more than 10 years, or both.

Present law (R.S. 38:2196.1) provides that when any person or other entity enters into any contract awarded without bidding with a state entity or local entity, or any contract with a local entity exceeding \$10,000 awarded with bidding, in which a commission, fee, or other consideration is paid to the contractor for the contractor to sell to or provide to the state entity or local entity any commodity, goods, brokerage service or other service of any kind, insurance, or anything of value, then the full disposition, splitting, or sharing of such commission, fee, or other consideration shall be disclosed to the state entity or local entity by the contractor in writing by an affidavit of notice of fee disposition prescribed by the Board of Ethics notarized as to its authenticity. Requires that the affidavit include the full value of the commission, fee, or other consideration to be paid, the names of all parties to receive dispositions, splits, or shares of the commission, fee, or other consideration, and the signature of the party authorized to commit the entity receiving the commission, fee, or other consideration to the contract, who shall attest to the truth of the facts set forth in the affidavit. Requires that the affidavit of notice be attached to and made a part of the contract for which the commission, fee, or other consideration is paid and shall be recorded in the public record. Provides that if at any time the disposition, splitting, or sharing of the commission, fee, or other consideration changes, or the amount of the commission, fee, or other consideration changes, then a new affidavit reflecting the changes from the first affidavit shall be prepared, executed, notarized, and recorded by the contractor in the public record. Provides that if for any reason the information on the recorded affidavit shall be found to be incorrect, then the contract shall become null and void and all payments of the commission, fee, or other consideration shall be rebated to the state entity or local entity which entered into the contract. Provides that in addition, intentional misrepresentation of the facts on an affidavit shall subject the party attesting to the facts to the penalties provided for filing or maintaining false public records provided for in R.S. 14:133.

Proposed law repeals present law and all other provisions with similar requirements for other types of contracts.

Proposed law (R.S. 38:2192) provides that each amendment or other revision to any service or insurance contract which adds an amount of 10% or more of the original contract amount and which additional amount is at least \$10,000 or all amendments and other revisions to any service or insurance contract aggregating to an amount of 20% or more of the original contract amount and which additional amount is at least \$10,000 shall be recorded by the public entity which entered into the contract in the office of the recorder of mortgages in the parish where the public entity is domiciled not later than 30 days after the date of such amendment or other revision takes place. Also, proposed law provides that the original contract shall be recorded together with the amendments or other revisions if not previously recorded.

Proposed law (R.S. 38:2222) requires that each change order to a public works contract or to a contract for materials and supplies which adds an amount of 10% or more of the original contract amount and which additional amount is at least \$10,000 or all change orders to a contract aggregating to an amount of 20% or more of the original contract amount and which additional amount is at least \$10,000 shall be recorded by the public entity which entered into the contract in the office of the recorder of mortgages in the parish where the work is to be done or if not a public work, where the entity is domiciled, not later than 30 days after the date of the change order which requires that the recordation take place.

Proposed law (R.S. 39:1557.1), relative to the Louisiana Procurement Code, requires each change order to a contract which adds an amount of 10% or more of the original contract amount and which additional amount is at least \$10,000 or all change orders to a contract aggregating to an amount of 20% of the original contract amount shall be recorded by the governmental body which entered into the contract in the office of the recorder of mortgages

in the parish where the work is to be done or where the entity is domiciled not later than 30 days after the date of the change order which requires that such recordation take place. Also, proposed law provides that the original contract shall be recorded together with the amendments or other revisions if not previously recorded. Also, proposed law provides that it shall not apply to the office of facility planning and control and the office of state purchasing.

Effective August 15, 2011.

(Amends R.S. 14:141, R.S. 39:1767, and R.S. 48:251.8; adds R.S. 38:2192 and 2222 and R.S. 39:1557.1; repeals R.S. 38:2196.1 and R.S. 39:200(N), 1493.1, and 1758)

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