

SENATE BILL NO. 242

BY SENATOR APPEL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1

AN ACT

2

To amend and reenact R.S. 14:141 and R.S. 39:1767 and R.S. 48:251.8, to enact R.S. 38:2192 and 2222 and R.S. 39:1557.1, and to repeal R.S. 38:2196.1, R.S. 39:200(N) and 1493.1, and Part X of Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950, consisting of R.S. 39:1758, relative to public contracts; to provide for prohibited splitting of profits, fees, and commissions; to provide with respect to recordation of certain change orders, amendments, or other revisions to public contracts; and to provide for related matters.

8

Be it enacted by the Legislature of Louisiana:

9

Section 1. R.S. 14:141 is hereby amended and reenacted to read as follows:

10

§141. Prohibited splitting of profits, fees or commissions; exceptions

11

A. For the purposes of this ~~section~~ Section, "splitting of profits, fees or commissions" means 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 political subdivision thereof is a party.

12

B. 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 political subdivision thereof from which a public ~~officer~~ official or public employee, representing the state or a political subdivision, as the case may be, 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~~

hereinabove described with the secretary of state at least ten days prior to execution of said contract. The ten-day filing period shall be waived in the event of an emergency in which such filing is not reasonable. Upon filing thereof, 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. **The contract shall be a public record.**

C. Whoever commits the crime of failure to report the splitting of receiving or offering to receive a portion of the profits, fees or commissions, and to contain such fee arrangement in the contract of sale or in the insurance contract as provided by this act Section shall upon conviction be fined not more than one ten thousand dollars or shall be imprisoned, with or without hard labor, for not more than two ten years, or both.

Section 2. R.S. 38:2192 and 2222 are hereby enacted to read as follows:

§2192. Certain contract amendments and revisions; recordation

Each amendment or other revision to any service or insurance contract which adds an amount of ten percent or more of the original contract amount and which additional amount is at least ten thousand dollars or all amendments and other revisions to any service or insurance contract aggregating to an amount of twenty percent or more of the original contract amount and which additional amount is at least ten thousand dollars 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 thirty days after the date of the amendment or other revision which requires that the recordation take place. In addition, the original contract shall be recorded together with the amendments or other revisions if not previously recorded.

* * *

§2222. Change orders; recordation

Each change order to a public works contract or to a contract for materials and supplies which adds an amount of ten percent or more of the

1 original contract amount and which additional amount is at least ten thousand
2 dollars or all change orders to a contract aggregating to an amount of twenty
3 percent or more of the original contract amount and which additional amount
4 is at least ten thousand dollars shall be recorded by the public entity which
5 entered into the contract in the office of the recorder of mortgages in the parish
6 where the work is to be done or, if not a public work, where the entity is
7 domiciled not later than thirty days after the date of the change order which
8 requires that the recordation take place. In addition, the original contract shall
9 be recorded together with the change orders if not previously recorded. The
10 provisions of this Section shall not apply to the office of facility planning and
11 control, and the office of state purchasing.

12 Section 3. R.S. 39:1767 is hereby amended and reenacted and R.S. 39:1557.1 is

13 hereby enacted to read as follows:

14 **§1557.1. Change orders; recordation**

15 Each change order to a contract which adds an amount of ten percent or
16 more of the original contract amount and which additional amount is at least
17 ten thousand dollars or all change orders to a contract aggregating to an
18 amount of twenty percent or more of the original contract amount and which
19 additional amount is at least ten thousand dollars shall be recorded by the
20 governmental body which entered into the contract in the office of the recorder
21 of mortgages in the parish where the work is to be done or where the entity is
22 domiciled not later than thirty days after the date of the change order which
23 requires that the recordation take place. In addition, the original contract shall
24 be recorded together with the amendments or other revisions if not previously
25 recorded. The provisions of this Section shall not apply to the office of facility
26 planning and control, and the office of state purchasing.

27 * * *

28 §1767. Appropriation dependency; requirement for affidavit of notice of fee
29 disposition

30 A. All lease-purchase contracts entered into pursuant to this Chapter shall

1 contain an annual appropriation dependency requirement to the effect that renewal
2 and continuation of such contract is contingent upon the appropriation of funds to
3 fulfill the requirements of the contract and if the legislature, after a diligent and good
4 faith effort, fails to appropriate sufficient monies to provide for the continuation of
5 a contract, or if such appropriation can not be effected, the contract shall terminate
6 in accordance with the terms of the lease on the last day of the last fiscal year for
7 which funds were appropriated, provided the equipment is returned to the nonprofit
8 lessor or his agent, as provided in the equipment-lease-purchase contract and such
9 contract shall not be a long-term debt of the state or the applicable purchasing
10 agency. In addition, in such equipment-lease-purchase contracts, the nonprofit lessor
11 shall covenant and agree to indemnify and hold the lessee harmless against any loss,
12 damage, liability, cost, penalty, or expense, including attorney fees, which is not
13 otherwise agreed to by the lessee in the equipment-lease-purchase contract and
14 which is incurred and arises upon a failure of the legislature to appropriate funds in
15 the manner described above for a continuation of the contract or the exercise of the
16 option to purchase the selected equipment.

17 B. Notwithstanding any limitation of the applicability of this Part or Chapter
18 ~~in any other provision of law, contracts shall be subject to the provisions of R.S.~~
19 ~~38.2196.1 regarding the requirement for an affidavit of notice of fee disposition, if~~
20 ~~applicable.~~

21 Section 4. R.S. 48:251.8 is hereby amended and reenacted to read as follows:

22 §251.8. Public contracts; certain provisions invalid; ~~requirement for affidavit of~~
23 ~~notice of fee disposition~~

24 A. The legislature hereby declares null and void and unenforceable as against
25 public policy any provision in a department contract which requires either of the
26 following:

27 (1) That a suit or arbitration proceeding must be brought in a forum or
28 jurisdiction outside of this state, instead of being pursued in accordance with the laws
29 of this state governing such actions.

30 (2) That the agreement must be interpreted according to the laws of another

1 jurisdiction.

2 ~~B. Notwithstanding any limitation of the applicability of this Part or Chapter~~
3 ~~in any other provision of law, contracts shall be subject to the provisions of R.S.~~
4 ~~38:2196.1 regarding the requirement for an affidavit of notice of fee disposition, if~~
5 ~~applicable.~~

6 Section 5. R.S. 38:2196.1, R.S. 39:200(N) and 1493.1, and Part X of Chapter 17 of
7 Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950, consisting of R.S. 39:1758,
8 are hereby repealed in their entirety.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____