

Regular Session, 2014

HOUSE BILL NO. 865

BY REPRESENTATIVE RICHARD

PUBLIC CONTRACTS: Provides for content, review, approval, and monitoring of certain cooperative endeavor agreements and contracts

1 AN ACT

2 To enact Subpart F of Part I of Chapter 16 of Subtitle III of Title 39 of the Louisiana
3 Revised Statutes of 1950, to be comprised of R.S. 39:1493.1 and 1493.2, relative to
4 public contracts; to require governmental bodies to submit cooperative endeavor
5 agreements which require the expenditure of public funds to the Office of
6 Contractual Review for review and approval; to provide for the content of such
7 agreements; to provide for the content of cooperative endeavor agreements or
8 contracts for line item appropriations; to require each governmental body to submit
9 such agreements or contracts to the Office of Contractual Review for review and
10 approval prior to disbursement of funds; to provide for the monitoring of
11 disbursements pursuant to such agreements or contracts; to provide for applicability;
12 and to provide for related matters.

13 Be it enacted by the Legislature of Louisiana:

14 Section 1. Subpart F of Part I of Chapter 16 of Subtitle III of Title 39 of the
15 Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:1493.1 and 1493.2, is hereby
16 enacted to read as follows:

17 SUBPART F. COOPERATIVE ENDEAVOR AGREEMENTS

18 §1493.1. Review and approval of cooperate endeavor agreements

19 A.(1) Unless exempted by written delegation of authority granted by the
20 director of contractual review with the approval of the commissioner of

1 administration, each governmental body as defined by R.S. 39:1484(11) shall submit
2 all cooperative endeavor agreements (hereafter "agreements") which are not with
3 another governmental entity and which require the expenditure of public funds to the
4 Office of Contractual Review for review and approval.

5 (2) To the fullest extent possible, all agreements shall be submitted for
6 review at least forty-five days prior to the effective date of the agreement. The
7 Office of Contractual Review shall review the agreement as expeditiously as possible
8 and return it to the submitting governmental body. Agreements not submitted within
9 forty-five days in advance of the effective date of the agreement shall be
10 accompanied by a written explanation of the reasons for the delayed submission.

11 B. All agreements shall contain a plan to monitor compliance with the terms
12 of the agreement, assigning a particular person within the governmental body to be
13 responsible for monitoring the agreement. Written reports shall be provided to the
14 governmental body at least every six months concerning the use of funds and the
15 specific goals and objectives for the use of the funds.

16 C. All agreements shall be submitted with appropriate budgetary forms as
17 determined by the director of contractual review evidencing the availability of funds.

18 D. All agreements shall contain a provision that conditions the agreement on
19 the availability of sufficient funds to fulfill the obligations of the governmental body
20 under the agreement and the approval of the director of contractual review, the
21 commissioner of administration, or both, unless exempt by written delegation of
22 authority granted pursuant to Paragraph (1) of Subsection A of this Section.

23 E. Agreements with nongovernmental entities for economic development
24 purposes shall contain the specific goals sought to be achieved by the
25 nongovernmental entity and methods for reimbursement to the state if those goals
26 are not met. Further, a nongovernmental entity, other than one participating in a
27 business incubator program, the Quality Jobs Program, or the Enterprise Zone
28 Program, which defaults on the agreement, breaches the terms of the agreement,

1 ceases to do business, or ceases to do business in Louisiana, shall be required to
2 repay the state. The agreement shall set out the terms of the repayment.

3 F. Agreements in which the state provides a guarantee or credit enhancement
4 for a private for-profit entity and which do not contemplate the issuance of bonds
5 shall be submitted to the State Bond Commission for approval prior to execution.
6 Evidence of the required State Bond Commission approval shall be attached to the
7 submitted agreement.

8 G. Agreements based on legislative appropriation to a public or quasi-public
9 agency or entity which is not a state budget unit shall include a comprehensive
10 budget provided to the governmental body and the legislative auditor showing all
11 anticipated uses of the appropriation, an estimate of the duration of the project, and
12 a plan showing specific goals and objectives, including measures of performance.

13 H. Agreements that contain an authorization for a nongovernmental recipient
14 to make grants shall contain a listing of all subrecipients, or, at a minimum, a
15 detailed description of the grant application and approval process, ensuring that
16 funds are not provided for any use inconsistent with the provisions of the agreement.

17 I. All departments, commissions, boards, agencies, and officers of the state
18 of Louisiana, or any political subdivision thereof, are authorized and directed to
19 cooperate in implementing the provisions of this Subpart.

20 §1493.2. Additional requirements for line item appropriations

21 A. In addition to any other information which may be required, and
22 specifically in addition to any information which may be required pursuant to the
23 provisions of this Title and the Act containing the appropriation, cooperative
24 endeavor agreements or contracts for line item appropriations with any entity which
25 is not a governmental body nor a governmental entity shall include the following
26 information:

27 (1) A copy of any supplemental information form submitted pursuant to R.S.
28 39:51.1.

1 (2) The legal name and mailing address of the recipient entity, and, if the
2 entity is nonpublic, a description of the legal status of the entity. If the entity is a
3 private entity required to register with the secretary of state, the entity shall show
4 evidence of good standing with the secretary of state.

5 (3) The names and addresses of all officers and directors of any nonpublic
6 recipient entity. Additionally, the entity shall provide the names and addresses of its
7 executive director, chief executive officer, or other person responsible for the day-to-
8 day operations of the entity, and the key personnel responsible for the program or
9 functions funded through the line item appropriation.

10 (4) A listing of any person receiving anything of economic value from any
11 recipient entity if that person is a state elected or appointed official or a member of
12 the immediate family of a state elected or appointed official. The listing shall
13 include the value of the thing of economic value received and the position held by
14 the state elected or appointed official or by the immediate family member. If the
15 listing indicates any relationship which may be a violation of the Code of
16 Governmental Ethics, R.S. 42:1101, et seq., the governmental body shall seek an
17 opinion from the Board of Ethics as to the propriety of proceeding with the
18 agreement.

19 (5) A detailed description of the public purpose sought to be achieved
20 through the line item appropriation which shall conform to the program described
21 in the Act making the appropriation, and, if applicable, the supplemental information
22 form submitted to the legislature.

23 (6) A comprehensive budget, provided to the governmental body and the
24 legislative auditor, showing all anticipated uses of the line item appropriation, other
25 sources of revenue and expenditures for the entity, programs or projects funded by
26 the appropriation, an estimate of the duration of the project, and a plan showing
27 specific goals and objectives, including measures of performance.

28 (7) A plan to monitor compliance with the terms of the cooperative endeavor
29 agreement authorizing the expenditure of the line item appropriation, and the name

1 of a particular person within the governmental body responsible for monitoring the
2 agreement. Written reports shall be provided to the governmental body at least
3 quarterly concerning the use of the line item appropriation and the specific goals and
4 objectives for the use of the appropriation.

5 (8) Certification that the entity has no outstanding audit issues or findings
6 or that the entity is working with appropriate governmental agencies to resolve any
7 issues or findings.

8 (9) Certification that the entity's bylaws provide that the entity shall comply
9 with the Open Meetings Law and the Public Records Law regarding the expenditure
10 of any appropriated funds.

11 (10) Certification that the entity shall agree to any audits regarding the
12 expenditure of any appropriated funds.

13 B. The governmental body entering into the cooperative endeavor agreement
14 or contract shall be prohibited from making disbursements pursuant to line item
15 appropriations until the cooperative endeavor agreement or contract has received
16 final approval by the Office of Contractual Review. Final approval shall not be
17 granted unless all of the information required pursuant to Subsection A of this
18 Section has been provided.

19 C. The governmental body entering into the cooperative endeavor agreement
20 or contract shall monitor disbursements pursuant to line item appropriations on a
21 quarterly basis. Disbursements shall be discontinued if the recipient entity has not
22 demonstrated substantial progress towards the specified goals and objectives, based
23 on established measures of performance. Disbursements shall resume when
24 substantial progress is demonstrated or the entity has justified, to the satisfaction of
25 the governmental body, reasons for the lack of progress. If the transferring
26 governmental body determines that the recipient does not have sufficient justification
27 for failing to use the line item appropriation within the estimated duration of the
28 project or failed to reasonably achieve its specific goals and objectives, the
29 governmental body shall demand that any unexpended funds be returned to the state

1 treasury unless approval to retain the funds is obtained from the division of
2 administration and the Joint Legislative Committee on the Budget.

3 D. Governmental bodies may call upon the legislative auditor, the state
4 inspector general, or both, to assist the governmental body entering into a
5 cooperative endeavor agreement or contract to determine if line item appropriations
6 are being or have been properly expended.

7 E. All departments, commissions, boards, offices, entities, agencies, and
8 officers of the state of Louisiana, or any political subdivision thereof, are authorized
9 and directed to cooperate in implementing the provisions of this Section.

10 F.(1) The provisions of this Section shall be applicable to line item
11 appropriations for Fiscal Year 2014-2015 and thereafter, and to new or modified
12 contracts or cooperative endeavor agreements for line item appropriations for prior
13 fiscal years. Additionally the provisions of this Section shall be applicable to line
14 item appropriations to or for an entity which is not a governmental body or a
15 governmental entity.

16 (2) The provisions of this Section shall not be applicable to line item
17 appropriations to public or quasi-public agencies or entities that have submitted a
18 budget request to the division of administration in accordance with Part II of Chapter
19 1 of Title 39 of the Louisiana Revised Statutes of 1950, transfers authorized by
20 specific provisions of the Louisiana Revised Statutes of 1950 to local governing
21 authorities, and transfers authorized by the Constitution of the state of Louisiana.

22 (3) The provisions of this Section shall not be applicable to appropriations
23 for the payment of money judgments against the state, including consent judgments,
24 stipulated judgments, judgments rendered by the Board of Tax Appeals, and other
25 judgments against the state.

26 G. The commissioner of administration may develop guidelines to assist the
27 governmental bodies, the Office of Contractual Review, and recipients of line item
28 appropriations in complying with the provisions of this Section.

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)]

Richard

HB No. 865

Abstract: Provides for the content of cooperative endeavor agreements and requires all cooperative endeavor agreements of executive department agencies requiring the expenditure of public funds to be reviewed and approved by the Office of Contractual Review. Provides for the content of cooperative endeavor agreements or contracts issued to a nongovernmental recipient of a line item appropriation and requires such agreements to be reviewed and approved by the Office of Contractual Review prior to disbursement of funds.

Present constitution authorizes, for a public purpose, the state and its political subdivisions or political corporations to engage in cooperative endeavors with each other, with the U.S. or its agencies, or with any public or private association, corporation, or individual.

Present law defines "governmental body" as any department, commission, council, board, office, bureau, committee, institution, agency, government, corporation, or other establishment of the executive branch of this state.

Proposed law requires each governmental body to submit all cooperative endeavor agreements (agreements) which require the expenditure of public funds to the Office of Contractual Review for review and approval. Provides an exemption by written delegation of authority granted by the director of contractual review with the approval of the commissioner of administration.

Proposed law requires all agreements to be submitted for review at least 45 days prior to the effective date of the agreement. Agreements not submitted within 45 days prior to the effective date of the agreement shall be accompanied by a written explanation of the reasons for the delay.

Proposed law requires that agreements contain a plan to monitor compliance with the terms of the agreement and written reports at least every six months concerning the use of funds and the specific goals and objectives for the use of the funds.

Requires agreements to contain a provision that conditions the agreement on the availability of sufficient funds to fulfill the obligations of the governmental body under the agreement and the approval of the director of contractual review or the commissioner of administration, unless exempt by written delegation of authority.

Proposed law requires agreements with nongovernmental entities for economic development purposes to contain the entity's specific goals and methods for reimbursement to the state if those goals are not met. Requires a nongovernmental entity which defaults on the agreement, breaches the terms of the agreement, or ceases to do business, to repay the state. Exempts a nongovernmental entity participating in a business incubator program, the Quality Jobs Program, or the Enterprise Zone Program from this provision of proposed law.

Proposed law requires agreements in which the state provides a guarantee or credit enhancement for a private for-profit entity and which do not contemplate the issuance of bonds to be submitted to the State Bond Commission for approval prior to execution.

Proposed law requires that agreements based on legislative appropriation to a public or quasi-public agency or entity which is not a state budget include a comprehensive budget

showing all anticipated uses of the appropriation, an estimate of the duration of the project, and a plan showing specific goals and objectives, including measures of performance.

Proposed law directs all departments, commissions, boards, agencies, and officers of the state, or any political subdivision to cooperate in implementing the provisions of proposed law.

Proposed law requires the following information in addition to any information required pursuant to present law and the Act containing the appropriation:

- (1) A copy of any supplemental form submitted by a nongovernmental entity pursuant to present law.
- (2) The legal name and mailing address of the recipient entity, and, if applicable, a description of the legal status of the entity. Private entities required to register with the secretary of state shall show evidence of good standing.
- (3) The names and addresses of all officers and directors of any nonpublic recipient entity and the names and addresses of certain officers responsible for the day-to-day operations of the entity and for the program or functions funded through the line item appropriation.
- (4) A listing of any person receiving anything of economic value from any recipient entity if that person is a state elected or appointed official or a member of the immediate family of such official. If the listing indicates any relationship which may be a possible violation of the Code of Governmental Ethics, the state agency shall seek an opinion from the Board of Ethics as to the propriety of proceeding with the agreement.
- (5) A detailed description of the public purpose sought to be achieved through the line item appropriation which shall conform to the program described in the Act making the appropriation.
- (6) A comprehensive budget showing all anticipated uses of the line item appropriation, other sources of revenue and expenditures funded by the appropriation, an estimate of the duration of the project, and a plan showing specific goals and objectives.
- (7) A plan to monitor compliance with the terms of the cooperative endeavor agreement and reports written quarterly concerning the use of the line item appropriation and the specific goals and objectives for the use of the appropriation.
- (8) Certification that the entity has no outstanding audit issues or findings or that the entity is working to resolve any issues or findings.
- (9) Certification that the entity's bylaws require compliance with the Open Meetings Law and the Public Records Law regarding the expenditure of any appropriated funds.
- (10) Certification that the entity agrees to audits regarding the expenditure of any appropriated funds.

Proposed law prohibits governmental bodies from making disbursements pursuant to line item appropriations until the cooperative endeavor agreement or contract has received final approval of the Office of Contractual Review. Final approval shall not be granted unless all of the information required pursuant to proposed law has been provided.

Proposed law requires governmental bodies entering into a cooperative endeavor agreement to monitor disbursements pursuant to line item appropriations on a quarterly basis. Further provides for the discontinuance of disbursements under certain circumstances.

Proposed law provides that if the transferring governmental body determines that the recipient failed to use the line item appropriation within the estimated duration of the project or failed to reasonably achieve its specific goals and objectives without sufficient justification, the governmental body shall demand that unexpended funds be returned to the state treasury unless the division of administration and the Joint Legislative Committee on the Budget approve the entity to retain the unexpended funds.

Proposed law directs all departments, commissions, boards, offices, entities, agencies, and officers of the state, or any political subdivision, to cooperate in implementing the provisions of proposed law.

Proposed law provides for the applicability of proposed law including specific appropriations exempt from the provisions of proposed law.

Proposed law authorizes the commissioner of administration to develop guidelines to assist the governmental bodies, the Office of Contractual Review, and recipients of line item appropriations in complying with the provisions of proposed law.

(Adds R.S. 39:1493.1 and 1493.2)