

RÉSUMÉ DIGEST

HB 597

2021 Regular Session

Miguez

Proposed law would have created 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.) and the La. Procurement Code (R.S. 39:1551, 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 would have added an additional restriction to contracts let by public entities pursuant to present law. Would have prohibited a public entity from entering into a contract with a company for the purchase of goods or services unless the contract contained a written verification from the company of both of the following:

- (1) The company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association based solely on the entity's or association's status as a firearm entity or firearm trade association.
- (2) The company will not discriminate against a firearm entity or firearm trade association during the term of the contract based solely on the entity's or association's status as a firearm entity or firearm trade association.

Further, proposed law would have applied only to a contract with a value of \$100,000 or more that met 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, 2021.

Additionally, would have established exceptions to proposed law for sole-source provider contracts and circumstances where the public entity does not receive any bids from companies that are able to provide the written verification required by proposed law.

Proposed law would have provided that "discriminate against a firearm entity or firearm trade association" means that a company:

- (1) Refuses to engage in the trade of any goods or services with the entity or association based solely on the entity's or association's status as a firearm entity or firearm trade association.
- (2) Refrains from continuing an existing business relationship with the entity or association based solely on the entity's or association's status as a firearm entity or firearm trade association.
- (3) Terminates an existing business relationship with the entity or association based solely on the entity or association's status as a firearm entity or firearm trade association.

Proposed law would have further provided that a company does not "discriminate against a firearm entity or firearm trade association" if it refuses to engage in the trade of any goods or services, refrains from continuing an existing business relationship, or declines to enter

into, modifies, or terminates an existing business relationship for any of the following reasons:

- (1) To comply with federal, state, or local law, policy or regulations or a directive by a regulator.
- (2) For any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

Proposed law would have further provided that nothing in proposed law be construed to require a company that is a merchant, retail seller, or platform to sell or list for sale ammunition, firearms, or firearm accessories.

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 would have added an additional restriction for contracts let by governmental entities pursuant to the La. Procurement Code. Would have defined "governmental entity" as:

- (1) 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.
- (2) 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 would have prohibited a governmental entity from entering into a contract with a company for the purchase of goods or services unless the contract contained a written verification from the company of both of the following:

- (1) The company does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association based solely on the entity's or association's status as a firearm entity or firearm trade association.
- (2) The company will not discriminate against a firearm entity or firearm trade association during the term of the contract based solely on the entity's or association's status as a firearm entity or firearm trade association.

Would have further provided that proposed law only applies to a contract with a value of \$100,000 or more that met 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, 2021.

Additionally, proposed law would have established exceptions to proposed law for sole-source provider contracts and circumstances where the governmental entity does not receive any bids from companies that are able to provide the written verification that would have been required by proposed law.

Proposed law would have provided that "discriminate against a firearm entity or firearm trade association" means that a company:

- (1) Refuses to engage in the trade of any goods or services with the entity or association based solely on the entity's or association's status as a firearm entity or firearm trade association.
- (2) Refrains from continuing an existing business relationship with the entity or association based solely on the entity's or association's status as a firearm entity or firearm trade association.
- (3) Terminates an existing business relationship with the entity or association based solely on the entity's or association's status as a firearm entity or firearm trade association.

Proposed law would have further provided that a company does not "discriminate against a firearm entity or firearm trade association" if it refuses to engage in the trade of any goods or services, refrains from continuing an existing business relationship, or declines to enter into, modifies, or terminates an existing business relationship for any of the following reasons:

- (1) To comply with federal, state, or local law, policy, or regulations or a directive by a regulator.
- (2) For any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's or association's status as a firearm entity or firearm trade association.

Proposed law would have further provided that nothing in proposed law be construed to require a company that is a merchant, retail seller, or platform to sell or list for sale ammunition, firearms, or firearm accessories.

(Proposed to add R.S. 38:2216.1 and R.S. 39:1602.2)

VETO MESSAGE:

"This bill purports to prevent the State of Louisiana and local governments from contracting with entities that "discriminate" against gun companies or gun trade associations. What this bill would actually do is prevent the State and local governments from complying with long-standing procurement laws which require that public contracts be awarded to the lowest qualified bidder. This issue is most likely to come up in the area of government borrowing from national banks. Thus, if this bill were to be signed into law, the State and local governments would be forced to accept financing at a higher interest rate than would otherwise be available in the market. Further, on competitive bond sales, banks will likely no longer offer their lowest interest rates because they will not have to compete with the banks that would be precluded under this legislation. In short, this bill will come at a significant cost to Louisiana taxpayers and will have no effect on changing the policies of any financial institution.

This bill was amended in the Senate with a change which would have added language to the bill providing for it to be inapplicable if the governmental entity determined that the requirement was "inconsistent with the entity's constitutional, statutory, or fiduciary duties." Despite the fact that this amendment was adopted without opposition, it was stripped off in conference committee. If the bill had been sent to my desk with that amendment, it may have been acceptable as it would have allowed for governments to avoid any significant financial consequences resulting from this legislation. However, this common sense amendment was removed, and thus I have vetoed the bill.