

2023 Regular Session

HOUSE BILL NO. 573

BY REPRESENTATIVE MCFARLAND

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

PUBLIC CONTRACTS: Provides relative to prohibited provisions in certain public contracts

1 AN ACT

2 To amend and reenact R.S. 38:2195(B) and (C) and R.S. 48:251.7(B) and to enact R.S.
3 38:2195(D) and R.S. 48:251.7(C), relative to prohibited provisions in public
4 contracts; to provide that any public contract provision that violates provisions of
5 law governing motor carrier transportation contracts and construction contracts is
6 invalid; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 38:2195(B) and (C) are hereby amended and reenacted and R.S.
9 38:2195(D) is hereby enacted to read as follows:

10 §2195. Prohibited provisions

11 * * *

12 B. It is hereby declared that any provision contained in a public contract,
13 other than a provision naming another as a co-insured or additional beneficiary in a
14 contract of insurance, which requires contracting parties to assume liability for
15 damages arising out of injuries or property damage to a public entity caused by the
16 negligence of anyone other than the contracting parties, its employees, or agents, is
17 contrary to the public policy of the state of Louisiana. Any and all such provisions
18 in any and all public contracts shall be null and void.

1 C. The provisions of this Section shall be inapplicable with respect to
2 intrastate intergovernmental contracts and to contracts with private providers for the
3 placement and care of persons in the custody of the state.

4 ~~C.~~ D. The provisions of this Section shall not apply to contracts between any
5 public entity and the owner of immovable property when the purpose of such
6 contract is to grant the public entity a servitude, right of way, or other authority to
7 go upon, construct works, perform activities, or otherwise exercise control over or
8 use the owner's property.

9 * * *

10 Section 2. R.S. 48:251.7(B) is hereby amended and reenacted and R.S. 48:251.7(C)
11 is hereby enacted to read as follows:

12 §251.7. Prohibited provisions

13 * * *

14 B. It is hereby declared that any provision contained in a department
15 contract, other than a provision naming another as a co-insured or additional
16 beneficiary in a contract of insurance, which requires contracting parties to assume
17 liability for damages arising out of injuries or property damage to the department
18 caused by the negligence of anyone other than the contracting parties, its employees,
19 or agents, is contrary to the public policy of the state of Louisiana. Any and all such
20 provisions in any and all department contracts shall be null and void.

21 C. The provisions of this Section shall not apply to contracts between the
22 department and the owner of immovable property when the purpose of such contract
23 is to grant the department a servitude, right-of-way, or other authority to go upon,
24 construct works, perform activities, or to otherwise exercise control over or use the
25 owner's property.

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 573 Reengrossed

2023 Regular Session

McFarland

Abstract: Specifies that any public contract provision that violates provisions of law governing motor carrier transportation contracts and construction contracts is invalid.

Present law (R.S. 38:2195(A)) specifies that any provision contained in a public contract, except a provision naming a co-insured or additional beneficiary in a contract of insurance, which requires a public entity to assume liability for damages arising out of injuries or property damage to the contracting parties or to third parties caused by the negligence of anyone other than the public body, its employees, or agents, is contrary to the public policy of the state of La. Further specifies that any and all such provisions in any public contract issued on or after Oct. 1, 1988, is null and void.

Present law (R.S. 38:2195(B)) specifies that the provisions of present law are not applicable to intrastate intergovernmental contracts and to contracts with private providers for the placement and care of persons in the custody of the state.

Present law (R.S. 38:2195(C)) specifies that the provisions of present law do not apply to contracts between a public entity and the owner of immovable property when the contract grants the public entity a servitude, right of way, or other authority to go upon, construct works, perform activities, or otherwise exercise control over or use the owner's property.

Proposed law redesignates provisions of present law and adds a provision that specifies that any provision contained in a public contract other than a provision naming another as co-insured or additional beneficiary in a contract of insurance, which requires contracting parties to assume liability for damages due to the negligence of anyone other than the contracting parties or their agents, is null and void.

Present law (R.S. 48:251.7(A)) specifies that any provision contained in a department contract, except a provision naming a co-insured or additional beneficiary in a contract of insurance, which requires the department to assume liability for damages arising out of injuries or property damage to the contracting parties or to third parties caused by the negligence of anyone other than the department, its employees, or agents, is contrary to the public policy of the state of La. Further specifies that any and all such provisions in any department contract is null and void.

Present law (R.S. 48:251.7(B)) specifies that the provisions of present law do not apply to contracts between the department and the owner of immovable property when the contract grants the department a servitude, right-of-way, or other authority to go upon, construct works, perform activities, or to otherwise exercise control over or use the owner's property.

Proposed law redesignates present law and adds a provision that specifies that any provision contained in a department contract other than a provision naming another as co-insured or additional beneficiary in a contract of insurance, which requires contracting parties to assume liability for damages due to the negligence of anyone other than the contracting parties or their agents, is null and void.

(Amends R.S. 38:2195(B) and (C) and R.S. 48:251.7(B); Adds R.S. 38:2195(D) and R.S. 48:251.7(C))

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Modify the proposed law provision governing public contracts to specify that any provision contained in a public contract other than a provision naming another as co-insured or additional beneficiary in a contract of insurance, which requires contracting parties to assume liability for damages due to the negligence of anyone other than the contracting parties or their agents, is null and void.

2. Modify the proposed law provision governing department contracts to specify that any provision contained in a department contract other than a provision naming another as co-insured or additional beneficiary in a contract of insurance, which requires contracting parties to assume liability for damages due to the negligence of anyone other than the contracting parties or their agents, is null and void.