

Regular Session, 2011

SENATE BILL NO. 76

BY SENATOR MARTINY

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

PUBLIC CONTRACTS. Prohibits public entities from requiring certain agreements related to labor organizations as a condition of bidding on projects. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 38:2211(A)(12) and to enact R.S. 38:2225.5, relative to contracts
3 by public entities; to provide for certain restrictions; to provide for definitions; to
4 provide for an effective date; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 38:2211(A)(12) is hereby amended and reenacted and R.S. 38:2225.5
7 is hereby enacted to read as follows:

8 §2211. Definitions

9 A. As used in this Chapter unless the context clearly indicates otherwise, the
10 following terms shall mean:

11 * * *

12 (12) "Public work" means the operation, erection, construction, alteration,
13 improvement, or repair of any public facility or immovable property owned, used,
14 or leased by a public entity.

15 * * *

16 §2225.5. Contracts in which public entities are participants; prohibitions and
17 duties; contractors' rights; employees' rights

1 **A. Unless required by federal law, each public entity, when engaged in**
2 **procuring products or services or letting contracts for construction,**
3 **manufacture, or operation of public works paid for in whole or in part by state**
4 **or local funds, or when overseeing or administering such procurement,**
5 **construction, manufacture, or operation, shall ensure that bid specifications,**
6 **project agreements, and other controlling documents, entered into, required,**
7 **or subject to approval by the public entity do not:**

8 **(1) Require bidders, offerors, contractors, subcontractors, or operators**
9 **to:**

10 **(a) Enter into or adhere to agreements with one or more labor**
11 **organizations on the same or related projects.**

12 **(b) Enter into any agreement whereby they are required to remain**
13 **neutral toward any labor organization.**

14 **(c) Pay predetermined or prevailing wages.**

15 **(2) Discriminate against bidders, offerors, contractors, subcontractors,**
16 **or operators for refusing to:**

17 **(a) Become or remain signatories or otherwise adhere to agreements**
18 **with one or more labor organizations on the same or related projects.**

19 **(b) Enter into any agreement whereby they are required to remain**
20 **neutral toward any labor organization.**

21 **(3) Require any bidders, offerors, contractors, subcontractors, or**
22 **operators to enter into, adhere to, or enforce any agreement that requires any**
23 **employee as a condition of employment to:**

24 **(a) Become a member of or become affiliated with a labor organization.**

25 **(b) Pay dues or fees to a labor organization over the employee's**
26 **objection.**

27 **B. No public entity shall provide financial assistance, issue a grant, or**
28 **enter into a cooperative agreement for any project a condition of which requires**
29 **that bid specifications, project agreements, or other controlling documents**

1 pertaining to the financial assistance, grant, or cooperative agreement contain
2 any of the elements prohibited in Subsection A of this Section. Furthermore,
3 each public entity shall exercise such authority as may be required to preclude
4 a grant recipient or party to a cooperative agreement from imposing any of the
5 elements prohibited in Subsection A of this Section in connection with any grant
6 or cooperative agreement awarded or entered into.

7 C. Nothing herein shall prohibit contractors or subcontractors from
8 voluntarily entering into agreements described in this Section.

9 D. Any interested party, which shall include a bidder, offeror,
10 contractor, subcontractor, operator, or taxpayer, shall have standing to
11 challenge any bid specification, project agreement, neutrality agreement,
12 controlling document, grant, or cooperative agreement which violates the
13 provisions of this Section. Furthermore, such party is authorized to and shall
14 receive injunctive relief to prevent violations of this Section upon a proper
15 showing under the standards of the Louisiana Code of Civil Procedure.

16 E. The provisions of this Section shall not apply to any work-release
17 program or to any contract under the Quality Jobs Program.

18 Section 2. If any provision or item of this Act or the application thereof is held
19 invalid, such invalidity shall not affect other provisions, items, or applications of this Act
20 which can be given effect without the invalid provisions, items, or applications, and to this
21 end the provisions of this Act are hereby declared severable.

22 Section 3. The provisions of this instrument are enacted pursuant to the police power
23 of the state.

24 Section 4. This Act shall become effective upon signature by the governor or, if not
25 signed by the governor, upon expiration of the time for bills to become law without signature
26 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
27 vetoed by the governor and subsequently approved by the legislature, this Act shall become
28 effective on the day following such approval.

The original instrument was prepared by Michelle Ducharme. The following digest, which does not constitute a part of the legislative instrument, was prepared by Laura Gail Sullivan.

DIGEST

Martiny (SB 76)

Proposed law provides that a public entity, unless otherwise required by federal law, when engaged in procuring products or services or letting contracts for construction, manufacture, or operation of public works paid for in whole or in part by public funds, or when overseeing or administering such procurement, construction, manufacture, or operation, shall ensure that bid specifications, project agreements, and other controlling documents entered into, required, or subject to approval by the public entity shall not:

- (1) Require bidders, offerors, contractors, subcontractors, or operators to:
 - (a) Enter into or adhere to agreements with one or more labor organizations on the same or related projects.
 - (b) Enter into agreements whereby they are required to remain neutral toward any labor organization.
 - (c) Pay predetermined or prevailing wages.
- (2) Discriminate against bidders, offerors, contractors, subcontractors, or operators for refusing to:
 - (a) Become or remain signatories or otherwise adhere to agreements with one or more labor organizations on the same or related projects.
 - (b) Enter into any agreement whereby they are required to remain neutral toward any labor organization.
- (3) Require any bidders, offerors, contractors, subcontractors, or operators to enter into, adhere to, or enforce any agreement that requires any employee as a condition of employment to:
 - (a) Become a member of or become affiliated with a labor organization.
 - (b) Pay dues or fees to a labor organization over the employee's objection.

Proposed law prohibits public entities from providing financial assistance, issuing grants, or entering into cooperative agreements for projects that restrict certain rights of employers or their employees.

Proposed law does not prevent contractors and subcontractors from voluntarily entering into various agreements which are otherwise prohibited by proposed law.

Proposed law allows any interested party to challenge any bid specification, project agreement, neutrality agreement, controlling document, grant, or cooperative agreement which violates proposed law. Provides for injunctive relief for violation of proposed law.

Proposed law specifies that the provisions of proposed law shall not apply to any inmate work-release program or to any contract under the Louisiana Quality Jobs Program.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 38:2211(A)(12); adds R.S. 38:2225.5)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the original bill.

1. Specify that the provisions of proposed law shall not apply to any inmate work-release program or to any contract under the Louisiana Quality Jobs Program.