

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

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

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

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

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

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

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

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

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

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

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

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

28 **B. No public entity shall provide financial assistance, issue a grant, or**
29 **enter into a cooperative agreement for any project a condition of which requires**

1 that bid specifications, project agreements, or other controlling documents
2 pertaining to the financial assistance, grant, or cooperative agreement contain
3 any of the elements prohibited in Subsection A of this Section.

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

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

13 E. The provisions of this Section shall not apply to the following:

14 (a) Any inmate work-release program.

15 (b) Any contract pursuant to the Louisiana Quality Jobs Program.

16 (c) Any contract or cooperative endeavor agreement pursuant to the
17 Incumbent Worker Training Program.

18 (d) Any public-private agreement for any construction or infrastructure
19 project in which the private entity, as a condition of its investment or
20 partnership with the public entity, requires that the private entity have the right
21 to control its labor relations policy with its own employees and the employees
22 of its contractors and subcontractors in any manner permitted by the National
23 Labor Relations Act, 29 U.S.C. 151 et seq.

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

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

1 Section 4. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without signature
3 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
5 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 Sherri Breaux.

DIGEST

Martiny (SB 76)

Proposed law provides that a public entity, except as provided in proposed law or 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, a condition of which is that the bid specifications, project agreements, or other controlling documents pertaining to the financial assistance, grant, or cooperative agreement contain any of the elements prohibited by proposed law.

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 the following:

- (1) Any inmate work-release program.
- (2) Any contract under the Louisiana Quality Jobs Program.
- (3) Any contract or cooperative endeavor agreement pursuant to the Incumbent Worker Training Program.
- (4) Any public-private agreement for any construction or infrastructure project in which the private entity, as a condition of its investment or partnership with the public entity, requires that the private entity have the right to control its labor relations policy with its own employees and the employees of its contractors and subcontractors in any manner permitted by the National Labor Relations Act.

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.

Senate Floor Amendments to engrossed bill.

1. Removes requirement for public entity to exercise authority to preclude imposition of prohibited elements in connection with any grant or cooperative agreement awarded or entered into.
2. Adds proposed law exceptions for the Incumbent Worker Training Program agreements and certain public-private agreements.