

2015 Regular Session

HOUSE BILL NO. 559

BY REPRESENTATIVES JAY MORRIS, ABRAMSON, HARRIS, SCHRODER, AND STOKES

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

FISCAL CONTROLS: Requires certain contracting entities to submit information to the legislative auditor prior to contracting with a state agency or receiving state monies

1 AN ACT

2 To enact R.S. 24:525 and R.S. 39:366.7, relative to certain state contracts; to require certain
3 contracting entities to submit certain information to the legislative auditor; to provide
4 for the duties of the legislative auditor relative to such requirement; to provide for
5 certain procedures and requirements to be subject to the approval of the Legislative
6 Audit Advisory Council; to provide for certain restrictions and contract prohibitions
7 for failure to comply; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 24:525 is hereby enacted to read as follows:

10 §525. Contracting entities; documentation; submission to the legislative auditor;
11 contract prohibition

12 A. For purposes of this Section, the following terms shall have the following
13 meanings unless the context clearly indicates otherwise:

14 (1) "Contract" shall mean an agreement by two or more parties whereby
15 obligations are created, modified, or extinguished. "Contract" shall not include any
16 of the following:

17 (a) A waiver, agreement to suspend prescription, installment agreement,
18 settlement agreement, collateral agreement, offer in compromise, or any other
19 document filed, entered into, or executed for the assessment, collection,

1 administration, and enforcement of taxes, fees, licenses, penalties, interest, and other
2 charges due the state that have been delegated to the secretary of the Department of
3 Revenue.

4 (b) A contract entered into pursuant to R.S. 47:337.26.

5 (c) A nondisclosure agreement entered into pursuant to R.S. 44:22.

6 (d) A contract or agreement entered into by the Department of Economic
7 Development with the exception of the following:

8 (i) Contracts funded from the Louisiana Mega-Project Development Fund
9 pursuant to R.S. 51:2365.

10 (ii) Contracts funded from the Rapid Response Fund pursuant to R.S.
11 51:2361.

12 (iii) Agreements for the allocation of retention and modernization tax credits
13 pursuant to R.S. 51:2399.1 et seq.

14 (iv) Contracts for professional, personal, consulting, or social services.

15 (v) Contracts subject to the Louisiana Procurement Code.

16 (2) "Contracting entity" shall mean any person that enters or seeks to enter
17 into a contract with a state agency. "Contracting entity" shall not include any
18 governmental entity or public, private, or parochial school, college, or university.

19 (3) "Governmental entity" shall mean the state or any political subdivision
20 of the state.

21 (4) "Person" means a natural person or legal entity other than a governmental
22 entity or an agency thereof.

23 (5) "State agency" shall have the same meaning as "agency" as defined in
24 R.S. 39:2.

25 B.(1) Prior to any contracting entity entering into or renewing a contract with
26 a state agency, the contracting entity shall submit information and documentation to
27 the legislative auditor and be approved in the manner provided in this Section. The
28 contracting entity shall submit the following information to the legislative auditor:

1 (a)(i) If a legal entity, the official name and domicile address of the
2 contracting entity as reflected in documentation submitted to the secretary of state's
3 office.

4 (ii) If a natural person, the full name and address of the contracting entity.

5 (b) If a legal entity, a complete and accurate listing of the board of directors
6 or equivalent governing body, if any, and officers, if any, of the contracting entity.

7 (c) Documentation certifying that all applicable federal, state, and payroll
8 taxes owed by the contracting entity have been paid and are current.

9 (d)(i) Documentation certifying that the contracting entity has a financial
10 statement for its most recent, completed fiscal year that has been compiled by or
11 attested to by a certified public accountant, or if the contracting entity is a nonprofit
12 organization, documentation certifying that the contracting entity has filed a current
13 Form 990 as required by the Internal Revenue Code.

14 (ii) A copy of the most recent financial statement, or if the contracting entity
15 is a nonprofit organization, a copy of its most recent Form 990.

16 (e) Information indicating the type or nature of the contract with the state
17 agency and the name of the state agency which is or would be a party to the contract.

18 (f) If the contracting entity is currently subject to the reporting requirements
19 of R.S. 24:513, documentation certifying that the contracting entity has submitted
20 the required reports to the legislative auditor.

21 (g) The names and addresses of all agents and registered lobbyists lobbying,
22 as defined in R.S 24:51 or 49:72, on behalf of the contracting entity relative to a
23 contract with the state or an appropriation or grant.

24 (h) Any additional information required to determine compliance with the
25 minimum qualifications to contract with a state agency or receive state monies
26 established pursuant to Subparagraph (3)(a) of this Subsection.

27 (2) Notwithstanding the provisions of the introductory paragraph of
28 Paragraph (1) of this Subsection, for contracts entered into by the Department of
29 Economic Development regarding specific economic development projects, the

1 contracting entity shall submit the information required by Paragraph (1) of this
2 Subsection no later than thirty days after the execution of the contract.

3 (3)(a) Any additional information required pursuant to Subparagraph (1)(h)
4 of this Subsection shall be established by the Legislative Audit Advisory Council at
5 a public meeting held no later than February first of each year to be effective for the
6 subsequent fiscal year and thereafter except as modified by the council as provided
7 in this Paragraph.

8 (b) The legislative auditor shall post all requirements on his website.

9 C. The legislative auditor shall establish a system to evaluate reports, audits,
10 and financial statements submitted pursuant to this Section, subject to the approval
11 of the Legislative Audit Advisory Council.

12 D.(1) The legislative auditor shall evaluate the information submitted
13 pursuant to this Section and make a determination regarding whether the information
14 is complete and accurate. If legislative auditor determines that the information
15 submitted by the contracting entity is complete and accurate, he shall immediately
16 place the name of the contracting entity on a list of approved contracting entities that
17 have complied with the requirements of Subsection B of this Section and shall post
18 and keep an updated list of approved contracting entities on his website.

19 (2) The legislative auditor shall establish criteria to remove a contracting
20 entity from the list of approved contracting entities, subject to the approval of the
21 Legislative Audit Advisory Council.

22 E. A contracting entity that appears on the list of approved contracting
23 entities on the legislative auditor's website shall be eligible, pursuant to this Section,
24 to request and receive state monies. Any contracting entity which does not appear
25 on the list of approved contracting entities on the legislative auditor's website shall
26 be ineligible to request or receive state monies.

27 F.(1) Except as otherwise provided in Paragraph B(2) of this Section, no state
28 agency shall contract with any contracting entity which does not appear on the list
29 of approved contracting entities on the legislative auditor's website.

1 (2) No state agency shall pay monies to a contracting entity which does not
2 appear on the list of approved contracting entities on the legislative auditor's website.

3 G.(1) All submissions of information required to be submitted by a
4 contracting entity by this Section shall be made in an electronic format designated
5 by the legislative auditor.

6 (2) The legislative auditor shall maintain the information submitted pursuant
7 to this Section on his website and shall provide for the ability for the public to easily
8 obtain information regarding each contracting entity, including links to any relevant
9 appropriation or capital outlay information and relevant contract information
10 maintained by the commissioner of administration pursuant to R.S. 39:6.

11 (3) The legislative auditor shall work with the commissioner of
12 administration as necessary to ensure compliance with this Section and R.S.
13 39:366.7.

14 Section 2. R.S. 39:366.7 is hereby enacted to read as follows:

15 §366.7. Contracting entities requesting or receiving state monies; documentation
16 and approval; contract prohibition

17 A. No contracting entity as defined in R.S. 24:525 shall receive or have
18 transferred to it any monies from any agency unless the contracting entity is on the
19 list of approved contracting entities on the legislative auditor's website as provided
20 in R.S. 24:525.

21 B.(1) No agency shall pay monies to a contracting entity as defined in R.S.
22 24:525 unless the contracting entity is on the list of approved contracting entities on
23 the legislative auditor's website as provided in R.S. 24:525.

24 (2) Except as otherwise provided by R.S. 24:525(B)(2), no agency shall
25 contract with a contracting entity as defined in R.S. 24:525 unless the contracting
26 entity is on the list of approved contracting entities on the legislative auditor's
27 website as provided in R.S. 24:525.

28 Section 3.(A) The requirements for contracting entities contained in Section 1 of this
29 Act shall become effective on January 1, 2016, and shall apply to contracts and renewals of

1 contracts executed on or after January 1, 2016. The prohibitions on contracting entities and
 2 state agencies contained in Section 1 and Section 2 of this Act shall become effective on July
 3 1, 2016. The legislative auditor, the Legislative Audit Advisory Council, and the
 4 commissioner of administration shall take all actions necessary to provide for the orderly
 5 implementation of this Act prior to January 1, 2016, including but not limited to notice of
 6 the requirements of this Act to each state agency.

7 (B) Except as otherwise provided in Subsection A of this Section, this Act shall
 8 become effective on July 1, 2015.

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 559 Original

2015 Regular Session

Jay Morris

Abstract: Requires a contracting entity to submit information and documents to the legislative auditor prior to entering into a contract with a state agency. Prohibits contracting entities from receiving monies and prohibits state agencies paying monies to or entering into contracts with contracting entities unless requirements are met.

Proposed law requires each contracting entity prior to entering into a contract with a state agency to submit the following information to the legislative auditor in an electronic format designated by legislative auditor:

- (1) If a legal entity, the official name and domicile address of the contracting entity as reflected in documentation submitted to the secretary of state's office or if a natural person, the full name and address of the contracting entity.
- (2) If a legal entity, a complete and accurate listing of the board of directors or equivalent governing body, if any, and officers, if any, of the contracting entity.
- (3) Documentation certifying that all applicable federal, state, and payroll taxes owed by the contracting entity have been paid and are current.
- (4) Documentation certifying that the contracting entity has a financial statement for its most recent, completed fiscal year that has been compiled by or attested to by a certified public accountant, or if the contracting entity is a nonprofit organization, documentation certifying that the contracting entity has filed a current Form 990 as required by the Internal Revenue Code along with a copy of the financial statement or Form 990.
- (5) Information indicating the type or nature of the contract with the state agency and the name the state agency which is a party to the contract.
- (6) If the contracting entity is currently subject to the audit requirements of present law (R.S. 24:513) documentation certifying the contracting entity has submitted the required reports to the legislative auditor.

- (7) The names and addresses of all agents and registered lobbyists lobbying (as defined pursuant to the present law regarding executive branch and legislative branch lobbying) on behalf of the contracting entity relative to a contract with the state or an appropriation or grant.
- (8) Any additional information required to determine compliance with the minimum qualifications to contract with a state agency or receive state monies (established by the Legislative Audit Advisory Council).

Proposed law requires the legislative auditor to establish a system to evaluate information submitted subject to the approval of the Legislative Audit Advisory Council and to evaluate and make a determination if the information submitted by a contracting entity is complete and accurate. Provides that if it is, he shall immediately place the name of the entity on the list of approved contracting entities and shall post and keep an updated list on his website. Proposed law further requires the legislative auditor to establish criteria to remove a contracting entity from the list of approved contracting entities, subject to the approval of the Legislative Audit Advisory Council.

Proposed law provides that a contracting entity which appears on the list of approved contracting entities on the legislative auditor's website shall be eligible to request and receive state monies and any entity which is not on the list is ineligible. Proposed law prohibits an agency from paying monies to a contracting entity unless the contracting entity is on the list of approved contracting entities on the legislative auditor's website. Further prohibits an agency from contracting with a contracting entity, unless the entity is on the list of approved contracting entities on the legislative auditor's website (provides a limited exception for certain contracts with the Dept. of Economic Development).

Proposed law defines "state agency", "contract", "contracting entity", "governmental entity", and "person" for its purposes. Specifically excludes governmental entities and any public, private, or parochial school, college, or university from the term "contracting entity". Specifically excludes from the term "contract" specified contracts entered into by the Dept. of Revenue and the Dept. of Economic Development.

Proposed law requires the legislative auditor to maintain the information submitted pursuant to proposed law on his website and to provide for the ability for the public to easily obtain information regarding each contracting entity, including links to any relevant appropriation or capital outlay information and relevant contract information maintained by the commissioner of administration's website pursuant to present law (R.S. 39:6). Further requires the legislative auditor to work with the commissioner of administration as necessary to ensure compliance with proposed law.

Effective July 1, 2015; except provides that the requirements on contracting entities contained in proposed law shall become effective on January 1, 2016, and shall apply to contracts and renewals of contracts executed on or after January 1, 2016; The prohibitions on contracting entities and state agencies contained in proposed law shall become effective on July 1, 2016. Provides that the legislative auditor, Legislative Audit Advisory Council, and the commissioner of administration shall take all actions necessary to provide for the orderly implementation of proposed law prior to January 1, 2016.

(Adds R.S. 24:525 and R.S. 39:366.7)