

2016 First Extraordinary Session

HOUSE BILL NO. 42

BY REPRESENTATIVES JAY MORRIS, TERRY BROWN, GARY CARTER,  
GISCLAIR, LANCE HARRIS, HAVARD, HILFERTY, HOFFMANN, MIKE  
JOHNSON, GREGORY MILLER, PEARSON, RICHARD, TALBOT, THIBAUT,  
AND WILLMOTT

FISCAL CONTROLS: Requires certain contracting entities to submit information to the legislative auditor prior to contracting with a state agency or receiving state monies (Item #33)

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 public access to such information; to provide for the duties of the legislative  
5 auditor relative to such requirement; to provide for certain procedures and  
6 requirements to be subject to the approval of the Legislative Audit Advisory Council;  
7 to provide for certain restrictions and contract prohibitions for failure to comply; and  
8 to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

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

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

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

1           (a) A waiver, agreement to suspend prescription, installment agreement,  
2           settlement agreement, collateral agreement, offer in compromise, or any other  
3           document filed, entered into, or executed for the assessment, collection,  
4           administration, and enforcement of taxes, fees, licenses, penalties, interest, and other  
5           charges due the state that have been delegated to the secretary of the Department of  
6           Revenue.

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

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

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

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

13           (ii) Contracts funded from the Rapid Response Fund pursuant to R.S.  
14          51:2361.

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

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

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

19           (2) "Contracting entity" shall mean any person who enters or seeks to enter  
20          into a contract with a state agency. "Contracting entity" shall not include any  
21          governmental entity; public, private, or parochial school, college, or university; or  
22          any electric power cooperative or provider or investor owned public utility that is  
23          regulated by the Louisiana Public Service Commission or by the governing authority  
24          of the city of New Orleans.

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

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

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

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

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

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

12          (b) If a legal entity, a complete and accurate listing of the owners of the  
13          contracting entity, whether in title or beneficial, unless it is a publicly traded entity,  
14          and a complete and accurate listing of the board of directors or equivalent governing  
15          body, if any, and officers, if any, of the contracting entity.

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

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

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

25          (e) Information indicating the type or nature of the contract with the state  
26          agency, including whether the contract was publicly bid, competitively bid,  
27          competitively negotiated, or let through a noncompetitive process; the value of the  
28          contract; and the name of each state agency which is or would be a party to the  
29          contract.

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

4           (g) The names and addresses of all agents, registered lobbyists, and other  
5           persons lobbying, as "lobbying" is defined in R.S. 24:51 or R.S. 49:72, on behalf of  
6           the contracting entity relative to a contract or potential contract with the state or an  
7           appropriation or grant.

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

11           (i) Documentation of the percentage of minority, women, veteran, and  
12           Louisiana-based ownership of the contracting entity, unless it is a publicly traded  
13           entity.

14           (2) Notwithstanding the provisions of the introductory paragraph of  
15           Paragraph (1) of this Subsection, for contracts entered into by the Department of  
16           Economic Development regarding specific economic development projects, the  
17           contracting entity shall submit the information required by Paragraph (1) of this  
18           Subsection no later than thirty days after the execution of the contract.

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

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

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

27           D.(1) The legislative auditor shall evaluate the information submitted  
28           pursuant to this Section and make a determination regarding whether the information  
29           is complete and accurate. If the legislative auditor determines that the information

1 submitted by the contracting entity is complete and accurate, he shall immediately  
2 place the name of the contracting entity on a list of approved contracting entities that  
3 have complied with the requirements of Subsection B of this Section and shall post  
4 and keep an updated list of approved contracting entities on his website.

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

8 E. A contracting entity that appears on the list of approved contracting  
9 entities on the legislative auditor's website shall be eligible, pursuant to this Section,  
10 to request and receive state monies pursuant to a contract. Any contracting entity  
11 which does not appear on the list of approved contracting entities on the legislative  
12 auditor's website shall be ineligible to request or receive state monies pursuant to a  
13 contract.

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

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

19 G.(1) All submissions of information by a contracting entity as required by  
20 this Section shall be made in an electronic format designated by the legislative  
21 auditor.

22 (2) The legislative auditor shall maintain the information submitted pursuant  
23 to this Section on his website, excluding the information provided pursuant to Item  
24 (B)(1)(d)(ii) of this Section, and shall provide for the ability for the public to easily  
25 obtain information regarding each contracting entity, including links to any relevant  
26 appropriation or capital outlay information and relevant contract information  
27 maintained by the commissioner of administration pursuant to R.S. 39:6.

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

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

5           §366.7. Contracting entities requesting or receiving state monies; documentation  
6           and approval; contract prohibition

7           A. No contracting entity as defined in R.S. 24:525 shall receive or have  
8           transferred to it any monies pursuant to a contract from any agency unless the  
9           contracting entity is on the list of approved contracting entities on the legislative  
10          auditor's website as provided in R.S. 24:525.

11          B.(1) No agency shall pay monies pursuant to a contract to a contracting  
12          entity as defined in R.S. 24:525 unless the contracting entity is on the list of  
13          approved contracting entities on the legislative auditor's website as provided in R.S.  
14          24:525.

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

19          Section 3.(A) The requirements for contracting entities contained in Section 1 of this  
20          Act shall become effective on January 1, 2017, and shall apply to contracts and renewals of  
21          contracts executed on or after January 1, 2017. The prohibitions on contracting entities and  
22          state agencies contained in Section 1 and Section 2 of this Act shall become effective on July  
23          1, 2017. The legislative auditor, the Legislative Audit Advisory Council, and the  
24          commissioner of administration shall take all actions necessary to provide for the orderly  
25          implementation of this Act prior to January 1, 2017, including but not limited to notice of  
26          the requirements of this Act to each state agency.

27          (B) Except as otherwise provided in Subsection A of this Section, this Act shall  
28          become effective on July 1, 2016.

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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)]

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HB 42 Reengrossed

2016 First Extraordinary 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 or renewing a contract with a state agency to submit the following information to the legislative auditor in an electronic format designated by the 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 owners of the contracting entity, whether in title or beneficial (unless it is publicly traded), and 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, including how the contract was let, the value of the contract, and the name of each 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, registered lobbyists, and persons 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 or potential 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).
- (9) Documentation of the percentage of minority, women, veteran, and Louisiana-based ownership of the contracting entity (unless it is publicly traded).

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 determine whether 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 pursuant to a contract 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; any public, private, or parochial school, college, or university; and any electric power cooperative or provider or investor owned public utility that is regulated by the Public Service Commission (PSC) or by the governing authority of the city of New Orleans 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 (excluding the financial statement or Form 990) 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, 2016; except provides that the requirements on contracting entities contained in proposed law shall become effective on Jan. 1, 2017, and shall apply to contracts and renewals of contracts executed on or after Jan. 1, 2017; the prohibitions on contracting entities and state agencies contained in proposed law shall become effective on July 1, 2017. 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 Jan. 1, 2017.

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

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Appropriations to the original bill:

1. Require a contracting entity to submit documentation of the percentage of minority, women, and local ownership of a contracting entity to the Legislative Auditor.
2. Change the requirement regarding the submission of information for certain Dept. of Economic Development contracts from no later than 30 days after the contract is executed to no less than 30 days prior to execution of the contract.



The House Floor Amendments to the engrossed bill:

1. Change the requirement on the contracting entity to submit certain information to the auditor regarding ownership, to instead require a contracting entity to submit documentation of the percentage of minority, women, veteran, and Louisiana-based ownership of a contracting entity, unless it is a publicly traded entity.
2. Change the requirement regarding the submission of information for certain Dept. of Economic Development contracts from no less than 30 days prior to the executive of the contract to no later than 30 days after the execution of the contract.
3. Exclude a copy of the contracting entity's most recent financial statement or, if a nonprofit, a copy of its most recent Form 990 from the information the auditor is required to maintain on his website.