

SENATE BILL NO. 71

BY SENATOR APPEL AND REPRESENTATIVES AUSTIN BADON, BOBBY BADON, BALDONE, BILLIOT, CONNICK, FANNIN, GISCLAIR, GUINN, HARRISON, HENRY, HINES, HOFFMANN, ROSALIND JONES, LABRUZZO, LEGER, LIGI, LOPINTO, MORENO, MORRIS, PEARSON, JANE SMITH, TALBOT AND WILLMOTT

1 AN ACT

2 To amend and reenact R.S. 39:1767 and R.S. 48:251.8, and to enact R.S. 38:2196.1, R.S.
3 39:200(N), 1493.1, and Part X of Chapter 17 of Subtitle III of Title 39 of the
4 Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:1758, relative to
5 public contracts; to require certain contractors to disclose the full disposition,
6 splitting, or sharing of contract commissions, fees, or other consideration by
7 affidavit; to provide for the form of the affidavit; to provide for nullification of
8 contracts in certain circumstances; to provide for criminal penalties; and to provide
9 for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 38:2196.1 is hereby enacted to read as follows:

12 **§2196.1. Public contracts; disclosure of disposition of commission, fee, or other**
13 **consideration; penalties**

14 **A.(1)(a) Notwithstanding any other provision of law to the contrary or**
15 **any limitation of the applicability of any of this Part or Chapter in any other**
16 **provision of law, when any person or other entity enters into any contract**
17 **awarded without bidding with a state entity or local entity, or any contract with**
18 **a local entity exceeding ten thousand dollars awarded with bidding, in which a**
19 **commission, fee, or other consideration is paid to the contractor for the**
20 **contractor to sell to or provide to the state entity or local entity any commodity,**
21 **goods, brokerage service or other service of any kind, insurance, or anything of**
22 **value, then the full disposition, splitting, or sharing of such commission, fee, or**

1 other consideration shall be disclosed to the state entity or local entity by the
2 contractor in writing by an affidavit of notice of fee disposition in the manner
3 provided for in this Section.

4 (b) For purposes of this Section, the following terms shall have the
5 following meanings:

6 (i) "State entity" means the state, or any agency, department, office, or
7 other instrumentality of the state.

8 (ii) "Local entity" means any political subdivision of the state, including
9 those entities with home rule charters which were existing or adopted when the
10 Constitution of Louisiana of 1974 was adopted, or any agency, department,
11 office, or other instrumentality of such political subdivision.

12 (2) The affidavit of notice of fee disposition shall be on a form which shall
13 be prescribed by the Board of Ethics and shall be notarized as to its
14 authenticity. The affidavit of notice of fee disposition shall include the full value
15 of the commission, fee, or other consideration to be paid, the names of all
16 parties to receive dispositions, splits, or shares of the commission, fee, or other
17 consideration, and the signature of the party authorized to commit the entity
18 receiving the commission, fee, or other consideration to the contract, who shall
19 attest to the truth of the facts set forth in the affidavit. The affidavit of notice
20 of fee disposition shall be attached to and made a part of the contract for which
21 the commission, fee, or other consideration is paid and shall be recorded in the
22 public record.

23 B. If at any time the disposition, splitting, or sharing of the commission,
24 fee, or other consideration changes, or the amount of the commission, fee, or
25 other consideration changes, then a new affidavit reflecting the changes from
26 the first affidavit shall be prepared, executed, notarized, and recorded by the
27 contractor in the public record.

28 C.(1) If for any reason the information on the recorded affidavit shall
29 be found to be incorrect, then the contract shall become null and void and all
30 payments of the commission, fee, or other consideration shall be rebated to the

1 state entity or local entity which entered into the contract.

2 (2) In addition, intentional misrepresentation of the facts on an affidavit
3 shall subject the party attesting to the facts to the penalties provided for filing
4 or maintaining false public records provided for in R.S. 14:133.

5 Section 2. R.S. 39:1767 is hereby amended and reenacted and R.S. 39:200(N),
6 1493.1, and Part X of Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised Statutes
7 of 1950, comprised of R.S. 39:1758, are hereby enacted to read as follows:

8 §200. General provisions

9 The following general provisions shall apply to all procurements under this Part:

10 * * *

11 N. Notwithstanding any limitation of the applicability of this Part or
12 Chapter in any other provision of law, contracts shall be subject to the
13 provisions of R.S. 38:2196.1 regarding the requirement for an affidavit of notice
14 of fee disposition, if applicable.

15 * * *

16 §1493.1. Requirement for affidavit of notice of fee disposition

17 Notwithstanding any limitation of the applicability of this Part or
18 Chapter in any other provision of law, contracts shall be subject to the
19 provisions of R.S. 38:2196.1 regarding the requirement for an affidavit of notice
20 of fee disposition, if applicable.

21 * * *

22 PART X. REQUIREMENTS OF CONTRACTS

23 §1758. Requirement for affidavit of notice of fee disposition

24 Notwithstanding any limitation of the applicability of this Part or
25 Chapter in any other provision of law, contracts shall be subject to the
26 provisions of R.S. 38:2196.1 regarding the requirement for an affidavit of notice
27 of fee disposition, if applicable.

28 * * *

29 §1767. Appropriation dependency; requirement for affidavit of notice of fee
30 disposition

1 A. All lease-purchase contracts entered into pursuant to this Chapter shall
2 contain an annual appropriation dependency requirement to the effect that renewal
3 and continuation of such contract is contingent upon the appropriation of funds to
4 fulfill the requirements of the contract and if the legislature, after a diligent and good
5 faith effort, fails to appropriate sufficient monies to provide for the continuation of
6 a contract, or if such appropriation can not be effected, the contract shall terminate
7 in accordance with the terms of the lease on the last day of the last fiscal year for
8 which funds were appropriated, provided the equipment is returned to the nonprofit
9 lessor or his agent, as provided in the equipment-lease-purchase contract and such
10 contract shall not be a long-term debt of the state or the applicable purchasing
11 agency. In addition, in such equipment-lease-purchase contracts, the nonprofit lessor
12 shall covenant and agree to indemnify and hold the lessee harmless against any loss,
13 damage, liability, cost, penalty, or expense, including attorney fees, which is not
14 otherwise agreed to by the lessee in the equipment-lease-purchase contract and
15 which is incurred and arises upon a failure of the legislature to appropriate funds in
16 the manner described above for a continuation of the contract or the exercise of the
17 option to purchase the selected equipment.

18 **B. Notwithstanding any limitation of the applicability of this Part or**
19 **Chapter in any other provision of law, contracts shall be subject to the**
20 **provisions of R.S. 38:2196.1 regarding the requirement for an affidavit of notice**
21 **of fee disposition, if applicable.**

22 Section 3. R.S. 48:251.8 is hereby amended and reenacted to read as follows:

23 §251.8. Public contracts; certain provisions invalid; **requirement for affidavit of**
24 **notice of fee disposition**

25 A. The legislature hereby declares null and void and unenforceable as against
26 public policy any provision in a department contract which requires either of the
27 following:

28 (1) That a suit or arbitration proceeding must be brought in a forum or
29 jurisdiction outside of this state, instead of being pursued in accordance with the laws
30 of this state governing such actions.

1 (2) That the agreement must be interpreted according to the laws of another
2 jurisdiction.

3 **B. Notwithstanding any limitation of the applicability of this Part or**
4 **Chapter in any other provision of law, contracts shall be subject to the**
5 **provisions of R.S. 38:2196.1 regarding the requirement for an affidavit of notice**
6 **of fee disposition, if applicable.**

7 Section 4. This Act shall become effective on July 1, 2010; if vetoed by the governor
8 and subsequently approved by the legislature, this Act shall become effective on July 1,
9 2010, or on the day following such approval by the legislature, whichever is later.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____