

Regular Session, 2008

HOUSE BILL NO. 1002

BY REPRESENTATIVE GALLOT

ETHICS: Provides relative to certain prohibited contracts

1 AN ACT

2 To amend and reenact R.S. 42:1113(D)(1)(a)(iii) and (iv) and (c), (2), (3), and (4) and
3 1114.3(A)(1) and (2), to enact R.S. 42:1113(D)(5), and to repeal R.S. 42:1113(E),
4 relative to conflicts of interest; to provide relative to certain contracts involving
5 certain public servants and certain affiliated persons and entities; to provide relative
6 to restrictions of such contracts; to provide for disclosure relative to such contracts;
7 to provide for enforcement and penalties; to provide relative to applicability; to
8 provide exceptions; to provide for effectiveness; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 42:1113(D)(1)(a)(iii) and (iv) and (c), (2), (3), and (4) and
11 1114.3(A)(1) and (2) are hereby amended and reenacted and R.S. 42:1113(D)(5) is hereby
12 enacted to read as follows:

13 §1113. Prohibited contractual arrangements; disclosure

14 * * *

15 D.(1)(a)

16 * * *

17 (iii) For purposes of this Subsection, "legal entity of a person" means any
18 corporation, partnership, or other such legal entity ~~except a publicly traded~~
19 ~~corporation or a passive ownership interest that is the result of participation in a~~
20 ~~federally approved program of employee ownership~~, in which a person identified in

1 Item (ii) of this Subparagraph or the spouse of such person owns an interest of
2 greater than five percent, except a publicly traded corporation or a legal entity in
3 which the person owns a passive ownership interest that is the result of participation
4 in a federally approved program of employee ownership.

5 (iv) For purposes of this Subsection, "legal entity of a family member" means
6 any corporation, partnership, or other such legal entity ~~except a publicly traded~~
7 ~~corporation or a passive ownership interest that is the result of participation in a~~
8 ~~federally approved program of employee ownership,~~ in which an immediate family
9 member of a person identified in Item (ii) of this Subparagraph, except the spouse
10 of such a person, owns an interest of greater than five percent, except a publicly
11 traded corporation or a legal entity in which the immediate family member owns a
12 passive ownership interest that is the result of participation in a federally approved
13 program of employee ownership.

14 * * *

15 ~~(c)(i) For the purposes of this Section, a provider agreement entered into~~
16 ~~with the Department of Health and Hospitals under the state medical assistance~~
17 ~~program shall not be considered a contract. The following shall not be considered~~
18 ~~a contract for purposes of this Subsection:~~

19 (ii) ~~For the purposes of this Section, a~~
20 (i) A foster parent provider agreement or a child care provider agreement
21 entered into with the Department of Social Services. ~~shall not be considered a~~
22 ~~contract and~~ In addition, such an agreement shall not be subject to R.S.
23 42:1111(E)(2)(a).

24 (iii) ~~For purposes of this Section, any action taken to comply with a state law,~~
25 ~~rule, or regulation shall not be considered a contract.~~

26 (ii) An agreement with a state entity or state quasi-public entity for housing,
27 medical treatment, retirement benefits, or insurance benefits provided on the same
28 terms and conditions available to similarly situated persons.

1 (iii) An agreement providing for public assistance benefits, including but not
2 limited to subsidies for agriculture, aquaculture, forestry, soil and water
3 conservation, educational scholarships, grants and subsidies, or guaranteed student
4 loans, provided that such benefits are available to similarly situated persons.

5 (iv) An agreement for which the compensation is solely reimbursement of
6 costs.

7 (v) Applying for, payment of fees for, or obtaining a license, credential, or
8 permit provided that such license, credential, or permit is available to similarly
9 situated persons.

10 (vi) The payment of admission fees.

11 (vii) The sale of property pursuant to the expropriation of immovable
12 property by any branch, agency, department, or institution of state government.

13 (viii) The donation of professional veterinary services or the donation of any
14 goods and services related to the provision of such veterinary services.

15 (ix) A sale by a retail establishment valued at two thousand five hundred
16 dollars or less. However, no person shall enter into separate sales valued at two
17 thousand five hundred dollars or less as a subterfuge to avoid the prohibition of this
18 Subsection. For purposes of this Item, "retail establishment" shall have the same
19 meaning provided in R.S. 14:67.25.

20 (2) The provisions of this Subsection shall not prohibit the following:

21 ~~(a) Completion of any contract otherwise prohibited by this Subsection~~
22 ~~which was entered into prior to initial election to the legislature; however, no such~~
23 ~~contract or subcontract shall be renewed.~~

24 ~~(b) Completion of any contract otherwise prohibited by this Subsection~~
25 ~~which was entered into prior to July 1, 1995; however, no such contract or~~
26 ~~subcontract shall be renewed.~~

27 ~~(c)~~ (a) Contracts for employment in a professional educational capacity in
28 or for professional services for an elementary or secondary school or other
29 educational institution.

1 ~~(d) Contracts of sale pursuant to the expropriation of immovable property by~~
2 ~~any branch, agency, department, or institution of state government.~~

3 (b) A provider agreement entered into with the Department of Health and
4 Hospitals under the state medical assistance program.

5 ~~(c)~~ (c) Contracts of employment of a physician or other licensed health care
6 professional with the state or the charity hospitals of the state or the Department of
7 Health and Hospitals.

8 ~~(f) Donation of professional veterinary services or the donation of any goods~~
9 ~~and services related to the provision of such veterinary services.~~

10 ~~(g)~~ (d) Completion of any contract which, at the time it was entered into, was
11 not prohibited by the provisions of this Subsection; however, no such contract shall
12 be renewed except as specifically provided for in this Paragraph.

13 ~~(h)~~(e)(i) Completion of any contract between a person identified ~~by~~ in Item
14 (1)(a)(ii) of this Paragraph Subsection or his spouse or a legal entity of a person and
15 state government, which contract was awarded by competitive bidding after being
16 advertised and awarded in accordance with Part II of Chapter 10 of Title 38 of the
17 Louisiana Revised Statutes of 1950, or competitively negotiated through a request
18 for proposal process or any similar competitive selection process in accordance with
19 Chapter 16 or 17 of Title 39 of the Louisiana Revised Statutes of 1950 or which
20 contract, other than a contract for consulting services, was not competitively
21 negotiated through a request for proposal process or any similar competitive
22 selection process in accordance with Chapter 16 or 17 of Title 39 of the Louisiana
23 Revised Statutes of 1950, and which contract was entered into prior to March 3,
24 2008; however, no such contract shall be renewed for a period extending beyond
25 January 9, 2012.

26 (ii) Completion of any contract between the immediate family member,
27 except for a spouse, of a person identified in Item (1)(a)(ii) of this Subsection or a
28 legal entity of a family member and state government, which contract was not
29 awarded by competitive bidding after being advertised and awarded in accordance

1 with Part II of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950 or
2 which contract, other than a contract for consulting services, was not competitively
3 negotiated through a request for proposal process or any similar competitive
4 selection process in accordance with Chapter 16 or 17 of Title 39 of the Louisiana
5 Revised Statutes of 1950, and which contract was entered into prior to March 3,
6 2008; however, no such contract shall be renewed for a period extending beyond
7 January 9, 2012.

8 ~~(i)(i) A sale by a retail establishment valued at two thousand five hundred~~
9 ~~dollars or less. However, no person shall enter into separate sales valued at two~~
10 ~~thousand five hundred dollars or less as a subterfuge to avoid the prohibition of this~~
11 ~~Subsection.~~

12 ~~(ii) For purposes of this Subparagraph, "retail establishment" shall have the~~
13 ~~same meaning provided in R.S. 14:67.25.~~

14 ~~(j) An agreement with a state entity or state quasi public entity providing for~~
15 ~~housing, retirement or insurance benefits, provided that those benefits are available~~
16 ~~to similarly situated persons.~~

17 ~~(k) An agreement providing for public assistance benefits, including but not~~
18 ~~limited to, subsidies for agriculture, aquaculture, forestry, soil and water~~
19 ~~conservation, educational scholarships, grants and subsidies or guaranteed student~~
20 ~~loans, provided that such benefits are available to similarly situated persons.~~

21 ~~(l) The payment of admission fees for events open to the public.~~

22 ~~(m)(f) Contracts for employment or for services by any licensed health care~~
23 ~~professional providing services in the classroom or working with administration in~~
24 ~~an elementary or secondary school or other educational institution.~~

25 ~~(n)(g) Contracts for services by health care professionals which are required~~
26 ~~by federal or state law to provide an educational program for students in an~~
27 ~~elementary or secondary school or other educational institution.~~

28 ~~(o) Contracts for which the compensation is solely reimbursement of costs.~~

1 ~~(p) Applying for, payment of fees for, or obtaining a license, credential, or~~
2 ~~permit provided that such license, credential, or permit is available to similarly~~
3 ~~situated persons.~~

4 ~~(q) (h) A contract in existence on March 3, 2008 for professional services~~
5 ~~entered into by a person selected pursuant to Part VII of Chapter 10 of Title 38 of the~~
6 ~~Louisiana Revised Statutes of 1950 with any agency or entity of state government~~
7 ~~with which such person had a contract for professional services pursuant to Part VII~~
8 ~~of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950 at any time prior~~
9 ~~to March 3, 2008. Such a contract may be renewed, but may not continue in effect~~
10 ~~March 3, 2008, or at any time prior to the initiation of the public service which made~~
11 ~~the person subject to the provisions of this Subsection; however, no contract for such~~
12 ~~professional services shall be entered into after January 8, 2012.~~

13 ~~(r) An agreement for the provision of goods or services by state government~~
14 ~~provided on the same terms and conditions available to similarly situated persons.~~

15 (3)(a) No person formerly serving in a position identified in Item (1)(a)(ii)
16 of this Subsection nor his spouse nor any legal entity of a person shall, for a period
17 of one year following the termination of the public service of such person enter into
18 a contract that would have been prohibited by this Subsection prior to the termination
19 of the public service of such person. The provisions of this Paragraph shall not
20 prohibit the renewal of a contract that was not prohibited prior to March 3, 2008.

21 (b) The provisions of this Paragraph shall not apply to a person, to the spouse
22 of a person, nor to a legal entity of a person if the public service of the person
23 terminated prior to March 3, 2008. However, the provisions of this Paragraph shall
24 apply to a person, to the spouse of a person, and to a legal entity of a person if the
25 person served in an office or position identified in Item (1)(a)(ii) of this Subsection
26 on or after March 3, 2008.

27 (4)(a) Each person identified in Item (1)(a)(ii) of this Subsection shall file
28 a report with the Board of Ethics, by ~~July first~~ May fifteenth of each year of his term
29 of office or of his service in his position, identifying the parties to and the value and

1 term of each contract between him or his spouse or legal entity of a person and state
2 government during the previous calendar year.

3 (b) Each immediate family member, except a spouse, of a person identified
4 in Item (1)(a)(ii) of this Subsection shall file a report with the Board of Ethics by
5 ~~July first~~ May fifteenth of each year of the person's term of office or of the person's
6 service in his position identifying the parties to and the value and term of each
7 contract between the immediate family member or any legal entity of a family
8 member and state government during the previous calendar year.

9 (c) The first report due under the provisions of this Subsection shall be due
10 by May 15, 2009.

11 E: (5) If any provision of this ~~Section~~ Subsection conflicts with any other
12 provision of this ~~Part~~ Section, the more restrictive provision shall govern.

13 * * *

14 §1114.3. Disaster or emergency contracts; prohibition; disclosure

15 A.(1) No statewide elected official, legislator, commissioner of
16 administration, or chief of staff or executive counsel to the governor, nor the spouse
17 of any such person, nor any corporation, partnership, or other legal entity, ~~except a~~
18 ~~publicly traded corporation or a passive ownership interest that is the result of~~
19 ~~participation in a federally approved program of employee ownership~~, in which such
20 a person owns an interest of greater than five percent, except a publicly traded
21 corporation or a legal entity in which the person owns a passive ownership interest
22 that is the result of participation in a federally approved program of employee
23 ownership, shall enter into any contract to which all of the following apply:

24 (a) The contract is directed to addressing needs directly emanating from a
25 gubernatorially declared disaster or emergency.

26 (b) The person knows or reasonably should know that the contract or
27 subcontract is funded or reimbursed in whole or in part with federal funds
28 distributed, paid, or allocated to or by the state or a state department, agency, or
29 official.

10,000 or less. Present law (R.S. 42:1113(B)) prohibits an appointed member of a board or commission, a member of his immediate family, or a legal entity in which he has a substantial economic interest from bidding on or entering into or being in any way interested in a contract, subcontract, or other transaction which is under the supervision or agency of the appointed member. Excludes legislators. Present law (R.S. 42:1113(C)) prohibits a legislator, a member of his immediate family, or a legal entity in which he has a controlling interest from bidding on or entering into or being in any way interested in any contract, subcontract, or other transaction involving the legislator's agency.

Present law (R.S. 42:1113(D)-eff. March 3, 2008) further prohibits legislators, statewide elected officials, certain executive branch officials, the Board of Ethics, and the ethics administrator along with spouses and certain legal entities of such officials from entering into any contract with state government. Provides limitations for contracts entered into by immediate family members, other than the spouse, of any such person and by certain legal entities of such immediate family members. Provides a number of exceptions. Requires reporting of certain contracts with state government annually by July 1.

Proposed law provides that the first report pursuant to present law shall be due by May 15, 2009. Removes certain redundant exception provisions and further makes technical changes to present law.

Proposed law reclassifies the following exceptions from "not prohibited" to "not contracts" for purposes of present law and proposed law: an agreement for housing, medical treatment, retirement benefits, or insurance benefits provided on the same terms and conditions available to similarly situated persons; an agreement providing for public assistance benefits, including subsidies for agriculture, aquaculture, forestry, soil and water conservation, educational scholarships, grants and subsidies or guaranteed student loans available to similarly situated persons; an agreement for which the compensation is solely reimbursement of costs; applying for, payment of fees for, or obtaining a license, credential, or permit available to similarly situated persons; the payment of admission fees; the sale of property pursuant to the expropriation of immovable property by any branch, agency, department, or institution of state government; the donation of professional veterinary services or the donation of any goods and services related to the provision of such veterinary services; a sale by a retail establishment valued at two thousand five hundred dollars or less (prohibits separate sales as a subterfuge). Reclassifies the exception for a provider agreement entered into with Dept. of Health and Hospitals under the state medical assistance program from "not a contract" to "not prohibited" for purposes of present law and proposed law. Removes the exception for agreements for the provision of goods or services by state government. Removes certain redundant exceptions for completion of certain contracts and an exception for actions taken to comply with a state law, rule, or regulation. Otherwise retains present law.

Present law exempts from the prohibitions of present law a contract in existence on March 3, 2008, for professional services entered into by a person selected pursuant to present law provisions relative to the selection of services performed by an architect, engineer, or landscape architect for public contracts with any agency or entity of state government with which such person had a contract for professional services pursuant to such provisions of present law at any time prior to March 3, 2008. Provides that such a contract may be renewed, but may not continue in effect after Jan. 8, 2012.

Proposed law removes the requirement that the contract existed on March 3, 2008. Requires the contract to be with an agency or entity of state government with which the person had a contract for professional services pursuant to such provisions of present law prior to March 3, 2008, or at any time prior to the initiation of the public service which made the person subject to the provisions of present law. Removes provision prohibiting continued effect of a renewed contract after Jan. 8, 2012. Provides instead that no contract for such professional services shall be entered into after Jan. 8, 2012. Otherwise retains present law.

Present law provides that if a provision of present law (R.S. 42:1113) conflicts with another provision of present law (Part II of the Code of Governmental Ethics) the more restrictive provision governs. Proposed law provides instead that if a provision of present and proposed law (R.S. 42:1113(D)) conflicts with a provision of present law (R.S. 42:1113), the more restrictive provision governs.

Present law additionally prohibits for a period of one year a person who formerly held an office or position covered by present law, his spouse, and a legal entity of the person from entering into a contract that would have been prohibited by present law prior to the termination of his public service.

Proposed law limits the applicability of present law. Provides that present law shall not apply to a person, to the spouse of a person, nor to a legal entity of a person if the public service of the person terminated prior to March 3, 2008. Provides, however, that present law shall apply to a person, to the spouse of a person, and to a legal entity of a person if the person served in an office or position covered by present law on or after March 3, 2008.

Present law (R.S. 42:1114.3) prohibits a statewide elected official, legislator, the commissioner of administration, the chief of staff to the governor, and the executive counsel to the governor; the spouse of any such person; and certain legal entities in which the person or spouse owns more than 5% from entering into a contract which (1) is directed to addressing needs directly emanating from a gubernatorially declared disaster or emergency and (2) the person knows or should know is funded or reimbursed with federal funds distributed, paid, or allocated to or by the state or a state department, agency, or official. Provides a number of exceptions.

Present law requires reporting by elected and appointed officials and their immediate family members who derive any thing of economic value through a contract related to a gubernatorially declared disaster or emergency and which the person knows or should know is funded or reimbursed by federal funds. Provides procedures for reporting.

Proposed law retains present law and makes technical changes.

Proposed law provides that it is to be applied retroactively as well as prospectively.

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

(Amends R.S. 42:1113(D)(1)(a)(iii) and (iv) and (c), (2), (3), and (4), and 1114.3(A)(1) and (2); Adds R.S. 42:1113(D)(5); Repeals R.S. 42:1113(E))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on House and Governmental Affairs to the original bill.

1. Reclassifies the following exceptions from "not prohibited" to "not contracts" for purposes of present law and proposed law: an agreement providing for housing, retirement or insurance benefits available to similarly situated persons; an agreement providing for public assistance benefits, including subsidies for agriculture, aquaculture, forestry, soil and water conservation, educational scholarships, grants and subsidies, or guaranteed student loans available to similarly situated persons; an agreement for the provision of goods or services by state government provided on the same terms and conditions available to similarly situated persons; an agreement for which the compensation is solely reimbursement of costs; applying for, payment of fees for, or obtaining a license, credential, or permit available to similarly situated persons; the payment of admission fees for events; the sale of property pursuant to the expropriation of immovable property by any branch, agency, department, or institution of state

government; the donation of professional veterinary services or the donation of any goods and services related to the provision of such veterinary services; a sale by a retail establishment valued at \$2,500 or less (prohibits separate sales as a subterfuge).

2. Reclassifies the exception for a provider agreement entered into with DHH under the state medical assistance program from "not a contract" to "not prohibited" for purposes of present law and proposed law.
3. Removes certain redundant exceptions for completion of certain contracts and an exception for actions taken to comply with a state law, rule, or regulation.
4. Changes the deadline for reporting contracts with the state from July 1 to May 15, including the first report which will be due May 15, 2009.

House Floor Amendments to the engrossed bill.

1. Relative to the exception for agreements providing for housing, retirement, or insurance benefits, makes exception applicable to agreements for housing, instead of housing benefits. Adds agreements for medical treatment. Adds the stipulation that the housing, medical treatment, retirement benefits, or insurance benefits must be provided on the same terms and conditions available to similarly situated persons.
2. Removes the exception for agreements for the provision of goods or services by state government.
3. Changes the exception for admission fees from applying to the payment of admission fees for events to applying to the payment of admission fees.
4. Amends the present law exception relative to public contracts for services performed by an architect, engineer, or landscape architect. Removes the stipulation that the contract existed on March 3, 2008. Stipulates instead that the contract be with an agency or entity of state government with which the person had a contract for such professional services prior to March 3, 2008, or at any time prior to the initiation of the public service which made the person subject to the provisions of present law. Removes provision prohibiting continued effect of a renewed contract after Jan. 8, 2012. Provides instead that no contract for such professional services shall be entered into after Jan. 8, 2012.