

Senate Study Bill 1090 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED DEPARTMENT OF
ADMINISTRATIVE SERVICES BILL)

A BILL FOR

1 An Act relating to contracts entered into by state agencies and
2 including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

unofficial

1 Section 1. NEW SECTION. **8A.311C State purchasing contracts**
2 **— prohibited terms.**

3 The provisions set forth in this section are void as a matter
4 of law as contrary to public policy if included in a contract
5 entered into by the department, the department of management or
6 a supported entity pursuant to chapter 8, subchapter XI, or any
7 other state agency. A state agency's contract that includes
8 any of the following provisions shall be interpreted as if the
9 contract did not include the void provision:

10 1. A provision that requires the state or its agencies to
11 defend, indemnify, hold harmless another person, or otherwise
12 assume the debt or liability of another person in violation of
13 Article VII, section 1, of the Constitution of the State of Iowa.

14 2. A provision that seeks to impose vendor terms that
15 are unknown at the time of signing the contract or can be
16 unilaterally changed by the vendor.

17 3. A provision that violates chapter 13 by not allowing
18 a state agency to participate in its own defense through
19 representation by the attorney general.

20 4. A provision that grants to any person other than the
21 attorney general the authority to convey to a court or litigant
22 the state's consent to any settlement of a suit involving the
23 contract when such settlement could impose liability on the
24 state.

25 5. A provision that specifies that the contract is governed
26 by the laws of a foreign state or nation.

27 6. A provision that claims blanket confidentiality of the
28 contract's terms.

29 7. A provision that claims that payment terms, including but
30 not limited to cost proposals or other pricing information, of
31 the contract are confidential.

32 8. A provision that authorizes or requires a venue for
33 litigation other than the district court of Polk county, Iowa,
34 or the United States district court for the southern district of
35 Iowa sitting in Des Moines, Iowa.

1 9. A provision that requires a state agency to pay attorney
2 fees, court costs, or other litigation expenses in the event of a
3 contractual dispute.

4 10. A provision that imposes on the state or its agencies
5 binding arbitration or another binding extrajudicial dispute
6 resolution process in which the final resolution is not
7 determined by the state.

8 11. A provision that waives a state agency's right to a jury
9 trial.

10 12. A provision that obligates a state agency to pay a
11 late payment charge not consistent with section 8A.514, interest
12 greater than allowed under section 8A.514 or other applicable
13 law, or any cancellation charge, as such charges constitute
14 pledges of the state's credit.

15 13. A provision that obligates a state agency to pay a tax.

16 14. A provision that imposes a prior notice obligation on
17 a state agency as a condition for the automatic renewal of a
18 software license. A state agency may provide notice of its
19 intent to terminate a software license at any time before the
20 renewal date established in the contract.

21 15. A provision that obligates a state agency to accept risk
22 of loss before the receipt of items or goods.

23 16. A provision that obligates a state agency to have
24 commercial insurance.

25 17. A provision that obligates a state agency to grant a
26 contractor full or partial ownership of intellectual property
27 developed pursuant to a state agency contract when the
28 intellectual property is developed in whole or in part using
29 federal funding.

30 18. A provision that limits the time in which the state or
31 its agencies may bring a legal claim under the contract to a
32 period shorter than that provided by Iowa law.

33 19. A boilerplate provision included in a vendor's
34 transactional documents, including but not limited to ordering
35 documents and quotations, that seeks to alter the terms of a

1 state agency's contract or to impose new terms in the contract.

2 Sec. 2. NEW SECTION. **8A.311D State purchasing contracts —**
3 **required terms.**

4 All of the following provisions shall be deemed to be included
5 in a state agency vendor contract:

6 1. *Governing law.* The contract shall be governed by the laws
7 of the state of Iowa, without giving effect to any conflict of
8 laws principles of Iowa law that may require the application of
9 another jurisdiction's law.

10 2. *Venue.* Any litigation commenced in connection with the
11 contract shall be brought and maintained in the district court
12 of Polk county, Iowa, or the United States district court for
13 the southern district of Iowa sitting in Des Moines, Iowa, as
14 appropriate.

15 Sec. 3. **APPLICABILITY.** This Act applies to contracts entered
16 into or renewed on or after the effective date of this Act.

17 **EXPLANATION**

18 The inclusion of this explanation does not constitute agreement with
19 the explanation's substance by the members of the general assembly.

20 This bill prohibits the inclusion of certain provisions
21 in contracts entered into by the department of administrative
22 services, the department of management or supported entities
23 pursuant to Code chapter 8, subchapter XI (information
24 technology), and any other state agency, and declares those
25 provisions void if present in such contracts. The bill also
26 provides that every state agency vendor contract shall be deemed
27 to include provisions requiring the contract to be governed by
28 Iowa law and for litigation related to the contract to be brought
29 and maintained in the district court of Polk county, Iowa, or the
30 United States district court for the southern district of Iowa
31 sitting in Des Moines, Iowa.