

2024 Regular Session

SENATE BILL NO. 265

BY SENATOR WOMACK

CONTRACTS. Provides relative to public contracts and public works. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 38:2241(C) and 2247, and R.S. 48:256.3(B) and 256.12, and to
3 enact R.S. 38:2241(G), relative to public contracts and public works; to provide
4 relative to the claims of subcontractors, materialmen, suppliers and laborers; to allow
5 a surety furnishing a bond to assert certain defenses that its principal could assert;
6 to provide for an exemption to public works contracts; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 38:2241(C) and 2247 are hereby amended and reenacted and R.S.
10 38:2241(G) is hereby enacted to read as follows:

11 §2241. Written contract and bond

12 * * *

13 C.(1) The payment provisions of all bonds furnished for public work
14 contracts described in this Part, regardless of form or content, shall be construed as
15 and deemed statutory bond provisions. **Except as provided in R.S. 38:2241(C)(2),**
16 **nothing in this Part shall be construed to preclude a surety who has furnished**
17 **such a bond from asserting any defense to the principal obligation that its**

1 **principal could assert except lack of capacity or discharge in bankruptcy of the**
2 **principal obligor.** Any such bond which fails to contain any of the requirements set
3 forth in this Part shall be deemed to incorporate all of the requirements set forth in
4 this Section. Language in any such bond containing any obligations beyond the
5 requirements set forth in this Part shall be deemed surplusage and read out of such
6 bond. Sureties and contractors executing payment bonds for public works contracts
7 under this Part shall be immune from liability for or payment of any claims not
8 required by this Part.

9 **(2) The surety shall be obligated and required to issue payment to**
10 **materialman for claims by a materialman under the following conditions:**

11 **(a) The claim is for materials delivered in conformity with material**
12 **specifications provided in the order for such materials.**

13 **(b) No sooner than forty-five days after material delivery, a materialman**
14 **sends a notice of nonpayment to the general contractor, surety, and the owner.**

15 **(c) The materialman has not been paid in full on or before ninety days**
16 **after material delivery.**

17 **(3) If the requirements of R.S. 38:2241(C)(2) are satisfied, the surety**
18 **shall pay a materialman within ten days after the materialman sends a payment**
19 **notice to the surety.**

20 **(4) The claim of a materialman and right to payment as provided in R.S.**
21 **38:2241(C) is in addition to and not in derogation of any other claims or**
22 **remedies available to a materialman in this Part.**

23 **(5) Any notice required under R.S. 38:2241 shall be served by mailing**
24 **the same by registered or certified mail, postage prepaid, in an envelope**
25 **addressed to the last known address of the general contractor, surety, and the**
26 **owner. The return receipt indicating that registered mail or certified mail was**
27 **properly addressed to the last known address of the general contractor, bond**
28 **surety, and the owner and deposited in the United States mail regardless of**
29 **whether the registered or certified mail was actually delivered, refused, or**

1 unclaimed satisfies the notice provision of R.S. 38:2241.

2 * * *

3 G. All contracts for projects that are directly associated with the
4 preparation of Super Bowl LIX are exempt from the provisions of this Section,
5 except for contracts for projects in excess of one hundred fifty thousand dollars.

6 The provisions of this Subsection shall terminate on February 10, 2025.

7 * * *

8 §2247. Construction of Part

9 A. Nothing in this Part shall be construed to deprive any claimant, as defined
10 in this Part and who has complied with the notice and recordation requirements of
11 R.S. 38:2242(B), of his right of action on the bond furnished pursuant to this Part,
12 provided that said action must be brought against the surety or the contractor or both
13 within one year from the registry of acceptance of the work or of notice of default
14 of the contractor; except that before any claimant having a direct contractual
15 relationship with a subcontractor but no contractual relationship with the contractor
16 shall have a right of action against the contractor or the surety on the bond furnished
17 by the contractor, he shall in addition to the notice and recordation required in R.S.
18 38:2242(B) give written notice to ~~said~~ the contractor within forty-five days from the
19 recordation of the notice of acceptance by the owner of the work or notice by the
20 owner of default, stating with substantial accuracy the amount claimed and the name
21 of the party to whom the material was furnished or supplied or for whom the labor
22 or service was done or performed. ~~Such~~ The notice shall be served by mailing the
23 same by registered or certified mail, postage prepaid, in an envelope addressed to the
24 contractor at any place he maintains an office in the state of Louisiana. Except as
25 provided in R.S. 38:2247(B), nothing in this Part shall be construed to preclude
26 a surety who has furnished such a bond pursuant to this Part from asserting
27 any defense to the principal obligation that its principal could assert except lack
28 of capacity or discharge in bankruptcy of the principal obligor.

29 B. The surety shall be obligated and required to issue payment to a

1 materialman for claims by a materialman under the following conditions:

2 (1) The claim is for materials delivered in conformity with material
3 specifications provided in the order for such materials.

4 (2) No sooner than forty-five days after material delivery, a materialman
5 sends a notice of nonpayment to the general contractor, surety, and the owner.

6 (3) A materialman has not been paid in full on or before ninety days
7 after material delivery.

8 C. If the requirements of R.S. 38:2247(B) are satisfied, the surety shall
9 pay a materialman within ten days after the materialman sends a payment
10 notice to the surety.

11 D. The claim of a materialman and right to payment as provided in R.S.
12 38:2247(B) is in addition to and not in derogation of any other claims and
13 remedies available to a materialman in this Part.

14 E. Any notice required under R.S. 38:2247 shall be served by mailing the
15 same by registered or certified mail, postage prepaid, in an envelope addressed
16 to the last known address of the general contractor, surety, and the owner. The
17 return receipt indicating that registered mail or certified mail was properly
18 addressed to the last known address of the general contractor, surety, and the
19 owner and deposited in the United States mail regardless of whether the
20 registered or certified mail was actually delivered, refused, or unclaimed
21 satisfies the notice provision of R.S. 38:2247.

22 Section 2. R.S. 48:256.3(B) and 256.12 are hereby amended and reenacted to read
23 as follows:

24 §256.3. Payment bond

25 * * *

26 B.(1) The payment provisions of all bonds furnished for department contracts
27 described in this Subpart, regardless of form or content, shall be construed as and
28 deemed statutory bond provisions. Except as provided in R.S. 48:256.3(B)(2),
29 nothing in this Part shall be construed to preclude a surety who has furnished

1 such a bond from asserting any defense to the principal obligation that its
2 principal could assert except lack of capacity or discharge in bankruptcy of the
3 principal obligor. Any such bond which fails to contain any of the requirements set
4 forth in this Subpart shall be deemed to incorporate all of the requirements set forth
5 in this Section. Language in any such bond containing any obligations beyond the
6 requirements set forth in this Part shall be deemed surplusage and read out of such
7 bond. Sureties and contractors executing payment bonds for department contracts
8 under this Subpart shall be immune from liability for or payment of any claims not
9 required by this Subpart.

10 (2) The surety shall be obligated and required to issue payment to a
11 materialman for claims by a materialman under the following conditions:

12 (a) The claim is for materials delivered in conformity with material
13 specifications provided in the order for such materials.

14 (b) No sooner than forty-five days after material delivery, the
15 materialman sends a notice of nonpayment to the general contractor, surety,
16 and the owner.

17 (c) The materialman has not been paid in full on or before ninety days
18 after material delivery.

19 (3) If the requirements of R.S. 48:256.3(B)(2) are satisfied, the surety
20 shall pay the materialman within ten days after the materialman sends a
21 payment notice to the surety.

22 (4) The claim of a materialman and right to payment as provided in R.S.
23 48:256.3(B) is in addition to and not in derogation of any other claims and
24 remedies available to a materialman in this Part.

25 (5) Any notice required under R.S. 48:256.3 shall be served by mailing
26 the same by registered or certified mail, postage prepaid, in an envelope
27 addressed to the last known address of the general contractor, surety, and the
28 owner. The return receipt indicating that registered mail or certified mail was
29 properly addressed to the last known address of the general contractor, bond

1 surety, and the owner and deposited in the United States mail regardless of
2 whether the registered or certified mail was actually delivered, refused, or
3 unclaimed satisfies the notice provision of R.S.48:256.3.

4 * * *

5 §256.12. Construction of Part

6 A. Nothing in this Part shall be construed to deprive any claimant, as defined
7 in this Part and who has complied with the notice and recordation requirements of
8 R.S. 48:256.5(B), of his right of action on the bond furnished pursuant to this Part,
9 provided that ~~said~~ the action must be brought against the surety or the contractor or
10 both within one year from the registry of acceptance of the work or of notice of
11 default of the contractor; except that before any claimant having a direct contractual
12 relationship with a subcontractor but no contractual relationship with the contractor
13 shall have a right of action against the contractor or the surety on the bond furnished
14 by the contractor, he shall in addition to the notice and recordation required in R.S.
15 48:256.5(B) give written notice to ~~said~~ the contractor and surety within forty-five
16 days from the recordation of the notice of final acceptance by the department of the
17 work or notice by the department of default, stating with substantial accuracy the
18 amount claimed and the name of the party to whom the material was furnished or
19 supplied or for whom the labor or service was done or performed. ~~Such~~ The notice
20 shall be served by mailing the same by registered or certified mail, postage prepaid,
21 in envelopes addressed separately to the contractor and surety at any place each
22 maintains an office in the state of Louisiana. Except as provided in R.S.
23 48:256.12(B), nothing in this Part shall be construed to preclude a surety who
24 has furnished such a bond pursuant to this Part from asserting any defense to
25 the principal obligation that its principal could assert except lack of capacity or
26 discharge in bankruptcy of the principal obligor.

27 B. The surety shall be obligated and required to issue payment to a
28 materialman for claims by a materialman under the following conditions:

29 (1) The claim is for materials delivered in conformity with material

1 specifications provided in the order for such materials.

2 (2) No sooner than forty-five days after material delivery, the
3 materialman sends a notice of nonpayment to the general contractor, surety,
4 and the owner.

5 (3) The materialman has not been paid in full on or before ninety days
6 after material delivery.

7 C. If the requirements of R.S. 48:256.12(B) are satisfied, the surety shall
8 pay the materialman within ten days after the materialman sends a payment
9 notice to the surety.

10 D. The claim of a materialman and right to payment as provided in R.S.
11 48:256.12(B) is in addition to and not in derogation of any other claims and
12 remedies available to a materialman in this Part.

13 E. Any notice required under R.S. 48:256.12 shall be served by mailing
14 the same by registered or certified mail, postage prepaid, in an envelope
15 addressed to the last known address of the general contractor, bond surety, and
16 the owner. The return receipt indicating that registered mail or certified mail
17 was properly addressed to the last known address of the general contractor,
18 surety, and the owner and deposited in the United States mail regardless of
19 whether the registered or certified mail was actually delivered, refused, or
20 unclaimed satisfies the notice provision of R.S. 48:256.12.

21 Section 3. This Act shall become effective upon signature of the governor or, if not
22 signed by the governor, upon expiration of the time for bills to become law without signature
23 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
24 vetoed by the governor and subsequently approved by the legislature, this Act shall become
25 effective on the day following such approval.

The original instrument was prepared by Emily Toler. The following digest, which does not constitute a part of the legislative instrument, was prepared by Curry J. Lann.

DIGEST

SB 265 Reengrossed

2024 Regular Session

Womack

Present law provides that the payment provisions of all bonds furnished for public work contracts are required to be construed as and deemed statutory bond provisions.

Proposed law provides a surety who has furnished such a bond is not precluded from asserting any defense to the principal obligation that its principal could assert except lack of capacity or discharge in bankruptcy of the principal obligor and otherwise retains present law.

Present law provides that nothing may deprive any claimant, of a right of action on the bond furnished, provided that an action must be initiated against the surety or the contractor or both within one year from either the registry of acceptance of the work or of notice of default of the contractor.

Proposed law requires that a surety who has furnished such a bond is not precluded from asserting any defense to the principal obligation that its principal could assert except lack of capacity or discharge in bankruptcy of the principal obligor and otherwise retains present law.

Present law requires that when the Department of Transportation and Development enters into a contract in excess of \$50,000 for the construction, maintenance, alteration, or repair of any public works, the department shall require of the contractor a bond with good, solvent, and sufficient surety.

Proposed law provides nothing shall be construed to preclude a surety who has furnished such a bond from asserting any defense to the principal obligation that its principal could assert except lack of capacity or discharge in bankruptcy of the principal obligor and otherwise retains present law.

Present law provides nothing shall deprive any claimant, who has complied with the notice and recordation requirements of the law, of a right of action on the bond furnished provided that action must be brought against the surety or the contractor or both within one year from the registry of acceptance of the work or of notice of default of the contractor.

Proposed law provides nothing shall be construed to preclude a surety who has furnished such bond from asserting any defense to the principal obligation that its principal could assert except lack of capacity or discharge in bankruptcy of the principal obligor and otherwise retains present law.

Proposed law exempts all contracts for projects that are directly associated with the preparation of Super Bowl LIX from the provisions of present law relative to public works contracts, except for contracts for projects in excess of \$150,000. Further provides that the exemption terminates on February 10, 2025.

Proposed law requires that a bond surety issue payment to a materialman under certain conditions if the materials conform to the material specifications, a notice of nonpayment has been issued after forty-five days, and no payment in full has been made to the materialman within ninety days after delivery of the materials.

Proposed law mandates that a bond surety pay a materialman within ten days after notice of nonpayment, if certain statutory requirements are satisfied.

Proposed law provides the claim and right to payment of the materialman is in addition to any other claims or remedies available.

Proposed law requires notice to be served by registered or certified United States mail in a postage prepaid, properly addressed envelope to the last known address of the general contractor, bond surety, and owner with a return receipt indicating that the letter was delivered, refused, or unclaimed to satisfy notice provisions.

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

(Amends R.S.38:2241(C) and 2247 and R.S. 48:256.3(B) and 256.12; adds R.S. 38:2241(G))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the original bill

1. Adds provision exempting all contracts for projects that are directly associated with the preparation of Super Bowl LIX from the provisions of present law relative to public works contracts, except for contracts for projects in excess of \$150,000. Further provides that the exemption terminates on February 10, 2025.
2. Makes technical corrections.

Senate Floor Amendments to engrossed bill

1. Requires bond surety to issue payment to a materialman under certain conditions if the materials conform to the material specifications, a notice of nonpayment has been issued after forty-five days, and no payment in full has been made to the materialman within ninety days after delivery of the materials.
2. Mandates bond surety to pay materialman within ten days after notice of nonpayment, if certain statutory requirements are satisfied.
3. Provides the claim and right to payment of the materialman is in addition to any other claims or remedies available.
4. Requires notice to be served by registered or certified mail via United States mail in a postage prepaid, properly addressed envelope to the last known address of the general contractor, bond surety, and owner with a return receipt indicating that the letter was delivered, refused, or unclaimed to satisfy notice provisions.
5. Makes technical corrections.