

SENATE BILL NO. 265

BY SENATOR WOMACK

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§2241. Written contract and bond

* * *

C.~~(1)~~ The payment provisions of all bonds furnished for public work contracts described in this Part, regardless of form or content, shall be construed as and deemed statutory bond provisions. **Except as provided in Paragraph (2) of this Subsection, nothing in this Part 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.** Any such bond which fails to contain any of the requirements set forth in this Part shall be deemed to incorporate all of the requirements set forth in this Section. Language in any such bond containing any obligations beyond the requirements set forth in this Part shall be deemed surplusage and read out of such bond. Sureties and contractors executing payment bonds for public works contracts under this Part shall be immune from liability for or payment of any claims not required by this Part.

(2) The surety shall be obligated and required to issue payment to a

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

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

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

7 (c) The materialman has not been paid in full on or before ninety days
8 after delivery of the material.

9 (3) If the requirements of Paragraph (2) of this Subsection are satisfied,
10 the surety shall pay the materialman within ten days after the materialman
11 sends a payment notice to the surety.

12 (4) The claim of a materialman and right to payment as provided in this
13 Subsection is in addition to and not in derogation of any other rights, claims, or
14 remedies available to a materialman in this Part.

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

23 * * *

24 G. All contracts for projects that are directly associated with the
25 preparation of Super Bowl LIX are exempt from the provisions of this Section,
26 except for contracts for projects in excess of one hundred fifty thousand dollars.
27 The provisions of this Subsection shall terminate on February 10, 2025.

28 * * *

29 §2247. Construction of Part

30 A. Nothing in this Part shall be construed to deprive any claimant, as defined

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

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

22 **(1) The claim is for material delivered in conformity with material**
23 **specifications provided in the order for such material.**

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

27 **(3) A materialman has not been paid in full on or before ninety days**
28 **after delivery of the material.**

29 **C. If the requirements of Subsection B of this Section are satisfied, the**
30 **surety shall pay the materialman within ten days after the materialman sends**

1 a payment notice to the surety.

2 D. The claim of a materialman and right to payment as provided in
 3 Subsection B of this Section is in addition to and not in derogation of any other
 4 rights, claims, or remedies available to a materialman in this Part.

5 E. Any notice required under this Section shall be served by mailing the
 6 same by registered or certified mail, postage prepaid, in an envelope addressed
 7 to the last known address of the general contractor, surety, and the owner. The
 8 return receipt indicating that registered mail or certified mail was properly
 9 addressed to the last known address of the general contractor, surety, and the
 10 owner and deposited in the United States mail regardless of whether the
 11 registered or certified mail was actually delivered, refused, or unclaimed
 12 satisfies the notice provision of this Section.

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

15 §256.3. Payment bond

16 * * *

17 B.(1) The payment provisions of all bonds furnished for department contracts
 18 described in this Subpart, regardless of form or content, shall be construed as and
 19 deemed statutory bond provisions. Except as provided in Paragraph (2) of this
 20 Subsection, nothing in this Part shall be construed to preclude a surety who has
 21 furnished such a bond from asserting any defense to the principal obligation
 22 that its principal could assert except lack of capacity or discharge in bankruptcy
 23 of the principal obligor. Any such bond which fails to contain any of the
 24 requirements set forth in this Subpart shall be deemed to incorporate all of the
 25 requirements set forth in this Section. Language in any such bond containing any
 26 obligations beyond the requirements set forth in this Part shall be deemed surplusage
 27 and read out of such bond. Sureties and contractors executing payment bonds for
 28 department contracts under this Subpart shall be immune from liability for or
 29 payment of any claims not required by this Subpart.

30 (2) The surety shall be obligated and required to issue payment to a

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

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

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

7 (c) The materialman has not been paid in full on or before ninety days
 8 after delivery of the material.

9 (3) If the requirements of Paragraph (2) of this Subsection are satisfied,
 10 the surety shall pay the materialman within ten days after the materialman
 11 sends a payment notice to the surety.

12 (4) The claim of a materialman and right to payment as provided in this
 13 Subsection is in addition to and not in derogation of any other rights, claims, or
 14 remedies available to a materialman in this Part.

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

23 * * *

24 §256.12. Construction of Part

25 A. Nothing in this Part shall be construed to deprive any claimant, as defined
 26 in this Part and who has complied with the notice and recordation requirements of
 27 R.S. 48:256.5(B), of his right of action on the bond furnished pursuant to this Part,
 28 provided that ~~said~~ the action must be brought against the surety or the contractor or
 29 both within one year from the registry of acceptance of the work or of notice of
 30 default of the contractor; except that before any claimant having a direct contractual

1 relationship with a subcontractor but no contractual relationship with the contractor
2 shall have a right of action against the contractor or the surety on the bond furnished
3 by the contractor, he shall in addition to the notice and recordation required in R.S.
4 48:256.5(B) give written notice to ~~said~~ the contractor and surety within forty-five
5 days from the recordation of the notice of final acceptance by the department of the
6 work or notice by the department of default, stating with substantial accuracy the
7 amount claimed and the name of the party to whom the material was furnished or
8 supplied or for whom the labor or service was done or performed. ~~Such~~ The notice
9 shall be served by mailing the same by registered or certified mail, postage prepaid,
10 in envelopes addressed separately to the contractor and surety at any place each
11 maintains an office in the state of Louisiana. **Except as provided in Subsection B**
12 **of this Section, nothing in this Part shall be construed to preclude a surety who**
13 **has furnished such a bond from asserting any defense to the principal obligation**
14 **that its principal could assert except lack of capacity or discharge in bankruptcy**
15 **of the principal obligor.**

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

18 **(1) The claim is for material delivered in conformity with material**
19 **specifications provided in the order for such material.**

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

23 **(3) The materialman has not been paid in full on or before ninety days**
24 **after delivery of the material.**

25 **C. If the requirements of Subsection B of this Section are satisfied, the**
26 **surety shall pay the materialman within ten days after the materialman sends**
27 **a payment notice to the surety.**

28 **D. The claim of a materialman and right to payment as provided in**
29 **Subsection B of this Section is in addition to and not in derogation of any other**
30 **rights, claims, or remedies available to a materialman in this Part.**

1 **E. Any notice required under this Section shall be served by mailing the**
2 **same by registered or certified mail, postage prepaid, in an envelope addressed**
3 **to the last known address of the general contractor, surety, and the owner. The**
4 **return receipt indicating that registered mail or certified mail was properly**
5 **addressed to the last known address of the general contractor, surety, and the**
6 **owner and deposited in the United States mail regardless of whether the**
7 **registered or certified mail was actually delivered, refused, or unclaimed**
8 **satisfies the notice provision of this Section.**

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

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____