

2026 Regular Session

SENATE BILL NO. 235

BY SENATOR WOMACK

PUBLIC CONTRACTS. Provides relative to payments under contract by public entities.
(gov sig)

1 AN ACT

2 To amend and reenact R.S. 38:2191(C) through (E) and to enact R.S. 38:2191(F), relative
3 to payments under contract by public entities; to provide relative to payments due on
4 certain public works contracts; to provide for withholding of liquidated damages;
5 provide for exceptions; to provide for mandamus proceedings; to provide for
6 attorney fees and interest; to provide for an effective date; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 38:2191(C) through (E) are hereby amended and reenacted and R.S.
10 38:2191(F) is hereby enacted to read as follows:

11 §2191. Payments under contract

12 * * *

13 C. Except as provided in R.S. 38:2248(C), a public entity shall not
14 withhold liquidated damages contested by the contractor from any payments
15 or monies otherwise due, provided that payment to the contractor shall not
16 prejudice the ability of a public entity to assert a claim for liquidated damages
17 against the contractor in an ordinary proceeding. The prevailing party shall be

1 entitled to recover reasonable attorney fees in connection with a public entity's
2 claim for liquidated damages in an ordinary proceeding. A public entity shall
3 be entitled to interest on liquidated damages recovered charged at one-half
4 percent accumulated daily, not to exceed fifteen percent, accruing from the date
5 of payment by the public entity of contested liquidated damages as provided for
6 by this Subsection.

7 D. The provisions of this Section shall not be subject to waiver by contract.

8 ~~E.~~ Any public entity failing to make any progressive stage payments
9 arbitrarily or without reasonable cause, or any final payment when due as provided
10 in this Section, shall be subject to mandamus to compel the payment of the sums due
11 under the contract up to the amount of the appropriation made for the award and
12 execution of the contract, including any authorized change orders, **together with**
13 **attorney fees and interest as provided for by this Section. If the public entity**
14 **prevails in an action brought against it pursuant to this Subsection, the**
15 **contractor shall be liable for reasonable attorney fees. Any claim by a public**
16 **entity to recover liquidated damages pursuant to Subsection C of this Section**
17 **shall not be subject to the mandamus proceeding.**

18 EF. A declaration that a public works contract is null and void as being
19 contrary to the provisions of R.S. 38:2211 et seq. shall not affect amounts due and
20 payable under the contract, including overhead and profit, for the work performed
21 by or on behalf of the contractor.

22 Section 2. This Act shall become effective upon signature of the governor or, if not
23 signed by the governor, upon expiration of the time for bills to become law without signature
24 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
25 vetoed by the governor and subsequently approved by the legislature, this Act shall become
26 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Senate Legislative Services. The keyword, summary, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

DIGEST

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Present law requires public entities to promptly pay all obligations arising under a public contract, including change orders, when the obligations are due and payable. Requires that if the public entity fails to make any progressive stage payment, without reasonable cause, within 45 days after receipt of a certified request for payment, the entity is liable for reasonable attorney fees and interest charged at 0.5% accumulated daily, not to exceed 15%.

Proposed law retains present law.

Present law requires that if the public entity fails to make final payment after formal final acceptance and within 45 days after receipt of a clear lien certificate, the entity is liable for reasonable attorney fees and interest charged at 0.5% accumulated daily, not to exceed 15%.

Proposed law retains present law.

Proposed law prohibits public entities from withholding liquidated damages contested by the contractor from any payments or monies otherwise due, provided that payment to the contractor does not prejudice a public entity's ability to assert a claim for liquidated damages against the contractor in an ordinary proceeding.

Proposed law provides that the prevailing party is entitled to recover reasonable attorney fees in connection with a public entity's claim for liquidated damages in an ordinary proceeding.

Proposed law provides that a public entity is entitled to interest on liquidated damages recovered charged at 0.5 % accumulated daily, not to exceed 15%, accruing from the date of payment by the public entity of contested liquidated damages.

Present law subjects public entities to mandamus for failing to make progressive stage payments arbitrarily or without reasonable cause, or any final payment when due. Present law provides that the mandamus compel the payment of amounts due under contract up to the appropriation made for the award and execution of the contract or change orders.

Proposed law adds that the mandamus compel the payment of attorney fees and accumulated interest to the contractor.

Proposed law provides that if a public entity prevails in a mandamus proceeding, the contractor is liable for reasonable attorney fees.

Proposed law provides that any claim by a public entity to recover liquidated damages shall not be subject to the mandamus proceeding.

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

(Amends R.S. 38:2191(C) - (E); Adds R.S. 38:2191(F))

Summary of Amendments Adopted by Senate

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

1. Provide that the prevailing party is entitled to recover reasonable attorney fees in a public entity's claim for liquidated damages in an ordinary proceeding.
2. Authorize a public entity to claim interest on liquidated damages recovered.
3. Provide that if a public entity prevails in a mandamus proceeding, the contractor is liable for reasonable attorney fees.