

Regular Session, 2013

SENATE BILL NO. 137

BY SENATOR APPEL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CONTRACTORS. Provides relative to certain lien and escrow account procedures for certain construction contracts. (8/1/13)

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AN ACT

To amend and reenact R.S. 9:4802(G)(3) and the introductory paragraph of 4815(A), and R.S. 38:2242(F), relative to construction contracts; to provide relative to certain lien and escrow account procedures; to provide relative to claims by certain persons against an owner or general contractor arising out of the performance of work under a contract; to provide relative to the minimum contract value for which funds withheld as retainage shall be required to be placed into an escrow account; to provide relative to certain time periods for the sending of notice of nonpayment in public and private construction contracts; to provide certain terms, conditions, procedures, and requirements; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:4802(G)(3) and the introductory paragraph of 4815(A) are hereby amended and reenacted to read as follows:

§4802. Improvement of immovable by contractor; claims against the owner and contractor; privileges securing the improvement

\* \* \*

G.(1)

\* \* \*

(3) In addition to the other provisions of this Section, if the seller of movables has not been paid by the subcontractor and has not sent notice of nonpayment to the general contractor and the owner, then the seller shall lose his right to file a privilege or lien on the immovable property. The return receipt indicating that certified mail was properly addressed to the last known address of the general contractor and the owner and deposited in the U.S. mail on or before ~~seventy-five~~ **forty-five** days from the last day of the month in which the material was delivered, regardless of whether the certified mail was actually delivered, refused, or unclaimed satisfies the notice provision hereof or no later than the statutory lien period, whichever comes first. The provisions of this Paragraph shall apply only to disputes arising out of recorded contracts.

\* \* \*

§4815. Escrow of funds due under contract; procedures

A. When, under the provisions of this Part, a contract in the amount of ~~fifty thousand~~ **five hundred thousand** dollars or more is entered into between an owner and a contractor and if in accordance with the terms of such contract funds earned by the contractor are withheld as retainage by the owner from periodic payments due to the contractor then such funds shall be deposited by the owner into an interest bearing escrow account. The provisions of this Section **shall be nonwaivable and** shall not apply to a contract for a single family residence or double family residence. The provisions of this Section also shall not apply to a contract for the construction or improvement of the following types of industrial facilities that are, or will be, engaged in activities defined or classified under one or more of the following subsectors, industry groups, or industries of the 1997 North American Industry Classifications System (NAICS):

\* \* \*

Section 2. R.S. 38:2242(F) is hereby amended and reenacted to read as follows:

§2242. Claimant defined; filing of sworn statements of amounts due; payment by

1 contracting authority

2 \* \* \*

3 F. In addition to the other provisions of this Section, if the materialman has  
 4 not been paid by the subcontractor and has not sent notice of nonpayment to the  
 5 general contractor and the owner, then the materialman shall lose his right to file a  
 6 privilege or lien on the immovable property. The return receipt indicating that  
 7 certified mail was properly addressed to the last known address of the general  
 8 contractor and the owner and deposited in the U.S. mail on or before ~~seventy-five~~  
 9 **forty-five** days from the last day of the month in which the material was delivered,  
 10 regardless of whether the certified mail was actually delivered, refused, or unclaimed  
 11 satisfies the notice provision hereof or no later than the statutory lien period,  
 12 whichever comes first. The provisions of this Subsection shall apply only to disputes  
 13 arising out of recorded contracts.

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The original instrument and the following digest, which constitutes no part  
 of the legislative instrument, were prepared by Julie J. Baxter.

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#### DIGEST

Present law relative to construction contracts provides that certain persons have a claim against the owner and general contractor to secure payment of certain obligations arising out of the performance of work under a private construction contract. Further provides that if the seller of movables has not been paid by the subcontractor and has not sent notice of nonpayment to the general contractor and the owner, then the seller shall lose his right to file a privilege or lien on the immovable property. Further provides that the return receipt indicating that certified mail was properly addressed to the last known address of the general contractor and the owner and deposited in the U.S. mail on or before 75 days from the last day of the month in which the material was delivered, regardless of whether the certified mail was actually delivered, refused, or unclaimed satisfies the notice provision or no later than the statutory lien period, whichever comes first. Further provides the provisions of present law shall apply only to disputes arising out of recorded contracts.

Proposed law changes the 75-day period in present law to a 45-day period.

Present law provides that when certain construction contracts in the amount of \$50,000 or more are entered into between an owner and a contractor and, if in accordance with the terms of such contract, funds earned by the contractor are withheld as retainage by the owner from periodic payments due to the contractor, then such funds shall be deposited by the owner into an interest bearing escrow account.

Proposed law increases the minimum value of such construction contracts to \$500,000 instead of \$50,000. Further provides that present law and proposed law shall not be waivable.

Present law provides that in certain public construction contracts, if the materialman has not

been paid by the subcontractor and has not sent notice of nonpayment to the general contractor and the owner, then the materialman shall lose his right to file a privilege or lien on the immovable property. Further provides that the return receipt indicating that certified mail was properly addressed to the last known address of the general contractor and the owner and deposited in the U.S. mail on or before 75 days from the last day of the month in which the material was delivered, regardless of whether the certified mail was actually delivered, refused, or unclaimed, satisfies the notice provision hereof or no later than the statutory lien period, whichever comes first. Further provides the provisions of present law shall apply only to disputes arising out of recorded contracts.

Proposed law changes the 75-day period in present law to a 45-day period.

Effective August 1, 2013.

(Amends R.S. 9:4802(G)(3) and 4815(A)(intro para) and R.S. 38:2242(F))