

2015 Regular Session

SENATE BILL NO. 151

BY SENATOR CORTEZ

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

PUBLIC CONTRACTS. Provides for payments, filing of sworn statements of amount due, and cancellation of statements of claim or privilege on DOTD contracts. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 48:251.5(B)(1) and (2), 256.5(B), 256.6(A)(1), and 256.7(C),
3 relative to public contracts of the Department of Transportation and Development;
4 to provide relative to payment of legal interest on contract balances; to provide
5 relative to filing of statements of amounts due by claimants; to provide relative to
6 cancellation of the inscription of claims and privileges; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 48:251.5(B)(1) and (2), 256.5(B), 256.6(A)(1), and 256.7(C) are
10 hereby amended and reenacted to read as follows:

11 §251.5. Payments under contract

12 * * *

13 B.(1) If the department fails to make any final payments after recordation of
14 formal final acceptance and within forty-five days following receipt of a clear lien
15 certificate by the department, ~~the department shall be liable for legal interest on the~~
16 ~~balance due on the contract.~~

17 ~~(2) If the final estimate by the department's engineer is not completed by the~~

1 ~~Expiration of the period prescribed in this Subsection,~~ the retainage or other
 2 payments known by the department to be due and payable shall be released, but the
 3 contractor and the contractor's surety shall remain liable for any overpayment by the
 4 department to the contractor, stipulated damages for delay in a completion or work
 5 necessary to repair latent defects, or in performance of warranty work under the
 6 contract.

7 **(2) If the department fails to make any final payment within one**
 8 **hundred days after its receipt of the clear lien certificate, the department shall**
 9 **be liable for legal interest on the balance due on the contract.**

10 * * *

11 §256.5. Claimant defined; filing of sworn statements of amounts due; payment by
 12 the department

13 * * *

14 B. Any claimant shall, after the maturity of his claim and within forty-five
 15 days after the recordation of final acceptance of the work by the department or of
 16 notice of default of the contractor or subcontractor, ~~file a copy of sworn statement~~
 17 ~~of the amount due him with the department having the work done~~ and record the
 18 original sworn statement of the amount due him in the office of the recorder of
 19 mortgages for the parish in which the work is done **and file a certified copy of the**
 20 **recorded sworn statement of the amount due, showing the recordation data,**
 21 **with the undersecretary of the department.**

22 * * *

23 §256.6. Authorization to cancel the inscription of claims and privileges;
 24 cancellation; lis pendens

25 A.(1) If a statement of claim or privilege is improperly filed or if the claim
 26 or privilege preserved by the filing of a statement of claim or privilege is
 27 extinguished, the public entity, contractor, or subcontractor, or other interested
 28 person may require the person who has filed a statement of claim or privilege to give
 29 a written authorization directing the recorder of mortgages to cancel the statement

1 of claim or privilege from his records, or to file an original lien cancellation
 2 certificate with the recorder of mortgages and to submit a certified copy of the
 3 recorded lien cancellation certificate, showing the recordation data, with the
 4 undersecretary of the department.

* * *

6 §256.7. Filing of bond or other security; cancellation of statement of claim or
 7 privilege

* * *

9 C. Any party who files a bond or other security to guarantee payment of an
 10 obligation secured by a privilege in accordance with the provisions of Subsection A
 11 of this Section shall give notice to the department, the claimant, and the contractor
 12 by certified mail, **and shall file a certified copy of the cancellation of the**
 13 **statement of claim or privilege by the recorder of mortgages, showing the**
 14 **recordation data, with the undersecretary of the department by certified mail.**

15 Section 2. This Act shall become effective upon signature by the governor or, if not
 16 signed by the governor, upon expiration of the time for bills to become law without signature
 17 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 18 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 19 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 Sharon F. Lyles.

DIGEST

SB 151 Engrossed

2015 Regular Session

Cortez

Present law makes the Department of Transportation and Development (DOTD) liable for legal interest on contract balances due and requires the release of retainage or other payments to a contractor if the final estimate is not complete, when DOTD fails to make final payment due to a contractor after recordation of formal final acceptance and within 45 days of its receipt of a clear lien certificate.

Proposed law makes DOTD liable for legal interest on final contract balances when DOTD fails to make any final payment within 100 days after receipt of a clear lien certificate.

Present law requires a claimant, after maturity of his claim and within 45 days of recordation of final acceptance of work by DOTD or notice of default of the contractor or subcontractor, to file a copy of a sworn statement of the amount due with DOTD and to record the statement with the recorder of mortgages for the parish where the work is performed.

Proposed law adds requirement for the claimant to file a certified copy of his recorded sworn statement, showing recordation data, with the undersecretary of DOTD.

Present law authorizes a public entity, contractor, or subcontractor, or other interested party to require a person who has filed a statement of claim or privilege to give a written authorization directing the recorder of mortgages to cancel the statement of claim or privilege from his records.

Proposed law adds requirement for the claimant to file a certified copy of the recorded lien cancellation certificate, showing recordation data, with the undersecretary of DOTD by certified mail.

Present law requires a party who files a bond or other security to guarantee payment of a statement of claim or privilege to give notice to DOTD, the claimant, and the contractor by certified mail.

Proposed law adds requirement for the party to file a certified copy of the cancelled statement of claim or privilege, showing recordation data, with the undersecretary of DOTD by certified mail.

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

(Amends R.S. 48:251.5(B)(1) and (2), 256.5(B), 256.6(A)(1), and 256.7(C))