

2016 Regular Session

HOUSE BILL NO. 334

BY REPRESENTATIVE SCHEXNAYDER

CONTRACTS: Provides relative to the enforcement of certain private and public construction contracts

1 AN ACT

2 To amend and reenact R.S. 9:2784(A) and 3902, and R.S. 38:2241(A)(2), relative to the  
3 enforcement of certain contracts; to provide relative to payments made pursuant to  
4 a valid contract; to provide relative to availability of certain penalties; to provide  
5 relative to the failure to pay an obligation pursuant to a bond; and to provide for  
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:2784(A) and 3902 are hereby amended and reenacted to read as  
9 follows:

10 §2784. Late payment by contractors to subcontractors and suppliers; penalties

11 A. When a contractor receives any payment from the owner for  
12 improvements to an immovable after the issuance of a certificate of payment by the  
13 architect or engineer, or when a contractor receives any payment from the owner for  
14 improvements to an immovable when no architect or engineer is on the job, the  
15 contractor shall promptly pay such monies received and due pursuant to a valid  
16 contract to each subcontractor and supplier in proportion to the percentage of work  
17 completed prior to the issuance of the certificate of payment by such subcontractor  
18 and supplier, or by the owner if no architect or engineer is on the job. Further,  
19 whenever a subcontractor receives payment from the contractor, the subcontractor  
20 shall promptly pay such monies received and due pursuant to a valid contract to each

1 sub-subcontractor and supplier in proportion to the work completed. Enforcement  
2 of the terms of a valid contract shall not be the cause for reduction of damages  
3 pursuant to Civil Code Article 2003 absent a determination by the court of bad faith.

4 \* \* \*

5 §3902. Failure of surety to pay; recovery of attorney's fees

6 A. If the surety on a bond fails to pay his obligation pursuant to the bond and  
7 a valid contract between the principal on the bond and the creditor, and it becomes  
8 necessary for the creditor to sue thereon, the ~~latter~~ creditor shall be entitled to ten per  
9 cent ~~attorney's~~ attorney fees on the amount recovered, provided he has employed an  
10 attorney for the purpose, has made written amicable demand on the principal and  
11 surety and thirty days have elapsed from their receipt thereof without payment being  
12 made, and the full amount claimed in the demand is recovered.

13 B. This Section shall not affect the right to recover interest and costs as  
14 otherwise provided by law.

15 Section 2. R.S. 38:2241(A)(2) is hereby amended and reenacted to read as follows:

16 §2241. Written contract and bond

17 A.

18 \* \* \*

19 (2) For each contract in excess of twenty-five thousand dollars per project,  
20 the public entity shall require of the contractor a bond with good, solvent, and  
21 sufficient surety in a sum of not less than fifty percent of the contract price for the  
22 payment by the contractor or subcontractor due and owing pursuant to a valid  
23 contract with the owner or a contractor or subcontractor to claimants as defined in  
24 R.S. 38:2242. The bond furnished shall be a statutory bond and no modification,  
25 omissions, additions in or to the terms of the contract, in the plans or specifications,  
26 or in the manner and mode of payment shall in any manner diminish, enlarge, or  
27 otherwise modify the obligations of the bond. The bond shall be executed by the  
28 contractor with surety or sureties approved by the public entity and shall be recorded

1 with the contract in the office of the recorder of mortgages in the parish where the  
2 work is to be done not later than thirty days after the work has begun.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, 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)]

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HB 334 Original

2016 Regular Session

Schexnayder

**Abstract:** Provides relative to the availability of certain penalties under and the enforcement of certain valid public and private contracts.

Present law (R.S. 9:2784(A)) provides that when a contractor or subcontractor receives any payment from the owner for improvements to an immovable, the contractor or subcontractor shall promptly pay such monies received to each subcontractor, sub-subcontractor, or supplier in proportion to the percentage of work completed.

Proposed law specifies that the duty to pay the subcontractor, sub-subcontractor, or supplier pursuant to present law arises when there is a valid contract, and that enforcement of the terms of a valid contract shall not be the cause for reduction of damages pursuant to C.C. Art. 2003 absent a determination by the court of bad faith.

Present law (R.S. 9:3902) provides a 10 percent attorney fee award if the surety on a bond fails to pay his obligation, and it becomes necessary for the creditor to sue.

Proposed law specifies that the present law 10 percent penalty is available when the surety fails to pay pursuant to the bond and a valid contract between the principal on the bond and the creditor.

Present law (R.S. 38:2241(A)(2)) provides that for contracts in excess of \$25,000, the contractor is required to post a bond with good, solvent, and sufficient surety in a sum of not less than 50 percent of the contract price for the payment by the contractor or subcontractor due and owing pursuant to a valid contract to claimants as defined in R.S. 38:2242.

Proposed law specifies that the present law bond requirement is based on a valid contract with the owner or a contractor or subcontractor.

(Amends R.S. 9:2784(A) and 3902 and R.S. 38:2241(A)(2))