

2024 Regular Session

SENATE BILL NO. 265

BY SENATOR WOMACK

CONTRACTS. Provides relative to public contracts and public works. (gov sig)

1 AN ACT

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

7 Be it enacted by the Legislature of Louisiana:

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

10 §2241. Written contract and bond

11 * * *

12 C. The payment provisions of all bonds furnished for public work contracts
13 described in this Part, regardless of form or content, shall be construed as and
14 deemed statutory bond provisions. Nothing in this Part shall be construed to
15 preclude a surety who has furnished such a bond from asserting any defense to
16 the principal obligation that its principal could assert except lack of capacity or
17 discharge in bankruptcy of the principal obligor. Any such bond which fails to

1 contain any of the requirements set forth in this Part shall be deemed to incorporate
2 all of the requirements set forth in this Section. Language in any such bond
3 containing any obligations beyond the requirements set forth in this Part shall be
4 deemed surplusage and read out of such bond. Sureties and contractors executing
5 payment bonds for public works contracts under this Part shall be immune from
6 liability for or payment of any claims not required by this Part.

7 * * *

8 §2247. Construction of Part

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

29 Section 2. R.S. 48:256.3(B) and 256.12 are hereby amended and reenacted to read

1 as follows:

2 §256.3. Payment bond

3 * * *

4 B. The payment provisions of all bonds furnished for department contracts
5 described in this Subpart, regardless of form or content, shall be construed as and
6 deemed statutory bond provisions. **Nothing in this Part shall be construed to**
7 **preclude a surety who has furnished such a bond from asserting any defense to**
8 **the principal obligation that its principal could assert except lack of capacity or**
9 **discharge in bankruptcy of the principal obligor.** Any such bond which fails to
10 contain any of the requirements set forth in this Subpart shall be deemed to
11 incorporate all of the requirements set forth in this Section. Language in any such
12 bond containing any obligations beyond the requirements set forth in this Part shall
13 be deemed surplusage and read out of such bond. Sureties and contractors executing
14 payment bonds for department contracts under this Subpart shall be immune from
15 liability for or payment of any claims not required by this Subpart.

16 * * *

17 §256.12. Construction of Part

18 Nothing in this Part shall be construed to deprive any claimant, as defined in
19 this Part and who has complied with the notice and recordation requirements of R.S.
20 48:256.5(B), of his right of action on the bond furnished pursuant to this Part,
21 provided that said action must be brought against the surety or the contractor or both
22 within one year from the registry of acceptance of the work or of notice of default
23 of the contractor; except that before any claimant having a direct contractual
24 relationship with a subcontractor but no contractual relationship with the contractor
25 shall have a right of action against the contractor or the surety on the bond furnished
26 by the contractor, he shall in addition to the notice and recordation required in R.S.
27 48:256.5(B) give written notice to said contractor and surety within forty-five days
28 from the recordation of the notice of final acceptance by the department of the work
29 or notice by the department of default, stating with substantial accuracy the amount

1 claimed and the name of the party to whom the material was furnished or supplied
 2 or for whom the labor or service was done or performed. Such notice shall be served
 3 by mailing the same by registered or certified mail, postage prepaid, in envelopes
 4 addressed separately to the contractor and surety at any place each maintains an
 5 office in the state of Louisiana. **Nothing in this Part shall be construed to preclude**
 6 **a surety who has furnished such a bond pursuant to this Part from asserting**
 7 **any defense to the principal obligation that its principal could assert except lack**
 8 **of capacity or discharge in bankruptcy of the principal obligor.**

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.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Emily Toler.

DIGEST

SB 265 Original

2024 Regular Session

Womack

Present law provides that the payment provisions of all bonds furnished for public work contracts are required to be construed as and deemed statutory bond provisions.

Proposed law provides a surety who has furnished such a bond is not precluded 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 and otherwise retains present law.

Present law provides that nothing may deprive any claimant, of a right of action on the bond furnished, provided that an action must be initiated against the surety or the contractor or both within one year from either the registry of acceptance of the work or of notice of default of the contractor.

Proposed law requires that a surety who has furnished such a bond is not precluded 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 and otherwise retains present law.

Present law requires that when the Department of Transportation and Development may enters into a contract in excess of \$50,000 for the construction, maintenance, alteration, or repair of any public works, the department shall require of the contractor a bond with good, solvent, and sufficient surety.

Proposed law provides nothing 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 and otherwise retains present law.

Present law provides nothing shall deprive any claimant, who has complied with the notice and recordation requirements of the law (R.S. 48:256.5(B), of a right of action on the bond furnished provided that action must be brought against the surety or the contractor or both within one year from the registry of acceptance of the work or of notice of default of the contractor.

Proposed law provides nothing shall be construed to preclude a surety who has furnished such 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 and otherwise retains present law.

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

(Amends R.S.38:2241(C) and 2247 and R.S. 48:256.3(B) and 256.12)