

2024 Regular Session

SENATE BILL NO. 265

BY SENATOR WOMACK

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§2241. Written contract and bond

* * *

C. The payment provisions of all bonds furnished for public work contracts described in this Part, regardless of form or content, shall be construed as and deemed statutory bond provisions. **Nothing in this Part 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**

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

8 * * *

9 **G. All contracts for projects that are directly associated with the**
10 **preparation of Super Bowl LIX are exempt from the provisions of this Section,**
11 **except for contracts for projects in excess of one hundred fifty thousand dollars.**
12 **The provisions of this Subsection shall terminate on February 10, 2025.**

13 * * *

14 §2247. Construction of Part

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

1 contractor at any place he maintains an office in the state of Louisiana. Nothing in
 2 this Part shall be construed to preclude a surety who has furnished such a bond
 3 pursuant to this Part from asserting any defense to the principal obligation that
 4 its principal could assert except lack of capacity or discharge in bankruptcy of
 5 the principal obligor.

6 Section 2. R.S. 48:256.3(B) and 256.12 are hereby amended and reenacted to read
 7 as follows:

8 §256.3. Payment bond

9 * * *

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

22 * * *

23 §256.12. Construction of Part

24 Nothing in this Part shall be construed to deprive any claimant, as defined in
 25 this Part and who has complied with the notice and recordation requirements of R.S.
 26 48:256.5(B), of his right of action on the bond furnished pursuant to this Part,
 27 provided that said action must be brought against the surety or the contractor or both
 28 within one year from the registry of acceptance of the work or of notice of default
 29 of the contractor; except that before any claimant having a direct contractual

1 relationship with a subcontractor but no contractual relationship with the contractor
 2 shall have a right of action against the contractor or the surety on the bond furnished
 3 by the contractor, he shall in addition to the notice and recordation required in R.S.
 4 48:256.5(B) give written notice to said contractor and surety within forty-five days
 5 from the recordation of the notice of final acceptance by the department of the work
 6 or notice by the department of default, stating with substantial accuracy the amount
 7 claimed and the name of the party to whom the material was furnished or supplied
 8 or for whom the labor or service was done or performed. Such notice shall be served
 9 by mailing the same by registered or certified mail, postage prepaid, in envelopes
 10 addressed separately to the contractor and surety at any place each maintains an
 11 office in the state of Louisiana. **Nothing in this Part shall be construed to preclude**
 12 **a surety who has furnished such a bond pursuant to this Part from asserting**
 13 **any defense to the principal obligation that its principal could assert except lack**
 14 **of capacity or discharge in bankruptcy of the principal obligor.**

15 Section 3. This Act shall become effective upon signature of 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 in 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 was prepared by Emily Toler. The following digest,
 which does not constitute a part of the legislative instrument, was prepared
 by Curry J. Lann.

	DIGEST	
SB 265 Engrossed	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 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.

Proposed law exempts all contracts for projects that are directly associated with the preparation of Super Bowl LIX from the provisions of present law relative to public works contracts, except for contracts for projects in excess of \$150,000. Further provides that the exemption terminates on February 10, 2025.

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; adds R.S. 38:2241(G))

Summary of Amendments Adopted by Senate

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

1. Adds provision exempting all contracts for projects that are directly associated with the preparation of Super Bowl LIX from the provisions of present law relative to public works contracts, except for contracts for projects in excess of \$150,000. Further provides that the exemption terminates on February 10, 2025.
2. Makes technical corrections.