

SENATE BILL NO. 235

BY SENATOR WOMACK AND REPRESENTATIVE WALTERS

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AN ACT

To amend and reenact R.S. 38:2191(C) through (E) and to enact R.S. 38:2191(F), relative to payments under contract by public entities; to provide relative to payments due on certain public works contracts; to provide for withholding of liquidated damages; provide for exceptions; to provide for mandamus proceedings; to provide for attorney fees and interest; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 38:2191(C) through (E) are hereby amended and reenacted and R.S. 38:2191(F) is hereby enacted to read as follows:

§2191. Payments under contract

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C. Except as provided in R.S. 38:2248(C), a public entity shall not withhold liquidated damages contested by the contractor from any payments or monies otherwise due, provided that payment to the contractor shall not prejudice the ability of a public entity to assert a claim for liquidated damages against the contractor in an ordinary proceeding. The prevailing party shall be entitled to recover reasonable attorney fees in connection with a public entity's claim for liquidated damages in an ordinary proceeding. A public entity shall be entitled to interest on liquidated damages recovered charged at one-half percent accumulated daily, not to exceed fifteen percent, accruing from the date of payment by the public entity of contested liquidated damages as provided for by this Subsection.

D. The provisions of this Section shall not be subject to waiver by contract.

~~**E.**~~ Any public entity failing to make any progressive stage payments arbitrarily or without reasonable cause, or any final payment when due as provided in this Section, shall be subject to mandamus to compel the payment of the sums due

1 under the contract up to the amount of the appropriation made for the award and
 2 execution of the contract, including any authorized change orders, **together with**
 3 **attorney fees and interest as provided for by this Section. If the public entity**
 4 **prevails in an action brought against it pursuant to this Subsection, the**
 5 **contractor shall be liable for reasonable attorney fees. Any claim by a public**
 6 **entity to recover liquidated damages pursuant to Subsection C of this Section**
 7 **shall not be subject to the mandamus proceeding.**

8 ~~EF~~. A declaration that a public works contract is null and void as being
 9 contrary to the provisions of R.S. 38:2211 et seq. shall not affect amounts due and
 10 payable under the contract, including overhead and profit, for the work performed
 11 by or on behalf of the contractor.

12 Section 2. This Act shall become effective upon signature of the governor or, if not
 13 signed by the governor, upon expiration of the time for bills to become law without signature
 14 by the governor, as provided in Article III, Section 18 of the Constitution of Louisiana. If
 15 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 16 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____