

GREEN SHEET REDIGEST

HB 203

2019 Regular Session

Gregory Miller

PRIVILEGES/LIENS: Provides relative to privileges on immovables

DIGEST

Present law (R.S. 9:4801(5)) provides for privileges on immovables to secure the obligations of the owner in favor of registered or certified surveyors or engineers or licensed architects or their professional subconsultants.

Proposed law retains present law but makes changes in terminology.

Present law (R.S. 9:4802) provides for claims against the owner and contractor in favor of subcontractors, laborers or employees, sellers of movables, lessors, and prime consultant registered or certified surveyors or engineers or their professional subconsultants. Present law further provides for the indemnity of the owner by a contractor and for the indemnity of the owner, contractor, or other subcontractor by a subcontractor.

Proposed law retains present law but provides that a contractor or subcontractor who pays the claims of other claimants is legally subrogated to the claimants' contractual rights but not their claims or privileges under the Private Works Act. Proposed law also makes changes in terminology and other minor semantic changes.

Present law (R.S. 9:4803) provides for the amounts secured by claims and privileges.

Proposed law retains present law but makes minor semantic changes, adds a cross-reference to additional limitations governing lessors of movables, and provides that claims and privileges under the Private Works Act do not secure payment of attorney fees or other litigation expenses. Proposed law further provides that when professional consultants or subconsultants are juridical persons, their claims and privileges under the Private Works Act arise in favor of the entity itself rather than its employees.

Present law sets forth the notices that are required to be provided by professional consultants and subconsultants (R.S. 9:4801(5) and 4802(5)(b)), lessors of movables (R.S. 9:4802(G)), and sellers of movables (R.S. 9:4802(G)). Proposed law (R.S. 9:4804) redesignates present law and makes changes in terminology. Proposed law further provides for the contents of these notices, the circumstances under which notice must be given, and the effect of failing to properly provide notice.

Present law (R.S. 9:4806) defines the persons who are considered to be owners under the Private Works Act.

Proposed law retains present law but adds usufructuaries and also provides that if the owner derives his interest in the immovable from another person, the owner's privilege is inferior and subject to the rights of and obligations owed to that person. Proposed law further provides that the inclusion of the name of an owner who is not responsible for the claim under the Private Works Act does not give rise to liability or a privilege on the owner's interest.

Present law (R.S. 9:4808) defines what constitutes a work under the Private Works Act.

Proposed law changes present law by making express a choice of law rule that was previously implicit under the Private Works Act, removing the requirement of the filing of a bond with the notice of contract, and deleting a prior legislative amendment concerning preliminary site work that was performed by the contractor engaged to construct the building.

Proposed law (R.S. 9:4809) defines the circumstances under which works are substantially completed and abandoned.

Proposed law (R.S. 9:4810) provides for the definitions of terms.

Present law (R.S. 9:4811(A)(2) and (B)) requires the notice of contract to contain the legal property description of the immovable and provides that the improper identification of the immovable constitutes prima facie evidence of actual prejudice.

Proposed law changes present law by requiring a complete property description of the immovable and providing that the improper or insufficient description of the immovable constitutes prima facie evidence of actual prejudice.

Present law (R.S. 9:4811(D)) provides that if the stipulated or estimated price of the work exceeds \$25,000, a notice of contract must be filed by the contractor in order for him to assert a privilege under present law (R.S. 9:4801).

Proposed law increases the threshold value of the work to \$100,000, and requires that the notice be filed by the contractor in order for him to assert any privilege under the Private Works Act. Proposed law further provides that if the general contractor is precluded from asserting a privilege pursuant to this provision, he is also prohibited from filing a statement of claim and privilege.

Present law (R.S. 9:4812(A)) provides that owners shall require general contractors to furnish and maintain a surety bond and imposes the requirement that the surety be solvent.

Proposed law retains present law but additionally provides that if the stipulated or estimated price of the work exceeds \$100,000, the bond must be issued by a surety company licensed to do business in Louisiana.

Present law (R.S. 9:4812(B)) sets forth the amount of the bond that must be furnished based on tiered percentages of the stipulated or estimated price of the work.

Proposed law deletes the tiered-percentage scheme provided by present law and instead provides that in all cases, the amount of the bond that is furnished must be at least 100% of the stipulated or estimated price of the work.

Present law (R.S. 9:4812(E)) sets forth the conditions that are deemed to be included in a bond that complies with these requirements and provides that a surety who has not consented to extensions of time has the right of indemnification as provided by Civil Code Article 3057.

Proposed law deletes the reference in present law to the right of the surety to indemnification under former Civil Code Article 3057 and also makes minor semantic changes.

Present law (R.S. 9:4813) provides for the extinguishment of the liability of the surety as to all persons who fail to institute actions asserting their claims within one year after the expiration of the time within which they must file their statements of claim or privilege.

Proposed law retains present law but makes minor semantic changes and further provides that a surety who pays a person to whom he is liable is legally subrogated to the person's contractual rights but not to the person's claims or privileges under the Private Works Act.

Present law (R.S. 9:4820(A)) provides for the effectiveness of privileges that arise under the Private Works Act. Present law further provides that in determining when work has begun, the driving of test piling, cutting or removal of trees and debris, placing of fill dirt, demolition of existing structures, or leveling of the land surface shall not be considered.

Proposed law retains present law but recognizes the existence of exceptions to the general rule and adds the clearing and grading of the land surface to the list provided by present law. Proposed law also uses defined terms and makes other semantic changes.

Present law (R.S. 9:4820(B)) provides that if the work is performed on an existing building or other construction, the part of the work performed before a third person's rights become

effective shall, for ranking purposes only, be considered a distinct work in certain circumstances.

Proposed law retains present law but clarifies that this provision applies only in the event that notice of contract was not filed. Proposed law further provides that a privilege other than a laborer's privilege arising prior to the suspension of work will only maintain its ranking if the claimant files a statement of claim or privilege no later than 60 days after the commencement of the suspension.

Present law (R.S. 9:4820(C)) provides that a person intending to acquire a mortgage, privilege, or other right in an immovable may conclusively rely upon a no-work affidavit as long as the affidavit is filed within four business days of its execution and the mortgage, privilege, or other document is filed before or within four business days of the filing of the affidavit.

Proposed law changes present law by requiring the inspection to occur and the no-work affidavit to be filed within four business days before or within four business days after the filing of the mortgage, privilege, or other document. Proposed law also uses defined terms, makes semantic changes, and further provides that the facts recited in the affidavit shall be deemed true at the time of the inspection and shall remain true until the mortgage, privilege, or other document is filed.

Proposed law (R.S. 9:4820(D)) provides that the privileges and claims granted to professional consultants and subconsultants shall have no effect as to third persons acquiring rights with respect to the immovable before the statement of claim or privilege is filed.

Proposed law (R.S. 9:4820(E)) provides that in the event that two notices of contract are filed, one of which was properly cancelled, the date of the later filing is the pertinent date for purposes of this provision.

Present law (R.S. 9:4821(A)) provides for the ranking of mortgages and privileges on immovables, including privileges arising under the Private Works Act.

Proposed law changes present law by limiting the applicability of these ranking rules only to privileges arising under the Private Works Act as to themselves and as to other mortgages and privileges, but not as to other mortgages and privileges among themselves.

Proposed law (R.S. 9:4821(B) and (C)) provides for the ranking of privileges arising under the Private Works Act as to themselves.

Proposed law (R.S. 9:4821(D)) provides that a privilege that encumbers a construction other than a building that would be movable under the Civil Code but is immovable for purposes of the Private Works Act is inferior to a UCC Chapter 9 security interest for which a financing statement was filed and later perfected or that was perfected before the privilege became effective against third persons.

Present law (R.S. 9:4822(A) through (D)) sets forth the time periods within which claimants must file their statements of claim and privilege.

Proposed law (R.S. 9:4822(A) through (C)) amends present law and provides that if notice of contract is properly filed but no notice of termination is filed, a claimant must file his statement of claim and privilege no later than six months after substantial completion or abandonment of the work. Proposed law provides that if a notice of termination is not filed, a general contractor must file his statement of privilege no later than seven months after substantial completion or abandonment of the work.

Proposed law (R.S. 9:4822(D)) further provides if before expiration of the period provided in proposed law and at least 10 days before filing his statement of claim or privilege a person granted a privilege under R.S. 9:4801(3) or (4), or a claim and privilege under R.S. 9:4802, in connection with a residential work for which a timely notice of contract was not filed gives notice of nonpayment to the owner, setting forth the amount and nature of the obligation

giving rise to the claim and privilege, then the period in which the person is permitted to file his statement of privilege or claim shall expire 70 days after:

- (1) The filing of a notice of termination of the work.
- (2) The substantial completion or abandonment of the work, if a notice of termination is not filed.

Present law (R.S. 9:4822(E)) sets forth the required contents of the notice of termination of the work, including a reasonable identification of the immovable.

Proposed law (R.S. 9:4822(E)) requires the notice of termination to contain a complete property description of the immovable and permits the notice of termination to certify that the contract with the general contractor has terminated. Proposed law also clarifies that a notice of termination made in good faith is only conclusive for purposes of the Private Works Act.

Proposed law (R.S. 9:4822(F)) permits the general contractor to request that the owner file a notice of termination of the work within ten days if the work has been abandoned by the owner or substantially completed and to obtain a judgment that has the effect of a notice of termination if the owner fails to do so.

Present law (R.S. 9:4822(F)) provides for the filing of a notice of termination or substantial completion with respect to a specified portion or area of work.

Proposed law amends present law to provide for the filing of a notice of termination with respect to a specified area of an immovable and to require the notice of termination to contain a complete property description of the specified area of the immovable.

Present law (R.S. 9:4822(G)) sets forth the required contents of a statement of claim or privilege.

Proposed law retains present law but makes semantic changes and also requires the statement of claim or privilege to identify the owner who is liable for the claim or the person who appears of record to own the immovable.

Present law (R.S. 9:4822(I) and (J)) defines the circumstances under which a work is substantially completed or abandoned. Proposed law (R.S. 9:4809) redesignates present law.

Present law (R.S. 9:4822(J)) requires a claimant not in privity of contract with a contractor to file a statement of claim or privilege as a prerequisite to filing an action against the contractor and his surety.

Proposed law deletes present law.

Present law (R.S. 9:4822(K) and (L)) permits a claimant to give notice to the owner of an obligation owed to him and provides that an owner who has received such a notice shall notify the claimant within three days of the filing of notice of termination of the work or the substantial completion or abandonment of the work.

Proposed law (R.S. 9:4822(H) and (I)) retains present law but extends the period within which the owner must give notice of the substantial completion or abandonment or of the filing of notice of termination of the work from three days to ten days. Proposed law further provides that a claimant who fails to file a statement of claim or privilege where an owner has not provided such notice retains his claim but not his privilege.

Present law (R.S. 9:4823) provides for the extinguishment of claims and privileges.

Proposed law retains present law but makes minor semantic changes and provides that the claim and privilege against the owner are extinguished if a bond is filed by either a contractor or a subcontractor.

Present law (R.S. 9:4831) provides for the filing and contents of a notice of contract, notice of termination, statement of claim or privilege, affidavit, or notice of pendency of action.

Proposed law changes present law by requiring notices of contract, notices of termination, certain affidavits, and other filings by an owner to contain a complete property description. Proposed law further provides that other filings must contain a reasonable identification of the immovable and permits subsequent references to notices of contract that contain complete property descriptions or reasonable identifications of the immovable.

Present law (R.S. 9:4832) sets forth the circumstances under which the recorder of mortgages must cancel a notice of contract.

Proposed law retains present law and also requires the recorder of mortgages to cancel a notice of contract if a no-work affidavit is filed within four business days of the filing of a request for cancellation signed by the owner and contractor.

Present law (R.S. 9:4833) sets forth the circumstances for cancellation of statements of claims and privileges.

Proposed law retains present law and also provides that an owner who is identified in a statement of claim or privilege but who is not liable for the claim may require the person who filed the statement of claim or privilege to request its cancellation. Proposed law further provides that if notice of pendency of action was not timely filed and the effect of recordation of a statement of claim or privilege has ceased, the recorder of mortgages shall cancel the recordation.

Present law (R.S. 9:4834) provides for the cessation of the effect of a filed notice of contract.

Proposed law retains present law but makes minor semantic changes and other clarifications.

Present law (R.S. 9:4835) provides for the filing of a bond or other security and the cancellation of statements of claim or privilege or notices of pendency of action.

Proposed law removes the statement under present law that the surety shall not have the benefit of division or discussion, which are no longer afforded to the surety under the Civil Code.

Present law (R.S. 9:4841) sets forth the procedure for the enforcement of claims and privileges.

Proposed law retains present law but employs proper terminology, clarifies the procedure to be used in concursus proceedings, and makes other semantic changes.

Present law (R.S. 9:4842) provides for the delivery of a notice or document required to be given under the Private Works Act. Present law further provides that proof of delivery of movables at the site of the immovable is prima facie evidence that the movables became component parts of, or were used on, the immovable or machinery or equipment.

Proposed law (R.S. 9:4842) retains the general rule under present law concerning delivery of communications or documents provided by present law.

Proposed law (R.S. 9:4846) retains present law concerning proof of delivery of movables at the site of the immovable.

Proposed law (R.S. 9:4843) provides that communications or documents are received when they come into the possession of the intended recipient.

Proposed law (R.S. 9:4844) provides for the delivery of communications or documents by mail or commercial courier and sets forth the addresses that may be used for the intended recipient.

Proposed law (R.S. 9:4845) provides for the delivery of communications or documents by electronic means, such as fax or email.

Present law (R.S. 9:4852) provides for the notice that must be given by the contractor to the owner in connection with residential home improvements.

Proposed law amends present law to clarify its meaning and improve its understandability.

Present law (C.C. Arts. 2772-2776) provides for privileges in favor of contractors, laborers, and materialmen in connection with contracts between them.

Proposed law repeals present law.

Present law (C.C. Art. 3249) provides that vendors, architects, contractors, subcontractors, other laborers, and suppliers of materials, as well as repairers of levees, bridges, ditches, and roads, are entitled to a privilege on immovables.

Proposed law amends present law to provide that vendors and those who are granted special privileges by legislation have a privilege on immovables.

Present law (C.C. Arts. 3267 and 3269) provides that vendors, workmen, and furnishers of materials are entitled to privileges on immovables and other privileges and provides with respect to the order of payment and the distribution of loss.

Proposed law retains present law but replaces "workmen and furnishers of materials" with "creditors having other special privileges".

Present law (C.C. Art. 3268) provides for the vendor's privilege on land and the workmen's privilege on buildings.

Proposed law repeals present law.

Present law (C.C. Art. 3272) provides for the recordation and ranking of privileges of contractors, mechanics, and materialmen.

Proposed law repeals present law.

Present law (C.C. Art. 3274) provides for the recordation of privileges and their effectiveness against third persons.

Proposed law retains present law but recognizes certain exceptions provided by legislation.

Present law (R.S. 9:4814) prohibits contractors, subcontractors, and their agents from failing to apply payments received in connection with a work as necessary to settle the claims of sellers of movables and laborers. Present law further provides for the payment of civil penalties, attorney fees, and court costs.

Proposed law redesignates present law.

Present law (R.S. 9:4815) provides for the escrow of funds held as retainage by the owner from periodic payments due to the contractor under a contract for \$50,000 or more. Present law further provides with respect to the requirements of the escrow account, the release of the funds from escrow, and the liability of the escrow agent and qualified financial institution.

Proposed law redesignates present law.

Present law (R.S. 9:4822(M)) provides for the furnishing of a retainage bond by the contractor.

Proposed law redesignates present law.

(Amends C.C. Arts. 3249, 3267, 3269, and 3274 and R.S. 9:4801(5), 4802(A)(5), (B), (C), and (F), 4803(A)(1) and (B), 4806, 4807(B), 4808(A), (B), (C), and (D)(1), 4811(A)(2), (B), and (D), 4812(A), (B), and (E)(1) and (2), 4813(D) and (E), 4820, 4821, 4822, 4823(A), (B), (C), (E), and (F), 4831, 4832(A)(intro. para.) and (1) and (B)(intro. para.) and (1), 4833(A), (B), (C), and (E), 4834, 4835(A) and (C), the heading of Subpart F of Part I of Chapter 2 of Code Title XXI of Code Book III of Title 9 of the Louisiana Revised Statutes of 1950, 4841(A), (B), (C)(intro. para.) and (3), (D), (E), and (F), 4842, and 4852(A); Adds R.S. 9:4803(C) and (D), 4804, 4809, 4810, 4813(F), 4832(C) and (D), 4843, 4844, 4845, and 4846; Repeals C.C. Arts. 2772, 2773, 2774, 2775, 2776, 3268, and 3272 and R.S. 9:4802(G) and 4811(E); Redesignates R.S. 9:4814, 4815, and 4822(M))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Provide a lessor 30 days, rather than 20 days, to deliver notice in order to claim a privilege for rents that accrued prior to the notice being given.
2. Delete a provision that would allow a seller who sells movables to a subcontractor to deliver notice on only one occasion.
3. Delete proposed law relative to requests for a statement of amounts owed.

The House Floor Amendments to the engrossed bill:

1. Define "residential work".
2. Provide notice requirements for preserving a claim or privilege in connection with a residential work.
3. Revise language contained in the notice of lien rights.
4. Make technical changes.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the reengrossed bill

1. Revised R.S. 9:4822(D) language.
2. Added language to R.S. 9:4804 regarding notice to certain claimants.