

2016 Regular Session

SENATE BILL NO. 354

BY SENATOR CORTEZ

PUBLIC CONTRACTS. Provides relative to contracts of the DOTD. (gov sig)

1 AN ACT

2 To amend and reenact the introductory paragraph of R.S. 48:251.8, 252(B)(7)(b) and 256.4,
3 to enact R.S. 48:251.8(3), and to repeal R.S. 48:251.5(B)(3), relative to contracts of
4 the Department of Transportation and Development; to provide relative to plan
5 changes, partial acceptance, and attorney fees; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. The introductory paragraph of R.S. 48:251.8, 252(B)(7)(b) and 256.4 are
8 hereby amended and reenacted and R.S. 48:251.8(3) is hereby enacted to read as follows:

9 §251.8. Public contracts; certain provisions invalid

10 The legislature hereby declares null and void and unenforceable as against
11 public policy any provision in a department contract which requires ~~either~~ any of the
12 following:

13 * * *

14 (3) That waives, releases, or extinguishes the rights to recover the cost of
15 damages or to obtain equitable adjustment for delays in performing such
16 contract, if such delay is caused in whole, or in part, by acts or omissions in the
17 control of the department. This provision shall not apply to negotiated plan

1 changes between the department and the contractor that settles, resolves, or
 2 concludes a dispute, or releases or extinguishes a claim to recover the cost of
 3 damages, or an equitable adjustment for such delays.

4 * * *

5 §252. Advertisement for bids; public presentment and reading of bids; fee for bid
6 proposals

7 * * *

8 B. Contracts for projects with an aggregate estimated cost equal to or greater
9 than the contract limit shall be let in accordance with the following provisions:

10 * * *

11 (7)(a) * * *

12 (b) Plan changes pertaining to contracts not required by this Part to be put out
 13 for public bid shall be negotiated in the best interest of the department or let out for
 14 public bid as provided by this Part. Negotiated plan changes shall be fully
 15 documented and itemized as to costs, including material quantities, material costs,
 16 labor costs, taxes, insurance, employee benefits, other related costs, profit, and
 17 overhead. Where certain unit prices are contained in the initial contract, no
 18 deviations shall be allowed in computing negotiated plan change costs for work
 19 under those work items unless the actual quantities worked vary more than twenty-
 20 five percent from the estimated quantities in the contract as advertised. **Plan changes**
 21 **within the scope of the contract shall not be recorded in the office of the**
 22 **recorder of mortgages in the parish where the work is performed.**

23 * * *

24 §256.4. Acceptance by the department

25 A. Whenever the department enters into a contract for the construction,
 26 maintenance, alteration, or repair of any public works, in accordance with the
 27 provisions of this Subpart, the undersecretary or his duly appointed designee of the
 28 department shall have recorded in the office of the recorder of mortgages, in the
 29 parish where the work has been done, a final acceptance of said work or a partial

1 acceptance of any specified area thereof upon completion of all of the work. The
 2 final acceptance shall be executed by the secretary or his duly appointed designee
 3 within thirty days of completion of all of the work on the project. The recordation of
 4 a final acceptance in accordance with the provisions of this Section shall be effective
 5 for all purposes under this Chapter.

6 **B. "Partial acceptance" as used in this Section means the determination**
 7 **by the department made after final inspection of a portion of the project that**
 8 **the contractor has satisfactorily completed that portion of the project and that**
 9 **such portion may be used advantageously by traffic or for other use.**

10 Section 2. R.S. 48:251.5(B)(3) is hereby repealed.

11 Section 3. This Act shall become effective upon signature by the governor or, if not
 12 signed by the governor, upon expiration of the time for bills to become law without signature
 13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 15 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 Sharon Lyles.

DIGEST

SB 354 Original

2016 Regular Session

Cortez

Present law provides that any provision in a DOTD contract that requires a suit or arbitration proceeding to be brought in a forum or jurisdiction outside of Louisiana or that the agreement must be interpreted according to the laws of another jurisdiction is null and void and unenforceable as against public policy.

Proposed law adds that any provision that waives, releases, or extinguishes the rights to recover the cost of damages or to obtain equitable adjustment for delays in performing such contract, if such delay is caused in whole, or in part, by acts or omissions in the control of the department. Provides that this provision is not applicable to negotiated plan changes between the department and the contractor that settle, resolve, or conclude a dispute, or release or extinguish a claim to recover the cost of damages or an equitable adjustment for such delays.

Present law provides for plan changes that may be negotiated.

Proposed law adds that plan changes within the scope of the contract are not required to be recorded in the office of the recorder of mortgages in the parish where the work is performed.

Present law provides for final acceptance or partial acceptance of work performed under contract and for recordation of a final acceptance or partial acceptance of any specified area

of the work upon completion.

Proposed law defines "partial acceptance" to mean the determination by DOTD made after final inspection of a portion of the project that the contractor has satisfactorily completed a portion of the project and that such portion may be used advantageously by traffic or for other use.

Present law provides for payment of attorney fees by DOTD to the contractor if the DOTD fails to make final payment or neglects to promptly ascertain final quantities under the contract in bad faith and a mandamus to perform such acts is required for the contractor to receive all monies due and owed the contractor under the contract.

Proposed law repeals present law.

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

(Amends R.S. 48:251.8(intro para), 252(B)(7)(b) and 256.4; adds R.S. 48:251.8(3); repeals R.S. 48:251.5(B)(3))