

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

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 48:252(B)(7)(b) and 256.4 are hereby amended and reenacted to read
8 as follows:

9 §252. Advertisement for bids; public presentment and reading of bids; fee for bid
10 proposals

11 * * *

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

14 * * *

15 (7)(a) * * *

16 (b) Plan changes pertaining to contracts not required by this Part to be put out
17 for public bid shall be negotiated in the best interest of the department or let out for

1 public bid as provided by this Part. Negotiated plan changes shall be fully
 2 documented and itemized as to costs, including material quantities, material costs,
 3 labor costs, taxes, insurance, employee benefits, other related costs, profit, and
 4 overhead. Where certain unit prices are contained in the initial contract, no
 5 deviations shall be allowed in computing negotiated plan change costs for work
 6 under those work items unless the actual quantities worked vary more than
 7 twenty-five percent from the estimated quantities in the contract as advertised. **Plan**
 8 **changes within the scope of the contract shall not be recorded in the office of the**
 9 **recorder of mortgages in the parish where the work is performed.**

10 * * *

11 §256.4. Acceptance by the department

12 **A.** Whenever the department enters into a contract for the construction,
 13 maintenance, alteration, or repair of any public works, in accordance with the
 14 provisions of this Subpart, the undersecretary or his duly appointed designee of the
 15 department shall have recorded in the office of the recorder of mortgages, in the
 16 parish where the work has been done, a final acceptance of said work or a partial
 17 acceptance of any specified area thereof upon completion of all of the work. The
 18 final acceptance shall be executed by the secretary or his duly appointed designee
 19 within thirty days of completion of all of the work on the project. The recordation of
 20 a final acceptance in accordance with the provisions of this Section shall be effective
 21 for all purposes under this Chapter.

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

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

27 Section 3. This Act shall become effective upon signature by the governor or, if not
 28 signed by the governor, upon expiration of the time for bills to become law without signature
 29 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 2 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 Engrossed

2016 Regular Session

Cortez

Present law, relative to contracts of the DOTD, 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. 48:252(B)(7)(b) and 256.4; repeals R.S. 48:251.5(B)(3))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill

1. Removes provisions that proposed to add 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 a contract, if delay is caused in whole or in part, by acts or omissions in control of the DOTD are not applicable to negotiated plan changes 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.