

SENATE, No. 1726

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MARCH 21, 2006

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns the prompt payment of construction contracts.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the prompt payment of construction contracts
2 and amending P.L.1991, c.133.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. Section 1 of P.L.1991, c.133 (C.2A:30A-1) is amended to
8 read as follows:

9 1. As used in this act:

10 "[General] Prime contractor" means a person who contracts with
11 an owner to improve real property.

12 "Improve" means: to build, alter, repair or demolish any structure
13 upon, connected with, on or beneath the surface of any real
14 property; to excavate, clear, grade, fill or landscape any real
15 property; to construct driveways and private roadways on real
16 property; to furnish construction related materials, including trees
17 and shrubbery, for any of the above purposes; or to perform any
18 labor upon a structure, including any design, professional or skilled
19 services furnished by an architect, engineer, land surveyor or
20 landscape architect licensed or registered pursuant to the laws of
21 this State.

22 "Structure" means all or any part of a building and other
23 improvements to real property.

24 "Owner" means any person, including any public or
25 governmental entity, who has an interest in the real property to be
26 improved and who has contracted with a [general] prime contractor
27 for such improvement to be made. "Owner" shall be deemed to
28 include any successor in interest or agent acting on behalf of an
29 owner.

30 "Prime rate" means the base rate on corporate loans at large
31 United States money center commercial banks.

32 "Real property" means the real estate that is improved upon or to
33 be improved upon.

34 "Subcontractor" means any person who has contracted to furnish
35 labor, materials or other services to a [general] prime contractor in
36 connection with a contract to improve real property.

37 "Subsubcontractor" means any person who has contracted to
38 furnish labor, materials or other services to a subcontractor in
39 connection with a contract to improve real property.

40 (cf: P.L.1991, c.133, s.1)

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42 2. Section 2 of P.L.1991, c.133 (C.2A:30A-2) is amended to
43 read as follows:

44 2. a. If a prime contractor has performed in accordance with the
45 provisions of a contract with the owner and the billing for the work

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 has been approved and certified by the owner or the owner's
2 approving agent, the owner shall pay the amount due to the prime
3 contractor each periodic payment, final payment or retainage
4 monies not more than 10 calendar days after the billing date, which
5 for a periodic billing, shall be the periodic billing date specified in
6 the contract. The billing shall be deemed approved and certified 15
7 days after the owner receives it unless the owner provides, before
8 the end of the 15-day period, a written statement of the amount
9 withheld and the reason for withholding payment. If the owner
10 finds a portion of the work not to be in accordance with the
11 contract, payment may be withheld for the reasonable value of that
12 portion only. Payment shall be made for any portion of the contract
13 which has a separate price and for which the work has been
14 performed in accordance with the provisions of the contract.

15 b. If a subcontractor or subsubcontractor has performed in
16 accordance with the provisions of [his] its contract with the
17 [general] prime contractor or subcontractor and the work has been
18 accepted by the owner, the owner's approving agent, or [general]
19 the prime contractor, as applicable, and the parties have not
20 otherwise agreed in writing, the contractor shall pay to [his] its
21 subcontractor and the subcontractor shall pay to [his] its
22 subsubcontractor within 10 calendar days of the receipt of each
23 periodic payment, final payment or receipt of retainage monies, the
24 full amount received for the work of the subcontractor or
25 subsubcontractor based on the work completed or the services
26 rendered under the applicable contract. In the case of ongoing work
27 on the same project for which partial payments are made, the
28 amount of money owed for work already completed shall only be
29 payable if the subcontractor or subsubcontractor is performing to
30 the satisfaction of the contractor or subcontractor, as applicable.

31 c. If a payment due pursuant to the provisions of this section is
32 not made in a timely manner, the delinquent party shall be liable for
33 the amount of money owed under the contract, plus interest at a rate
34 equal to the prime rate plus 1%. Interest on amounts due pursuant
35 to this section shall be paid to the prime contractor, subcontractor or
36 subsubcontractor for the period beginning on the day after the
37 required payment date and ending on the day on which the check
38 for payment has been drawn.

39 d. Any prime contractor, subcontractor or subsubcontractor who
40 is not paid as required by this section may, after providing seven
41 calendar days' written notice to the party failing to make the
42 required payments, suspend performance of a construction contract,
43 without penalty for breach of contract, until the payment required
44 pursuant to this section is made.

45 e. The rights, remedies or protections provided by this section
46 for prime contractors, subcontractors and subsubcontractors shall be
47 in addition to other remedies provided pursuant to any other

1 provision of State law. To the extent that the provisions of this
2 section provide greater rights, remedies or protections for prime
3 contractors, subcontractors and subsubcontractors than other
4 provisions of State law, the provisions of this section shall
5 supersede those other provisions.

6 f. All contracts for the improvement of structures entered into
7 after the effective date of P.L. , c. (C.) (pending before the
8 Legislature as this bill) between owners, prime contractors,
9 subcontractors or subsubcontractors shall provide that disputes
10 regarding whether a party has failed to make payments required
11 pursuant to this section shall be submitted to a process of binding
12 arbitration under the rules and guidelines of the American
13 Arbitration Association, prior to any submission to a court for
14 adjudication. Arbitration required by this section shall not apply to
15 disputes concerning the bid solicitation or award process, or to the
16 formation of contracts or subcontracts. In any action or arbitration
17 brought to collect payments or resolve disputes pursuant to this
18 section, the action or arbitration shall be conducted inside of this
19 State and the prevailing party shall be awarded reasonable costs and
20 attorney fees.

21 (cf: P.L.1991, c.133, s.2)

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23 3. This act shall take effect immediately, but shall not apply to
24 contracts for the improvement of structures entered into before the
25 effective date.

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STATEMENT

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30 This bill provides procedures and remedies for prime contractors,
31 subcontractors and subsubcontractors who are not paid in a timely
32 way in connection with a public or private construction contract.

33 The bill requires that if a prime contractor has performed in
34 accordance with the provisions of a construction contract and the
35 billing for the work has been approved and certified by the owner,
36 the owner shall pay the amount due to the prime contractor each
37 periodic payment, final payment or retainage monies not more than
38 10 calendar days after the billing date. The billing shall be deemed
39 approved and certified 15 days after the owner receives it unless the
40 owner provides, before the end of the 15-day period, a written
41 statement of the amount withheld and the reason for withholding
42 payment. If the owner finds a portion of the work not to be in
43 accordance with the contract, payment may be withheld for only
44 that portion. Payment shall be made for any portion of the contract
45 which has a separate price and for which the work has been
46 performed in accordance with the provisions of the contract.

47 The bill provides that if payments are late, the project owner is
48 liable for the amount of money owed under the contract, plus

1 interest at a rate equal to the prime rate plus 1%. Current law
2 establishing that liability applies it to contractors and
3 subcontractors, but not owners.

4 The bill permits any prime contractor, subcontractor or
5 subsubcontractor who is not paid as required to suspend
6 performance of a construction contract, after giving seven calendar
7 day's written notice to the party failing to make the required
8 payments, without penalty for breach of contract, until the required
9 payment is made.

10 The rights, remedies or protections provided by the bill are in
11 addition to other remedies provided under any other State law. To
12 the extent that the bill's provisions provide greater rights, remedies
13 or protections for prime contractors, subcontractors and
14 subsubcontractors than other State laws, the provisions of the bill
15 supersede the other laws.

16 The bill requires all construction contracts between owners,
17 prime contractors, subcontractors or subsubcontractors entered into
18 after the effective date of the bill to provide that disputes regarding
19 whether a party has failed to make required payments, be submitted
20 to binding arbitration, prior to any submission to a court for
21 adjudication. Arbitration required by the bill would not apply to
22 disputes concerning the bid solicitation or award process, or to the
23 formation of contracts or subcontracts. The bill requires that
24 actions and arbitrations brought to collect payments or resolve
25 disputes pursuant to the bill be conducted inside of this State and
26 that the prevailing party be awarded reasonable costs and attorney
27 fees.