

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1034

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 1996

The Assembly Local Government Committee reports favorably Assembly Bill No. 1034, with committee amendments.

The intent of Assembly Bill No. 1034 is to eliminate certain payment problems that sometimes arise on public improvement construction sites when a general contractor has hired subcontractors who, in turn, have hired other subcontractors that are unknown to the general contractor.

Generally, it is the responsibility of the subcontractor who receives payment from the general contractor to pay any "sub-subcontractors" for work performed or materials delivered with regard to the subcontractor's project obligations. A "sub-subcontractor" that does not receive payment from the subcontractor may file a mechanics' lien for work performed or materials supplied against the general contractor or against the bonds posted by the general contractor.

In order to discharge a valid mechanics' lien the general contractor must often pay a "sub-subcontractor" for materials or labor for which the subcontractor has already received payment. In order to eliminate the potential for confusion in such cases, the amended bill requires that any subcontractor, or any laborer, mechanic, materialman, merchant or trader, seeking to assert a lien for payment due, must within 20 days of the first performance of work or delivery of materials to a public improvement, file with the municipal clerk, the treasurer or other chief financial officer of the county or the chairman of the commission, board or authority, whichever is appropriate, written notice that he or she has furnished labor or materials to a subcontractor on the project. The notice must contain the name, address and telephone number of the person providing the labor or materials, the name and geographical location of the public improvement for which the labor or materials have been supplied, the name of the subcontractor to which the labor or materials have been supplied, a description of the labor or materials supplied, and the date that the labor or materials were first supplied to the subcontractor. If no such notice is given, a mechanics' lien cannot be secured by the "sub-subcontractor." The "sub-subcontractor" would still have the option of suing the subcontractor for payment. The bill,

as introduced by the sponsors, provided that the required notice was to be provided to the contractor. The committee deleted that requirement and amended the bill to provide filing with a public official so that the filings will be public records.

The amended bill also requires that the officer of the public agency with whom these notices are to be filed must maintain a separate file for the notices, and that the file must be available to the public for inspection and copying during regular business hours.

The amended bill also requires that failure to provide the required notice will be a bar to secure a lien for labor or materials provided, unless there is money owing from the contractor to the subcontractor to whom the labor or materials were provided. In this case, the lien is limited in value to an amount not greater than the money owing from the contractor to the subcontractor.

The amended bill provides that a subcontractor or supplier who knowingly applies payment received from a contractor on a public improvement to amounts due and owing for work performed or labor or materials supplied on a construction project other than that public improvement will forfeit all lien rights under the "Municipal Mechanics' Lien Law," N.J.S.2A:44-125 et seq., and be liable for all damages incurred by a contractor as a result of the misapplication of the funds, including but not limited to attorney fees. As originally introduced by the sponsor, this penalty would have only been applied to suppliers.

The amendments also require that any subcontractor or supplier who knowingly applies payment received from a contractor on the public improvement to amounts due and owing on any construction project other than the public improvement, and then claims a lien against the public improvement for non-payment, shall forfeit all lien rights and be liable for all damages, court costs and reasonable legal expenses, including attorney's fees, incurred by the contractor in defending or causing the discharge of the lien claim. Under the bill introduced by the sponsor, this forfeiture of lien rights and liability for monetary amounts applied only to a supplier.

The committee amended section 2 of the bill to conform the amendatory language of the sponsors' bill with changes to N.J.S.2A:44-143 that resulted from the enactment of P.L.1995, c.384. The committee's amendments in this section also clarify that a payment and performance bond shall have an obligation for the performance of the contract as well as payment by the contractor for labor and materials used in the work contracted for.

Assembly Bill No. 1034 was pre-filed for introduction in the 1996-1997 legislative session pending technical review. As reported by the committee, the bill contains the changes required by technical review, which has been performed.