

ASSEMBLY, No. 1404

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1996

By Assemblymen ROMA and DiGAETANO

1 AN ACT concerning certain projects and supplementing P.L.1963,  
2 c.150 (C.34:11-56.25 et seq.).

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

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7 1. a. Any person who submits a bid directly to a public body for  
8 a contract for any public work subject to the provisions of the "New  
9 Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.)  
10 and is not awarded the contract (hereinafter referred to in this section  
11 as the "plaintiff") may bring an action for damages in a court of  
12 competent jurisdiction against the contractor who was directly  
13 awarded the contract by the public body or any subcontractor of that  
14 contractor (hereinafter referred to in this section as the "defendant")  
15 alleging that the defendant has, in connection with work performed  
16 pursuant to the contract, violated the provisions of P.L.1963, c.150  
17 (C.34:11-56.25 et seq.) or failed to pay any contribution, tax,  
18 assessment or benefit required by any other applicable law.

19 b. Upon finding that one or more defendants violated the  
20 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or failed to pay  
21 any contribution, tax, assessment or benefit required by any other  
22 applicable law in connection with work performed pursuant to the  
23 contract, and that the plaintiff submitted a bid for the contract which  
24 was less than the sum total of the bid accepted by the public body plus  
25 any additional amount that the defendant or defendants would have  
26 paid during the term of the contract to be in full compliance with  
27 P.L.1963, c.150 (C.34:11-56.25 et seq.) and other applicable laws in  
28 connection with the contract, the court shall order the defendant or  
29 defendants to pay to the plaintiff the entire amount of damages  
30 sustained plus reasonable attorney's fees or, if the court finds the  
31 noncompliance to be intentional, three times the amount of damages  
32 sustained plus reasonable attorney's fees. If there are two or more  
33 defendants, the court shall allocate the payments for damages  
34 sustained and attorney's fees among the defendants in a reasonable  
35 manner. Nothing in this section shall be construed as requiring  
36 payments to a plaintiff by any contractor or subcontractor who has not  
37 violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or

1 failed to pay any contribution, tax, assessment or benefit required by  
2 any other applicable law in connection with work performed pursuant  
3 to the contract.

4 c. A plaintiff may designate an agent or representative to maintain  
5 the action for and on behalf of all other plaintiffs who are similarly  
6 situated. In any action involving two or more plaintiffs, each plaintiff  
7 shall recover the entire amount of damages sustained by that plaintiff,  
8 as determined by the court, or if the court finds the noncompliance to  
9 be intentional, each plaintiff shall recover three times the entire amount  
10 of damages sustained by that plaintiff.

11 d. For the purposes of this section, the damages sustained by a  
12 plaintiff shall include the plaintiff's costs of preparing and submitting  
13 the bid and may, if sought by the plaintiff, include profits that the court  
14 determines the plaintiff would have made if the plaintiff had been  
15 awarded the contract and complied with the P.L.1963, c.150  
16 (C.34:11-56.25 et seq.) and other applicable laws.

17 e. If the court determines that the defendant did not, in connection  
18 with work performed pursuant to the contract, violate the provisions  
19 of P.L.1963, c.150 (C.34:11-56.25 et seq.) or fail to pay any  
20 contribution, tax, assessment or benefit required by other applicable  
21 law, the court shall order the plaintiff to pay the reasonable attorney's  
22 fees of the defendant.

23 f. As used in this section:

24 "Person" means any individual, corporation, company, partnership,  
25 firm, association or business;

26 "Contractor" means a person who is directly awarded a contract for  
27 a public work by a public body; and

28 "Subcontractor" means any subcontractor or lower tier  
29 subcontractor of a contractor.

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31 2. This act shall take effect immediately.

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#### STATEMENT

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36 This bill permits any contractor who unsuccessfully bids for a public  
37 works contract to bring a court action as a plaintiff against the bidder  
38 who won the bid or the winning bidder's subcontractors based on  
39 violations of the "New Jersey Prevailing Wage Act," P.L.1963, c.150  
40 (C.34:11-56.25 et seq.) or other applicable laws requiring payments in  
41 connection with the contract.

42 If the court finds that the winning bidder or a subcontractor of that  
43 bidder violated the laws and that the sum of the winning bid plus any  
44 additional payments that the violator or violators would have paid to  
45 be in full compliance with the laws is greater than the plaintiff's bid,  
46 the court is required to order the violator or violators to pay the

1 reasonable attorney's fees of the plaintiff and the damages sustained by  
2 the plaintiff or triple damages, if the violation was intentional.

3 The action may be joined by similarly situated plaintiffs, each of  
4 whom is entitled to full damages or triple damages, if the violation is  
5 intentional. Damages include the plaintiff's costs of bidding and may,  
6 if sought by the plaintiff, include profits that the plaintiff would have  
7 made if the plaintiff had won the bid.

8 If the court determines that there was no violation, the plaintiff is  
9 required to pay the reasonable attorney's fees of the defendant.

10 The purpose of this bill is to give recourse for conscientious,  
11 law-abiding building contractors who are often underbid by  
12 unscrupulous competitors who fail to pay the wages, benefits or taxes  
13 required by law and undermine the health, safety and training  
14 standards needed to sustain appropriate quality levels in public works.  
15 The bill empowers the private sector to help ensure that required  
16 wages are paid in full, along with the associated unemployment  
17 insurance contributions, taxes and health benefits, therefore reducing  
18 State costs caused by uncompensated health care, lost taxes and  
19 contributions and substandard construction practices.

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24 Concerns certain projects.