

[First Reprint]  
ASSEMBLY, No. 1404

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1996

By Assemblymen ROMA, DiGAETANO and  
Assemblywoman Allen

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 <sup>1</sup>and whose bid is the lowest bid other  
11 than the bid accepted by the public body<sup>1</sup> (hereinafter referred to in  
12 this section as the "plaintiff") may bring an action for damages in a  
13 court of competent jurisdiction against the contractor who was directly  
14 awarded the contract by the public body or any subcontractor of that  
15 contractor (hereinafter referred to in this section as the "defendant")  
16 alleging that the defendant has, in connection with work performed  
17 pursuant to the contract, violated the provisions of P.L.1963, c.150  
18 (C.34:11-56.25 et seq.) or failed to pay any contribution, tax,  
19 assessment or benefit required by any other applicable law.

20 b. Upon finding that one or more defendants violated the  
21 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or failed to pay  
22 any contribution, tax, assessment or benefit required by any other  
23 applicable law in connection with work performed pursuant to the  
24 contract, and that the plaintiff submitted a bid for the contract which  
25 was less than the sum total of the bid accepted by the public body plus  
26 any additional amount that the defendant or defendants would have  
27 paid during the term of the contract to be in full compliance with  
28 P.L.1963, c.150 (C.34:11-56.25 et seq.) and other applicable laws in  
29 connection with the contract, the court shall order the defendant or  
30 defendants to pay to the plaintiff the entire amount of damages

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly ALA committee amendments adopted February 5, 1996.

1 sustained plus reasonable attorney's fees or, if the court finds the  
2 noncompliance to be intentional, three times the amount of damages  
3 sustained plus reasonable attorney's fees. If there are two or more  
4 defendants, the court shall allocate the payments for damages  
5 sustained and attorney's fees among the defendants in a reasonable  
6 manner. Nothing in this section shall be construed as requiring  
7 payments to a plaintiff by any contractor or subcontractor who has not  
8 violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or  
9 failed to pay any contribution, tax, assessment or benefit required by  
10 any other applicable law in connection with work performed pursuant  
11 to the contract.

12 c. <sup>1</sup>[A plaintiff may designate an agent or representative to  
13 maintain the action for and on behalf of all other plaintiffs who are  
14 similarly situated. In any action involving two or more plaintiffs, each  
15 plaintiff shall recover the entire amount of damages sustained by that  
16 plaintiff, as determined by the court, or if the court finds the  
17 noncompliance to be intentional, each plaintiff shall recover three  
18 times the entire amount of damages sustained by that plaintiff.

19 d.]<sup>1</sup> For the purposes of this section, the damages sustained by a  
20 plaintiff shall <sup>1</sup>[include] be<sup>1</sup> the plaintiff's costs of preparing and  
21 submitting the bid <sup>1</sup>[and may, if sought by the plaintiff, include profits  
22 that the court determines the plaintiff would have made if the plaintiff  
23 had been awarded the contract and complied with the P.L.1963, c.150  
24 (C.34:11-56.25 et seq.) and other applicable laws] plus ten percent of  
25 the value of the portion of the contract awarded to the defendant<sup>1</sup>.

26 <sup>1</sup>[e.] d.<sup>1</sup> If the court determines that the defendant did not, in  
27 connection with work performed pursuant to the contract, violate the  
28 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or fail to pay  
29 any contribution, tax, assessment or benefit required by other  
30 applicable law, the court shall order the plaintiff to pay the reasonable  
31 attorney's fees of the defendant.

32 <sup>1</sup>[f.] e.<sup>1</sup> As used in this section:

33 "Person" means any individual, corporation, company, partnership,  
34 firm, association or business;

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

37 "Subcontractor" means any subcontractor or lower tier  
38 subcontractor of a contractor.

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40 2. This act shall take effect immediately.

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Concerns certain projects.