

[Second Reprint]
ASSEMBLY, No. 1404

STATE OF NEW JERSEY

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By Assemblyman ROMA, Assemblywoman Allen,
Assemblymen Asselta, Augustine, Bagger, Bateman, Blee,
Cottrell, DeSopo, Felice, Garcia, Geist, Greenwald, Gusciora,
Improveduto, Kelly, LeFevre, Malone, O'Toole,
Assemblywoman Quigley, Assemblymen Rocco, Romano,
Assemblywomen J. Smith, Turner, Wright, Assemblymen
Bucco, Roberts, Zisa, Assemblywoman Buono, Assemblymen
Friscia and Wisniewski

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

3

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 ¹and whose bid is the lowest bid other
11 than the bid accepted by the public body¹ (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 ²a finding by the court that the plaintiff was a responsible
21 bidder for the contract and a² finding that one or more defendants
22 violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or
23 failed to pay any contribution, tax, assessment or benefit required by
24 any other applicable law in connection with work performed pursuant

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:

¹ Assembly ALA committee amendments adopted February 5, 1996.

² Assembly floor amendments adopted March 28, 1996.

1 to the contract, and that the plaintiff submitted a bid for the contract
2 which was less than the sum total of the bid accepted by the public
3 body plus any additional amount that the defendant or defendants
4 would have paid during the term of the contract to be in full
5 compliance with P.L.1963, c.150 (C.34:11-56.25 et seq.) and other
6 applicable laws in connection with the contract, the court shall order
7 the defendant or defendants to pay to the plaintiff the entire amount of
8 damages sustained plus reasonable attorney's fees or, if the court finds
9 the noncompliance to be intentional, three times the amount of
10 damages sustained plus reasonable attorney's fees ². except that the
11 court shall order no payment to the plaintiff if the court finds that the
12 violation or failure to pay was caused by minor record keeping
13 mistakes or minor computational errors². If there are two or more
14 defendants, the court shall allocate the payments for damages
15 sustained and attorney's fees among the defendants in a reasonable
16 manner. Nothing in this section shall be construed as requiring
17 payments to a plaintiff by any contractor or subcontractor who has not
18 violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or
19 failed to pay any contribution, tax, assessment or benefit required by
20 any other applicable law in connection with work performed pursuant
21 to the contract. ²A plaintiff may designate an agent or representative
22 to maintain the action.²

23 c. ¹[A plaintiff may designate an agent or representative to
24 maintain the action for and on behalf of all other plaintiffs who are
25 similarly situated. In any action involving two or more plaintiffs, each
26 plaintiff shall recover the entire amount of damages sustained by that
27 plaintiff, as determined by the court, or if the court finds the
28 noncompliance to be intentional, each plaintiff shall recover three
29 times the entire amount of damages sustained by that plaintiff.

30 d.]¹ For the purposes of this section, the damages sustained by a
31 plaintiff shall ¹[include] ²[be¹ include² the plaintiff's costs of
32 preparing and submitting the bid ¹[and may, if sought by the plaintiff,
33 include profits that the court determines the plaintiff would have made
34 if the plaintiff had been awarded the contract and complied with the
35 P.L.1963, c.150 (C.34:11-56.25 et seq.) and other applicable laws]
36 ²[plus ten percent of the value of the portion of the contract awarded
37 to the defendant¹] and may, if sought by the plaintiff, include profits
38 that the court determines the plaintiff would have made if the plaintiff
39 had been awarded the contract and complied with P.L.1963, c.150
40 (C.34:11-56.25 et seq.) and other applicable laws².

41 ¹[e.] d.¹ If the court determines that the defendant did not, in
42 connection with work performed pursuant to the contract, violate the
43 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or fail to pay
44 any contribution, tax, assessment or benefit required by other
45 applicable law, the court shall order the plaintiff to pay the reasonable
46 attorney's fees of the defendant.

1 ¹[f.] e.¹ As used in this section:

2 "Person" means any individual, corporation, company, partnership,
3 firm, association or business;

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

6 "Subcontractor" means any subcontractor or lower tier
7 subcontractor of a contractor.

8

9 2. This act shall take effect immediately.

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14 Concerns certain projects.