

[Third Reprint]
ASSEMBLY, No. 1404

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1996

**By Assemblymen ROMA, DiGAETANO, Assemblywoman Allen,
Assemblymen Asselta, Augustine, Bagger, Bateman, Blee,
Cottrell, DeSopo, Felice, Garcia, Geist, Greenwald, Gusciora,
Imprevduto, Kelly, LeFevre, Malone, O'Toole,
Assemblywoman Quigley, Assemblymen Rocco, Romano,
Assemblywomen J. Smith, Turner, Wright, Assemblymen
Bucco, Roberts, Zisa, Assemblywomen Buono, Friscia,
Assemblymen Wisniewski, Barnes, Cohen, Dalton, R. Smith,
Suliga, Assemblywoman Weinberg, Assemblyman Caraballo,
Assemblywoman Cruz-Perez, Assemblymen Green, Jones,
Pascrell, T. Smith, Gibson and Doria**

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:

6

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 3or, if, pursuant to law, the
12 contract is awarded on the basis of factors other than or in addition to
13 the lowest bid, whose bid is the highest in rank other than the bid
14 accepted by the public body³ (hereinafter referred to in this section as
15 the "plaintiff") may bring an action for damages in a court of
16 competent jurisdiction against the contractor who was directly
17 awarded the contract by the public body or any subcontractor of that
18 contractor (hereinafter referred to in this section as the "defendant")
19 alleging that the defendant has, in connection with work performed
20 pursuant to the contract, violated the provisions of P.L.1963, c.150

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.

³ Assembly floor amendments adopted June 17, 1996.

1 (C.34:11-56.25 et seq.) or failed to pay any contribution, tax,
2 assessment or benefit required by any other applicable law. ³If there
3 is more than one losing bidder, a bidder with a higher bid than the
4 second lowest bidder or lower rank than the second highest rank, if,
5 pursuant to law, the contract is awarded on the basis of factors other
6 than or in addition to the lowest bid, may bring the action if that
7 bidder gives written notice of his intention to bring an action, sent by
8 first-class mail and certified mail, return receipt requested, to every
9 other losing bidder whose bid was lower than his or whose bid was
10 higher in rank than his and none of the bidders notified files an action
11 within 30 days following the date of their receipt of notice. The
12 written notice of intention to bring an action must contain the
13 following: (1) a statement of the specific violations or failures to pay
14 allegedly committed, which shall not preclude, in the course of the
15 action, consideration of other violations or failures to pay as may be
16 revealed in the course of discovery, (2) a statement that the action is
17 to be filed pursuant to this act, and (3) a statement that the recipient
18 of the notice may have the right to file an action and will be precluded
19 from doing so if he does not file an action within 30 days of his receipt
20 of the notice. If no other losing bidder so notified files an action
21 within 30 days of his receipt of the notice, the losing bidder who sent
22 the notice shall file an action pursuant to this act within 15 days of the
23 last day any of the recipients of the notice could have filed an action.
24 If more than one bidder files an action, all actions other than that filed
25 by the bidder whose bid is the lowest of the bidders who filed actions,
26 or, if, pursuant to law, the contract is awarded on the basis of factors
27 other than or in addition to the lowest bid, whose bid is the highest in
28 rank of the bidders who filed actions, shall be dismissed.³

29 b. Upon ²a finding by the court that the plaintiff was a responsible
30 bidder for the contract and a² finding that one or more defendants
31 violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or
32 failed to pay any contribution, tax, assessment or benefit required by
33 any other applicable law in connection with work performed pursuant
34 to the contract, and that the plaintiff submitted a bid for the contract
35 which was less than the sum total of the bid accepted by the public
36 body plus any additional amount that the defendant or defendants
37 would have paid during the term of the contract to be in full
38 compliance with P.L.1963, c.150 (C.34:11-56.25 et seq.) and other
39 applicable laws in connection with the contract, the court shall order
40 the defendant or defendants to pay to the plaintiff the entire amount of
41 damages sustained plus ³costs and³ reasonable attorney's fees or, if the
42 court finds the noncompliance to be intentional, three times the
43 amount of damages sustained plus ³costs and³ reasonable attorney's
44 fees ², except that the court shall order no payment to the plaintiff if
45 the court finds that the violation or failure to pay was caused by minor
46 record keeping mistakes or minor computational errors² ³or by other

1 minor mistakes. The occurrence of more than two violations or
2 failures to pay shall lead to the rebuttable presumption that the
3 violation or failure to pay at issue is not minor.³ If there are two or
4 more 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. ²A plaintiff may designate an agent or representative
12 to maintain the action³ if the violation or failure to pay has an
13 adverse effect on the agent or representative or, if the agent or
14 representative is an organization or association, on any member of the
15 organization or association. If the plaintiff prevails, the agent or
16 representative shall be entitled to reimbursement for costs and
17 reasonable attorney's fees of the agent or representative but not to a
18 financial interest in the damages awarded.³

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

26 d.]¹ For the purposes of this section, the damages sustained by a
27 plaintiff shall ¹[include] ²[be¹ include² the plaintiff's costs of preparing
28 and submitting the bid ¹[and may, if sought by the plaintiff, include
29 profits that the court determines the plaintiff would have made if the
30 plaintiff had been awarded the contract and complied with the
31 P.L.1963, c.150 (C.34:11-56.25 et seq.) and other applicable laws]

32 ²[plus ten percent of the value of the portion of the contract awarded
33 to the defendant]¹] and may, if sought by the plaintiff, include profits
34 that the court determines the plaintiff would have made if the plaintiff
35 had been awarded the contract and complied with P.L.1963, c.150
36 (C.34:11-56.25 et seq.) and other applicable laws².

37 ¹[e.] d.¹ If the court determines that the defendant did not, in
38 connection with work performed pursuant to the contract, violate the
39 provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or fail to pay
40 any contribution, tax, assessment or benefit required by other
41 applicable law, the court shall order the plaintiff to pay the ³costs and³
42 reasonable attorney's fees of the defendant. ³Nothing herein shall
43 preclude a defendant who is found to have committed minor record
44 keeping mistakes, minor computational errors or other minor mistakes
45 from being awarded relief pursuant to section 1 of P.L.1988, c.46
46 (C.2A:15-59.1).³

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.

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9 2. This act shall take effect immediately.

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14 Concerns certain projects.
