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ASSEMBLY, No. 1404

STATE OF NEW JERSEY

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By Assemblymen ROMA, DiGAETANO, Assemblywoman Allen, Assemblymen Asselta, Augustine, Bagger, Bateman, Blee, Cottrell, DeSopo, Felice, Garcia, Geist, Greenwald, Gusciora, Impreveduto, 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 body^{1 3} or, 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

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 contractor (hereinafter referred to in this section as the "defendant")
2 alleging that the defendant has, in connection with work performed
3 pursuant to the contract, violated the provisions of P.L.1963, c.150
4 (C.34:11-56.25 et seq.) or failed to pay any contribution, tax,
5 assessment or benefit required by any other applicable law. ³If there
6 is more than one losing bidder, a bidder with a higher bid than the
7 second lowest bidder or lower rank than the second highest rank, if,
8 pursuant to law, the contract is awarded on the basis of factors other
9 than or in addition to the lowest bid, may bring the action if that
10 bidder gives written notice of his intention to bring an action, sent by
11 first-class mail and certified mail, return receipt requested, to every
12 other losing bidder whose bid was lower than his or whose bid was
13 higher in rank than his and none of the bidders notified files an action
14 within 30 days following the date of their receipt of notice. The
15 written notice of intention to bring an action must contain the
16 following: (1) a statement of the specific violations or failures to pay
17 allegedly committed, which shall not preclude, in the course of the
18 action, consideration of other violations or failures to pay as may be
19 revealed in the course of discovery, (2) a statement that the action is
20 to be filed pursuant to this act, and (3) a statement that the recipient
21 of the notice may have the right to file an action and will be precluded
22 from doing so if he does not file an action within 30 days of his receipt
23 of the notice. If no other losing bidder so notified files an action
24 within 30 days of his receipt of the notice, the losing bidder who sent
25 the notice shall file an action pursuant to this act within 15 days of the
26 last day any of the recipients of the notice could have filed an action.
27 If more than one bidder files an action, all actions other than that filed
28 by the bidder whose bid is the lowest of the bidders who filed actions,
29 or, if, pursuant to law, the contract is awarded on the basis of factors
30 other than or in addition to the lowest bid, whose bid is the highest in
31 rank of the bidders who filed actions, shall be dismissed.³

32 b. Upon ²a finding by the court that the plaintiff was a responsible
33 bidder for the contract and a² finding that one or more defendants
34 violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or
35 failed to pay any contribution, tax, assessment or benefit required by
36 any other applicable law in connection with work performed pursuant
37 to the contract, and that the plaintiff submitted a bid for the contract
38 which was less than the sum total of the bid accepted by the public
39 body plus any additional amount that the defendant or defendants
40 would have paid during the term of the contract to be in full
41 compliance with P.L.1963, c.150 (C.34:11-56.25 et seq.) and other
42 applicable laws in connection with the contract, the court shall order
43 the defendant or defendants to pay to the plaintiff the entire amount of
44 damages sustained plus ³costs and³ reasonable attorney's fees or, if the
45 court finds the noncompliance to be intentional, three times the
46 amount of damages sustained plus ³costs and³ reasonable attorney's

1 fees ², except that the court shall order no payment to the plaintiff if
2 the court finds that the violation or failure to pay was caused by minor
3 record keeping mistakes or minor computational errors² ³or by other
4 minor mistakes. The occurrence of more than two violations or
5 failures to pay shall lead to the rebuttable presumption that the
6 violation or failure to pay at issue is not minor.³ If there are two or
7 more defendants, the court shall allocate the payments for damages
8 sustained and attorney's fees among the defendants in a reasonable
9 manner. Nothing in this section shall be construed as requiring
10 payments to a plaintiff by any contractor or subcontractor who has not
11 violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or
12 failed to pay any contribution, tax, assessment or benefit required by
13 any other applicable law in connection with work performed pursuant
14 to the contract. ²A plaintiff may designate an agent or representative
15 to maintain the action ³if the violation or failure to pay has an adverse
16 effect on the agent or representative or, if the agent or representative
17 is an organization or association, on any member of the organization
18 or association. If the plaintiff prevails, the agent or representative
19 shall be entitled to reimbursement for costs and reasonable attorney's
20 fees of the agent or representative but not to a financial interest in the
21 damages awarded³ .²

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

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

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

1 keeping mistakes, minor computational errors or other minor mistakes
2 from being awarded relief pursuant to section 1 of P.L.1988, c.46
3 (C.2A:15-59.1).³

4 ¹[f.] e.¹ As used in this section:

5 "Person" means any individual, corporation, company, partnership,
6 firm, association or business;

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

9 "Subcontractor" means any subcontractor or lower tier
10 subcontractor of a contractor.

11

12 2. This act shall take effect immediately.

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17 Concerns certain projects.