

## CHAPTER 81

AN ACT concerning certain types of liens and amending various parts of the statutory law.

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

1. N.J.S.2A:44-128 is amended to read as follows:

Debts for labor and materials; funds liable; asserting lien; forfeiture of lien.

2A:44-128. a. Any person who, as laborer, mechanic, materialman, merchant or trader, or subcontractor, in pursuance of or conformity with the terms of any contract for any public improvement made between any person and a public agency as defined in N.J.S.2A:44-126 and authorized by law to make contracts for the making of public improvements, performs any labor or furnishes any materials, including the furnishing of oil, gasoline or lubricants and vehicle use, toward the performance or completion of any such contract, shall, on complying with the provisions of subsection b. of N.J.S.2A:44-128, N.J.S.2A:44-132 and N.J.S.2A:44-133, have a lien for the value of the labor or materials, or both, upon the moneys due or to grow due under the contract and in the control of the public agency, to the full value of the claim or demand. The lien may be filed and, to the extent of the amount due or to grow due under the contract, shall become an absolute lien to the full value of the labor performed or materials furnished in favor of every person and his representatives and assigns employed by or furnishing materials to the contractor or subcontractor.

No public agency shall be required to pay a greater amount than the contract price of the labor performed and materials furnished or the value thereof when no specific contract is made with respect to the same by the contractor or subcontractor, respectively.

b. Any person who may seek to assert a lien under subsection a. of this section shall, within 20 days of the first performance of work or performance of work or delivery of labor or materials to a subcontractor, file with the municipal clerk, the chief financial officer of the county or the chairman of the commission, board or authority, whichever is appropriate, written notice that he or she has furnished labor or materials to the subcontractor. The notice shall contain the name, address and telephone number of the person providing the labor or materials, the name and geographical location of the public improvement for which the labor or materials have been supplied, the name of the subcontractor to which the labor or materials have been supplied, a description of the labor or materials supplied, and the date that the labor or materials were first supplied to the subcontractor. The officer of the public agency shall maintain a separate file for all written notices which shall be available to the public for inspection and copying during regular business hours. Failure to provide this written notice as required within 20 days of the first performance of work or delivery of labor or materials to the subcontractor shall be a bar to secure a lien for the labor or materials provided, unless there is money owing from the contractor to the subcontractor to whom the labor or materials were provided, in which case the lien shall be limited in value to a sum not greater than the money owing from the contractor to the subcontractor.

The public entity with which the notice required by this section is filed may charge an inquiry fee for information contained in the notice to any person, including the contractor. The inquiry fee shall be reasonable and shall be set to reflect the cost to the public entity of retrieving the information.

Notwithstanding the provisions of this section to the contrary, if a notice is filed after the 20-day period, the person so filing may assert a lien under subsection a. of this section for any labor or materials provided on or after that filing date.

No additional notice shall be required for work or materials provided under the same public improvement contract subsequent to the initial notice, notwithstanding that the work and materials may be provided under a separate contract or purchase order.

Written notice shall be substantially in the following form:

### NOTICE OF THE DELIVERY OF LABOR OR MATERIALS

In accordance with the terms and provisions of the "Municipal Mechanics' Lien Law," N.J.S.2A:44-125 et seq., notice is hereby given that:

1. (Name of person supplying labor or materials) of (address of person supplying labor or materials) has on (date) provided to (name of subcontractor) the following: (description of labor

or materials). My telephone number is (telephone number of person supplying labor or materials).

2. The (description of labor or materials) were provided for the (name of public improvement) in (name of municipality), New Jersey.

Signed:.....  
For:.....  
Individual, firm or corporation.....

c. Funds received by a contractor and paid to a subcontractor or supplier for work performed or labor or materials supplied pursuant to a contract for any public improvement shall be applied only to amounts due and owing for work performed or labor or materials supplied for such public improvement. Any subcontractor or supplier who knowingly applies such payment received from the contractor on the public improvement to amounts due and owing for work performed or labor or materials supplied on a construction project other than the public improvement and then claims a lien on the public improvement for non-payment shall forfeit all lien rights under this title. A subcontractor or supplier forfeiting his lien rights pursuant to this section shall be liable for all damages incurred by any contractor as a result of the misapplication of such funds, including attorney's fees, and shall be liable for all court costs and reasonable legal expenses, including attorneys' fees, incurred by the contractor in defending or causing the discharge of the lien claim.

2. N.J.S.2A:44-143 is amended to read as follows:

Additional bond for payment of claims for labor, material, etc.; waiver, surety's obligation.

2A:44-143. a. (1) When public buildings or other public works or improvements are about to be constructed, erected, altered or repaired under contract, at the expense of the State or any contracting unit, as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), or school district, the board, officer or agent contracting on behalf of the State, contracting unit or school district, shall require delivery of the payment and performance bond issued in accordance with N.J.S.2A:44-147 and otherwise, as provided for by law, with an obligation for the performance of the contract and for the payment by the contractor for all labor performed or materials, provisions, provender or other supplies, teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction, erection, alteration or repair of such buildings, works or improvements provided by subcontractors or material suppliers in contract with the contractor, or subcontractors or material suppliers in contract with a subcontractor to the contractor, which class of persons shall be the beneficiaries of the payment and performance bond. The board, officer or agent shall also require that all payment and performance bonds be issued by a surety which meets the following standards:

(a) The surety shall have the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued; and

(b) With respect to all payment and performance bonds in the amount of \$850,000 or more, (i) if the amount of the bond is at least \$850,000 but not more than \$3.5 million, the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570, except that if the surety has been operational for a period in excess of five years, the surety shall be deemed to meet the requirements of this subparagraph if it is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (ii) if the amount of the bond is more than \$3.5 million, then the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, shall be rated in one of the

three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the provisions of subparagraph (ii) of this subparagraph which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from the requirement to hold such a certificate if the surety meets an equivalent set of standards developed by the Commissioner of Insurance through regulation which at least equal, and may exceed, the general criteria required for issuance of a certificate of authority by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305. A surety company seeking such an exemption shall, not later than the 180th day following the effective date of P.L.1995, c.384, certify to the appropriate contracting unit that it meets that equivalent set of standards set forth by the commissioner as promulgated.

(2) When such contract is to be performed at the expense of the State and is entered into by the Director of the Division of Building and Construction or State departments designated by the Director of the Division of Building and Construction, the director or the State departments may: (a) establish for that contract the amount of the bond at any percentage, not exceeding 100%, of the amount bid, based upon the director's or department's assessment of the risk presented to the State by the type of contract, and other relevant factors, and (b) waive the bond requirement of this section entirely if the contract is for a sum not exceeding \$200,000.

(3) When such a contract is to be performed at the expense of a contracting unit or school district, the board, officer or agent contracting on behalf of the contracting unit or school district may: (a) establish for that contract the amount of the bond at any percentage, not exceeding 100%, of the amount bid, based upon the board's, officer's or agent's assessment of the risk presented to the contracting unit or school district by the type of contract and other relevant factors, and (b) waive the bond requirement of this section entirely if the contract is for a sum not exceeding \$100,000.

b. A surety's obligation shall not extend to any claim for damages based upon alleged negligence that resulted in personal injury, wrongful death, or damage to real or personal property, and no bond shall in any way be construed as a liability insurance policy. Nothing herein shall relieve the surety's obligation to guarantee the contractor's performance of all conditions of the contract, including the maintenance of liability insurance if and as required by the contract. Only the obligee named on the bond, and any subcontractor performing labor or any subcontractor or materialman providing materials for the construction, erection, alteration or repair of the public building, work or improvement for which the bond is required pursuant to this section, shall have any claim against the surety under the bond.

c. A board, officer or agent contracting on behalf of the State, contracting unit or school district shall not accept more than one payment and performance bond to cover a single construction contract. The board, officer or agent may accept a single bond executed by more than one surety to cover a single construction contract only if the combined underwriting limitations of all the named sureties, as set forth in the most current annual revision of United States Treasury Circular 570, or as determined by the Commissioner of Insurance pursuant to R.S.17:18-9, meet or exceed the amount of the contract to be performed.

d. A board, officer or agent contracting on behalf of the State, contracting unit or school district shall not accept a payment or performance bond unless there is attached thereto a Surety Disclosure Statement and Certification to which each surety executing the bond shall have subscribed. This statement and certification shall be complete in all respects and duly acknowledged according to law, and shall have substantially the following form:

**SURETY DISCLOSURE STATEMENT AND CERTIFICATION**

....., surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond

is (are) in the following amount(s) as of the calendar year ended December 31, ..... (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus amounts, together with the name and address of the firm of certified public accounts that shall have certified those amounts):

.....  
.....  
.....

(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. §9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows (indicating for each such surety that surety's underwriting limitation and the effective date thereof):

.....  
.....  
.....

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of (date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

.....  
.....  
.....

(4) The amount of the bond to which this statement and certification is attached is \$ ..... .

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:.....

.....  
.....  
.....; and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c.243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

**CERTIFICATE**  
(to be completed by an authorized certifying agent  
for each surety on the bond)

I ..... (name of agent), as ..... (title of agent) for ..... (name of surety), a corporation/mutual insurance company/other (indicating type of business organization) (circle one) domiciled in ..... (state of domicile), DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is VOIDABLE.

.....  
(Signature of certifying agent)

.....  
(Printed name of certifying agent)

.....  
(Title of certifying agent)

3. N.J.S.2A:44-144 is amended to read as follows:

Sureties on and amount of bond; condition for payment of claims; bond deposited, held for use of interested parties.

2A:44-144. The bond required by this article shall be executed by the contractor with such sureties in accordance with N.J.S.2A:44-147 as shall be approved by the board, officer or agent acting on behalf of the State, contracting unit or school district, in an amount equal to 100 per cent of the contract price. The payment bond shall be conditioned for the payment by the contractor of all indebtedness which may accrue to any person, firm or corporation designated as a "beneficiary" pursuant to N.J.S.2A:44-143, in an amount not exceeding the sum specified in the bond, on account of any labor performed or materials, provisions, provender or other supplies, or teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction, erection, alteration or repair of the public building or public work or improvement.

The payment bond shall be deposited with and be held by the board, officer or agent acting on behalf of the State, contracting unit or school district, for the use of any beneficiary thereof.

4. N.J.S.2A:44-145 is amended to read as follows:

Statements of claimants filed with sureties on bond; time for action on bond.

2A:44-145. Any person who may be a beneficiary of the payment bond, as defined in this article, and who does not have a direct contract with the contractor furnishing the bond shall, prior to commencing any work, provide written notice to the contractor by certified mail or otherwise, provided that he shall have proof of delivery of same, that said person is a beneficiary of the bond. If a beneficiary fails to provide the required written notice, the beneficiary shall only have rights to the benefits available hereunder from the date the notice is provided.

Any beneficiary, as defined in N.J.S.2A:44-143, to whom any money shall be due on account of having performed any labor or furnished any materials, provisions, provender or other supplies, or teams, fuels, oils, implements or machinery in, upon, for or about the construction, erection, alteration or repair of any public building or other public work or improvement, shall, at any time before the expiration of one year from the last date upon which such beneficiary shall have performed actual work or delivered materials to the project, in the case of a material supplier, furnish the sureties on the bond required by this article a statement of the amount due to him.

No action shall be brought against any of the sureties on the bond required by this article until the expiration of 90 days after provision to the sureties and the contractor of the statement of the amount due to him, but in no event later than one year from the last date upon which such beneficiary shall have performed actual work or delivered materials to the project.

5. N.J.S.2A:44-146 is amended to read as follows:

Action on bond; limitation.

2A:44-146. If the indebtedness due to any person as shown by the statement required to be filed by N.J.S.2A:44-145 shall not be paid in full at the expiration of 90 days from the date of notice of the amount due to the person, such person shall, within one year from the last date that work was performed or materials were supplied by that person, bring an action in his own name upon the bond required by this article.

6. N.J.S.2A:44-147 is amended to read as follows:

Bond form; conditions.

2A:44-147. The bond required by this article shall be in substantially the following form: "Know all men by these presents, that we, the undersigned as principal and as sureties, are

hereby held and firmly bound unto in the penal sum of dollars, for the payment of which well and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

"Signed this ..... day of ....., 19..... .

"The condition of the above obligation is such that whereas, the above named principal did on the ..... day of ....., 19 ..... , enter into a contract with , which said contract is made a part of this the bond the same as though set forth herein;

"Now, if the said ..... shall well and faithfully do and perform the things agreed by ..... to be done and performed according to the terms of said contract, and shall pay all lawful claims of beneficiaries as defined by N.J.S.2A:44-143 for labor performed or materials, provisions, provender or other supplies or teams, fuels, oils, implements or machinery furnished, used or consumed in the carrying forward, performing or completing of said contract, we agreeing and assenting that this undertaking shall be for the benefit of any beneficiary as defined in N.J.S.2A:44-143 having a just claim, as well as for the obligee herein; then this obligation shall be void; otherwise the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the surety for any and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

"The said surety hereby stipulates and agrees that no modifications, omissions or additions in or to the terms of the said contract or in or to the plans or specifications therefor shall in anywise affect the obligation of said surety on its bond."

Recovery of any claimant under the bond shall be subject to the conditions and provisions of this article to the same extent as if such conditions and provisions were fully incorporated in the form set forth above.

7. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to read as follows:

C.40A:11-13 Specifications.

13. Specifications. Any specifications for an acquisition under this act, whether by purchase, contract or agreement, shall be drafted in a manner to encourage free, open and competitive bidding. In particular, no specifications under this act may:

(a) Require any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the purchase, contract or agreement is made; or

(b) Require that any bidder be a resident of, or that his place of business be located in, the county or municipality in which the purchase will be made or the contract or agreement performed, unless the physical proximity of the bidder is requisite to the efficient and economical purchase or performance of the contract or agreement; except that no specification for a contract for the collection and disposal of municipal solid waste shall require any bidder to be a resident of, or that his place of business be located in, the county or municipality in which the contract will be performed; or

(c) Discriminate on the basis of race, religion, sex, national origin; or

(d) Require, with regard to any purchase, contract or agreement, the furnishing of any "brand name," but may in all cases require "brand name or equivalent," except that if the materials to be supplied or purchased are patented or copyrighted, such materials or supplies may be purchased by specification in any case in which the ordinance or resolution authorizing the purchase, contract, sale or agreement so indicates, and the special need for such patented or copyrighted materials or supplies is directly related to the performance, completion or undertaking of the purpose for which the purchase, contract or agreement is made; or

(e) Fail to include any option for renewal, extension, or release which the contracting unit may intend to exercise or require; or any terms and conditions necessary for the performance of any extra work; or fail to disclose any matter necessary to the substantial performance of the contract or agreement.

Any specification adopted by the governing body, which knowingly excludes prospective bidders by reason of the impossibility of performance, bidding or qualification by any but one bidder, except as provided herein, shall be null and void and of no effect and subject purchase, contract or agreement shall be readvertised, and the original purchase, contract or agreement shall be set aside by the governing body.

Any specification adopted by the governing body for a contract for the collection and disposal

of municipal solid waste shall conform to the uniform bid specifications for municipal solid waste collection contracts established pursuant to section 22 of P.L.1991, c.381 (C.48:13A-7.22).

Any specification adopted by the governing body may include an item for the cost, which shall be paid by the contractor, of creating a file to maintain the notices of the delivery of labor or materials required by N.J.S.2A:44-128.

8. This act shall take effect on the 30th day next following enactment.

Approved July 25, 1996.