

[Second Reprint]  
SENATE, No. 436

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators SINAGRA, CIESLA, Matheussen, Palaia, Martin,  
MacInnes and Kyrillos

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 <sup>2</sup>a finding by the court that the plaintiff was a responsible  
21 bidder for the contract and <sup>2</sup>a 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  
25 to the contract, and that the plaintiff submitted a bid for the contract  
26 which was less than the sum total of the bid accepted by the public  
27 body plus any additional amount that the defendant or defendants  
28 would have paid during the term of the contract to be in full  
29 compliance with P.L.1963, c.150 (C.34:11-56.25 et seq.) and other  
30 applicable laws in connection with the contract, the court shall order

**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> Senate SCM committee amendments adopted February 15, 1996.

<sup>2</sup> Senate floor amendments adopted March 21, 1996.

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

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

24 d.]<sup>1</sup> For the purposes of this section, the damages sustained by a  
25 plaintiff shall <sup>1</sup>[include] <sup>2</sup>[be<sup>1</sup> include<sup>2</sup> the plaintiff's costs of  
26 preparing and submitting the bid <sup>1</sup>[and may, if sought by the plaintiff,  
27 include profits that the court determines the plaintiff would have made  
28 if the plaintiff had been awarded the contract and complied with the  
29 P.L.1963, c.150 (C.34:11-56.25 et seq.) and other applicable laws]  
30 <sup>2</sup>[plus ten percent of the value of the portion of the contract awarded  
31 to the defendant<sup>1</sup>] and may, if sought by the plaintiff, include profits  
32 that the court determines the plaintiff would have made if the plaintiff  
33 had been awarded the contract and complied with P.L.1963, c.150  
34 (C.34:11-56.25 et seq.) and other applicable laws<sup>2</sup>.

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

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

42 "Person" means any individual, corporation, company, partnership,  
43 firm, association or business;

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

46 "Subcontractor" means any subcontractor or lower tier

1 subcontractor of a contractor.

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3 2. This act shall take effect immediately.

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8 Concerns certain projects.