

[Third Reprint]  
SENATE, No. 436

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators SINAGRA, CIESLA, Matheussen, Palaia,  
Martin, MacInnes, Kyrillos, Sacco, McGreevey,  
Assemblymen Roma and DiGaetano

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 and whose bid is the lowest bid other  
11 than the bid accepted by the public body<sup>1</sup> <sup>3</sup>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 body<sup>3</sup> (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  
21 (C.34:11-56.25 et seq.) or failed to pay any contribution, tax,  
22 assessment or benefit required by any other applicable law. <sup>3</sup>If there  
23 is more than one losing bidder, a bidder with a higher bid than the  
24 second lowest bidder or lower rank than the second highest rank, if,  
25 pursuant to law, the contract is awarded on the basis of factors other  
26 than or in addition to the lowest bid, may bring the action if that  
27 bidder gives written notice of his intention to bring an action, sent by  
28 first-class mail and certified mail, return receipt requested, to every

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.

<sup>3</sup> Assembly floor amendments adopted June 24, 1996.

1 other losing bidder whose bid was lower than his or whose bid was  
2 higher in rank than his and none of the bidders notified files an action  
3 within 30 days following the date of their receipt of notice. The  
4 written notice of intention to bring an action must contain the  
5 following: (1) a statement of the specific violations or failures to pay  
6 allegedly committed, which shall not preclude, in the course of the  
7 action, consideration of other violations or failures to pay as may be  
8 revealed in the course of discovery, (2) a statement that the action is  
9 to be filed pursuant to this act, and (3) a statement that the recipient  
10 of the notice may have the right to file an action and will be precluded  
11 from doing so if he does not file an action within 30 days of his receipt  
12 of the notice. If no other losing bidder so notified files an action  
13 within 30 days of his receipt of the notice, the losing bidder who sent  
14 the notice shall file an action pursuant to this act within 15 days of the  
15 last day any of the recipients of the notice could have filed an action.  
16 If more than one bidder files an action, all actions other than that filed  
17 by the bidder whose bid is the lowest of the bidders who filed actions,  
18 or, if, pursuant to law, the contract is awarded on the basis of factors  
19 other than or in addition to the lowest bid, whose bid is the highest in  
20 rank of the bidders who filed actions, shall be dismissed.<sup>3</sup>

21 b. Upon <sup>2</sup>a finding by the court that the plaintiff was a responsible  
22 bidder for the contract and <sup>2</sup>a finding that one or more defendants  
23 violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or  
24 failed to pay any contribution, tax, assessment or benefit required by  
25 any other applicable law in connection with work performed pursuant  
26 to the contract, and that the plaintiff submitted a bid for the contract  
27 which was less than the sum total of the bid accepted by the public  
28 body plus any additional amount that the defendant or defendants  
29 would have paid during the term of the contract to be in full  
30 compliance with P.L.1963, c.150 (C.34:11-56.25 et seq.) and other  
31 applicable laws in connection with the contract, the court shall order  
32 the defendant or defendants to pay to the plaintiff the entire amount of  
33 damages sustained plus <sup>3</sup>costs and<sup>3</sup> reasonable attorney's fees or, if the  
34 court finds the noncompliance to be intentional, three times the  
35 amount of damages sustained plus <sup>3</sup>costs and<sup>3</sup> reasonable attorney's  
36 fees <sup>2</sup>, except that the court shall order no payment to the plaintiff if  
37 the court finds that the violation or failure to pay was caused by minor  
38 record keeping mistakes or minor computational errors<sup>2 3</sup>or by other  
39 minor mistakes. The occurrence of more than two violations or  
40 failures to pay shall lead to the rebuttable presumption that the  
41 violation or failure to pay at issue is not minor<sup>3</sup>. If there are two or  
42 more defendants, the court shall allocate the payments for damages  
43 sustained and attorney's fees among the defendants in a reasonable  
44 manner. Nothing in this section shall be construed as requiring  
45 payments to a plaintiff by any contractor or subcontractor who has not  
46 violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) or

1 failed to pay any contribution, tax, assessment or benefit required by  
2 any other applicable law in connection with work performed pursuant  
3 to the contract. <sup>2</sup>A plaintiff may designate an agent or representative  
4 to maintain the action <sup>3</sup>if the violation or failure to pay has an adverse  
5 effect on the agent or representative or, if the agent or representative  
6 is an organization or association, on any member of the organization  
7 or association. If the plaintiff prevails, the agent or representative  
8 shall be entitled to reimbursement for costs and reasonable attorney's  
9 fees of the agent or representative but not to a financial interest in the  
10 damages awarded<sup>3, 2</sup>

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

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

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

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

40 "Person" means any individual, corporation, company, partnership,  
41 firm, association or business;

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

44 "Subcontractor" means any subcontractor or lower tier  
45 subcontractor of a contractor.

46 2. This act shall take effect immediately.

1

2

3

4 Concerns certain projects.