

[Corrected Copy]  
SENATE, No. 834

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1996

By Senator BUBBA

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

3

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

6

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

8 2A:44-128. a. Any person who, as laborer, mechanic,  
9 materialman, merchant or trader, or subcontractor, in pursuance of or  
10 conformity with the terms of any contract for any public improvement  
11 made between any person and a public agency as defined in [section]  
12 N.J.S.2A:44-126 [of this title] and authorized by law to make  
13 contracts for the making of public improvements, performs any labor  
14 or furnishes any materials, including the furnishing of oil, gasoline or  
15 lubricants and vehicle use, toward the performance or completion of  
16 any such contract, shall, on complying with the provisions of  
17 [sections] subsection b. of N.J.S.2A:44-128, N.J.S.2A:44-132 and  
18 N.J.S.2A:44-133 [of this title], have a lien for the value of the labor  
19 or materials, or both, upon the moneys due or to grow due under the  
20 contract and in the control of the public agency, to the full value of the  
21 claim or demand. The lien may be filed and, to the extent of the  
22 amount due or to grow due under the contract, shall become an  
23 absolute lien to the full value of the labor performed or materials  
24 furnished in favor of every person and his representatives and assigns  
25 employed by or furnishing materials to the contractor or  
26 subcontractor.

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

31 b. Any person who may seek to assert a lien under subsection a. of  
32 this section shall, within 20 days of the first performance of work or  
33 performance of work or delivery of labor or materials to a

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 subcontractor, provide to the contractor written notice that he or she  
2 has furnished labor or materials to the subcontractor. The notice shall  
3 contain the name, address and telephone number of the person  
4 providing the labor or materials, the name and geographical location  
5 of the public improvement for which the labor or materials have been  
6 supplied, the name of the subcontractor to which the labor or materials  
7 have been supplied, a description of the labor or materials supplied,  
8 and the date that the labor or materials were first supplied to the  
9 subcontractor. The provision of this written notice to the contractor  
10 within 20 days of the first performance of work or delivery of labor or  
11 materials to the subcontractor shall be a requirement for, and shall be  
12 a condition of, the securing of a lien by the person supplying the labor  
13 or materials.

14 Written notice to the contractor shall be substantially in the  
15 following form:

16  
17 NOTICE TO CONTRACTOR OF THE DELIVERY OF LABOR  
18 OR  
19 MATERIALS

20  
21 In accordance with the terms and provisions of the "Municipal  
22 Mechanics' Lien Law," N.J.S.2A:44-125 et seq., notice is hereby given  
23 that:

24 1. (Name of person supplying labor or materials) of (address of  
25 person supplying labor or materials) has on (date) provided to (name  
26 of subcontractor) the following: (description of labor or materials).  
27 My telephone number is (telephone number of person supplying labor  
28 or materials).

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

31  
32  
33 Signed: \_\_\_\_\_

34 For: \_\_\_\_\_

35 Individual, firm or corporation

36  
37 c. Funds received by a contractor and paid to a subcontractor or  
38 supplier for work performed or labor or materials supplied pursuant to  
39 a contract for any public improvement shall be applied only to amounts  
40 due and owing for work performed or labor or materials supplied for  
41 such public improvement. Any supplier who knowingly applies such  
42 payment received from the contractor on the public improvement to  
43 amounts due and owing for work performed or labor or materials  
44 supplied on a construction project other than the public improvement  
45 and then claims a lien on the public improvement for non-payment  
46 shall forfeit all lien rights under this title. A supplier forfeiting his lien

1 rights pursuant to this section shall be liable for all damages incurred  
2 by any contractor as a result of the misapplication of such funds,  
3 including attorney's fees, and shall be liable for all court costs and  
4 reasonable legal expenses, including attorneys' fees, incurred by the  
5 contractor in defending or causing the discharge of the lien claim.  
6 (cf: N.J.S.2A:44-128)

7

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

9 2A:44-143. a. (1) When public buildings or other public works or  
10 improvements are about to be constructed, erected, altered or repaired  
11 under contract, at the expense of the State or any contracting unit, as  
12 defined in section 2 of P.L.1971, c.198 (C.40A:11-2), or school  
13 district, the board, officer or agent contracting on behalf of the State,  
14 contracting unit or school district, shall require the [payment and]  
15 delivery of a surety performance bond and payment bond issued in  
16 accordance with N.J.S.2A:44-147 and otherwise, as provided for by  
17 law, [with an] with good and sufficient sureties. It shall be the  
18 obligation of the payment bond for the payment by the contractor[,  
19 and by all subcontractors,] for all labor performed or materials,  
20 provisions, provender or other supplies, teams, fuels, oils, implements  
21 or machinery used or consumed in, upon, for or about the  
22 construction, erection, alteration or repair of such buildings, works or  
23 improvements [and]provided by subcontractors or material suppliers  
24 in contract with the contractor, or subcontractors in contract with a  
25 subcontractor, or material supplier to the contractor, or material  
26 suppliers to a contractor, which class of persons shall be the  
27 beneficiaries of such surety bond. The board, officer or agent  
28 contracting on behalf of the State, contracting unit or school district  
29 also shall require that all payment and performance bonds be issued by  
30 a surety which meets the following standards:

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

34 (b) With respect to all payment and performance bonds in the  
35 amount of \$850,000 or more, (i) if the amount of the bond is at least  
36 \$850,000 but not more than \$3.5 million, the surety shall hold a  
37 current certificate of authority, issued by the United States Secretary  
38 of the Treasury pursuant to 31 U.S.C.§9305, that is valid in the State  
39 of New Jersey as listed annually in the United States Treasury Circular  
40 570, except that if the surety has been operational for a period in  
41 excess of five years, the surety shall be deemed to meet the  
42 requirements of this subparagraph if it is rated in one of the three  
43 highest categories by an independent, nationally recognized United  
44 States rating company that determines the financial stability of  
45 insurance companies, which rating company or companies shall be  
46 determined pursuant to standards promulgated by the Commissioner

1 of Insurance by regulation adopted pursuant to the "Administrative  
2 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (ii) if the  
3 amount of the bond is more than \$3.5 million, then the surety shall  
4 hold a current certificate of authority, issued by the United States  
5 Secretary of the Treasury pursuant to 31 U.S.C.§9305, that is valid in  
6 the State of New Jersey as listed annually in the United States  
7 Treasury Circular 570 and, if the surety has been operational for a  
8 period in excess of five years, shall be rated in one of the three highest  
9 categories by an independent, nationally recognized United States  
10 rating company that determines the financial stability of insurance  
11 companies, which rating company or companies shall be determined  
12 pursuant to standards promulgated by the Commissioner of Insurance  
13 by regulation adopted pursuant to the "Administrative Procedure Act,"  
14 P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the  
15 provisions of subparagraph (ii) of this subparagraph which does not  
16 hold a certificate of authority issued by the United States Secretary of  
17 the Treasury shall be exempt from the requirement to hold such a  
18 certificate if the surety meets an equivalent set of standards developed  
19 by the Commissioner of Insurance through regulations which at least  
20 equal, and may exceed, the general criteria required for issuance of a  
21 certificate of authority by the United States Secretary of the Treasury  
22 pursuant to 31 U.S.C.§9305. A surety company seeking such an  
23 exemption shall, not later than the 180th day following the effective  
24 date of P.L.1995, c.384, certify to the appropriate contracting unit that  
25 it meets that equivalent set of standards set forth by the Commissioner  
26 as promulgated.

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

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

46 b. A surety's obligation shall not extend to any claim for damages

1 based upon alleged negligence that resulted in personal injury,  
2 wrongful death, or damage to real or personal property, and no bond  
3 shall in any way be construed as a liability insurance policy. Nothing  
4 herein shall relieve the surety's obligation to guarantee the contractor's  
5 performance of all conditions of the contract, including the  
6 maintenance of liability insurance if and as required by the contract.  
7 Only the obligee named on the bond, and any subcontractor  
8 performing labor or any subcontractor or materialman providing  
9 materials for the construction, erection, alteration or repair of the  
10 public building, work or improvement for which the bond is required  
11 pursuant to this section, shall have any claim against the surety under  
12 the bond.

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

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

30

31 SURETY DISCLOSURE STATEMENT AND CERTIFICATION

32

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

35

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

39 (2) The capital (where applicable) and surplus, as determined in  
40 accordance with the applicable laws of this State, of the surety(ies)  
41 participating in the issuance of the attached bond is (are) in the  
42 following amount(s) as of the calendar year ended December 31,  
43 (most recent calendar year for which capital and surplus amounts are  
44 available), which amounts have been certified as indicated by certified  
45 public accountants (indicating separately for each surety that surety's  
46 capital and surplus amounts, together with the name and address of the

1 firm of certified public accounts that shall have certified those  
2 amounts):

3 \_\_\_\_\_  
4 \_\_\_\_\_  
5 \_\_\_\_\_  
6 \_\_\_\_\_.

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

14 \_\_\_\_\_  
15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_.

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

25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_  
28 \_\_\_\_\_.

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

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

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

39 \_\_\_\_\_  
40 \_\_\_\_\_  
41 \_\_\_\_\_; and

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

1 attached shall have been filed with the appropriate public agency.

2

3 CERTIFICATE

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

6

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

14

15 \_\_\_\_\_  
16 (Signature of certifying agent)

17

18 \_\_\_\_\_  
19 (Printed name of certifying agent)

20

21 \_\_\_\_\_  
22 (Title of certifying agent)

23

(cf: P.L.1995, c.384, s.1)

24

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

26

27 2A:44-144. The bond required by this article shall be executed by  
28 the contractor with such sureties in accordance with N.J.S.2A:44-147  
29 as shall be approved by the board, officer or agent acting on behalf of  
30 the State, contracting unit or school district, in an amount equal to [at  
31 least] 100 per cent of the contract price[, and]. The payment bond  
32 shall be conditioned for the payment by the contractor[, and by all  
33 subcontractors, or his or their subcontractor,] of all indebtedness  
34 which may accrue to any person, firm or corporation designated as a  
35 "beneficiary" pursuant to N.J.S.2A:44-143, in an amount not  
36 exceeding the sum specified in the bond, on account of any labor  
37 performed or materials, provisions, provender or other supplies, or  
38 teams, fuels, oils, implements or machinery used or consumed in,  
39 upon, for or about the construction, erection, alteration or repair of  
the public building or public work or improvement.

40

41 The payment bond shall be deposited with and be held by the board,  
42 officer or agent acting on behalf of the State, contracting unit or  
43 school district, for the use of [any party interested therein]any  
beneficiary thereof.

44

(cf: P.L.1995, c.384, s.2)

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

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

10 Any [person] beneficiary, as defined in N.J.S.2A:44-143, to whom  
11 any money shall be due on account of having performed any labor or  
12 furnished any materials, provisions, provender or other supplies, or  
13 teams, fuels, oils, implements or machinery in, upon, for or about the  
14 construction, erection, alteration or repair of any public building or  
15 other public work or improvement, shall, at any time before the  
16 [acceptance of such building, work or improvement by the duly  
17 authorized board or officer, or within 80 days thereafter] expiration of  
18 one year from the last date upon which such beneficiary shall have  
19 performed actual work or delivered materials to the project, in the  
20 case of a material supplier, furnish the sureties on the bond required  
21 by this article a statement of the amount due to him.

22 No action shall be brought against any of the sureties on the bond  
23 required by this article until the expiration of [80] 90 days after [the  
24 acceptance of the building, work or improvement by the duly  
25 authorized board or officer] provision to the sureties and the  
26 contractor of the statement of the amount due to him, but in no event  
27 later than one year from the last date upon which such beneficiary shall  
28 have performed actual work or delivered materials to the project.

29 (cf: N.J.S.2A:44-145)

30

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

32 2A:44-146. If the indebtedness due to any person as shown by the  
33 statement required to be filed by [section] N.J.S.2A:44-145 [of this  
34 title] shall not be paid in full at the expiration of [80] 90 days from  
35 the [acceptance of the building, work or improvement by the duly  
36 authorized board or officer] date of notice of the amount due to the  
37 person, such person [may] shall, within 1 year from the [date of such  
38 acceptance] last date that work was performed or materials were  
39 supplied by that person, bring an action in his own name upon the  
40 bond required by this article.

41 (cf: N.J.S.2A:44-146)

42

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

44 2A:44-147. The bond required by this article shall be in  
45 substantially the following form:

46 "Know all men by these presents, that we, the undersigned as

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

5 "Signed this day of , 19 .

6  
7 "The condition of the above obligation is such that whereas, the  
8 above named principal did on the day of , 19 , enter into a contract  
9 with , which said contract is made a part of this the bond the same as  
10 though set forth herein;

11 "Now, if the said shall well and faithfully do and perform the things  
12 agreed by to be done and performed according to the terms of said  
13 contract, and shall pay all lawful claims of [subcontractors,  
14 materialmen, laborers, persons, firms or corporations] beneficiaries as  
15 defined by N.J.S.2A:44-143 for labor performed or materials,  
16 provisions, provender or other supplies or teams, fuels, oils,  
17 implements or machinery furnished, used or consumed in the carrying  
18 forward, performing or completing of said contract, we agreeing and  
19 assenting that this undertaking shall be for the benefit of any  
20 [subcontractor, materialman, laborer, person, firm or corporation]  
21 beneficiary as defined in N.J.S.2A:44-143 having a just claim, as well  
22 as for the obligee herein; then this obligation shall be void; otherwise  
23 the same shall remain in full force and effect; it being expressly  
24 understood and agreed that the liability of the surety for any and all  
25 claims hereunder shall in no event exceed the penal amount of this  
26 obligation as herein stated.

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

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

35 (cf: N.J.S.2A:44-147)

36  
37 7. This act shall take effect on the 30th day next following  
38 enactment.

39  
40  
41 STATEMENT

42  
43 The intent of this bill is to eliminate the problems that sometimes  
44 arise on construction sites when there are many subcontractors on a  
45 construction project.

46 In many cases, a general contractor will hire a subcontractor to

1 perform certain parts of a construction job, and the subcontractor will  
2 hire a sub-subcontractor. Oftentimes, the general contractor is not  
3 aware that the sub-subcontractor has been hired and is working on the  
4 construction project. It is the responsibility of the subcontractor who  
5 employs a sub-subcontractor to pay the sub-subcontractor for work  
6 performed or materials delivered, after receiving his payment from the  
7 general contractor. If a sub-subcontractor does not receive payment,  
8 a lien is usually filed by him against the contractor, or against the bond  
9 or bonds posted by the general contractor.

10 In order to eliminate the potential for confusion in such cases, the  
11 bill requires that any subcontractor, or any laborer, mechanic,  
12 materialman, merchant or trader, seeking to assert a lien for payment  
13 due, must within 20 days of the first performance of work or delivery  
14 of labor or materials to a subcontractor, provide to the contractor  
15 written notice that he or she has furnished labor or materials to the  
16 subcontractor. The notice must contain the name, address and  
17 telephone number of the person providing the labor or materials, the  
18 name and geographical location of the public improvement for which  
19 the labor or materials have been supplied, the name of the  
20 subcontractor to which the labor or materials have been supplied, a  
21 description of the labor or materials supplied, and the date that the  
22 labor or materials were first supplied to the subcontractor. If no such  
23 notice is given, a lien cannot be secured.

24 The bill also requires that funds received by a contractor and paid  
25 to a subcontractor or supplier for work performed or labor or  
26 materials supplied pursuant to a contract for any public improvement  
27 shall be applied only to amounts due and owing for work performed  
28 or labor or materials supplied for such public improvement. Any  
29 supplier who knowingly applies such payment received from the  
30 contractor on the public improvement to amounts due and owing for  
31 work performed or labor or materials supplied on a construction  
32 project other than the public improvement and then claims a lien on the  
33 public improvement for non-payment shall forfeit all lien rights under  
34 this title. A supplier forfeiting his lien rights pursuant to this section  
35 shall be liable for all damages incurred by any contractor as a result of  
36 the misapplication of such funds, including attorney's fees, and shall be  
37 liable for all court costs and reasonable legal expenses, including  
38 attorneys' fees, incurred by the contractor in defending or causing the  
39 discharge of the lien claim.

40

41

42

43

44 Revises certain aspects of "Municipal Mechanics' Lien Law."