

[Second Reprint]

SENATE, No. 1726

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED MARCH 21, 2006

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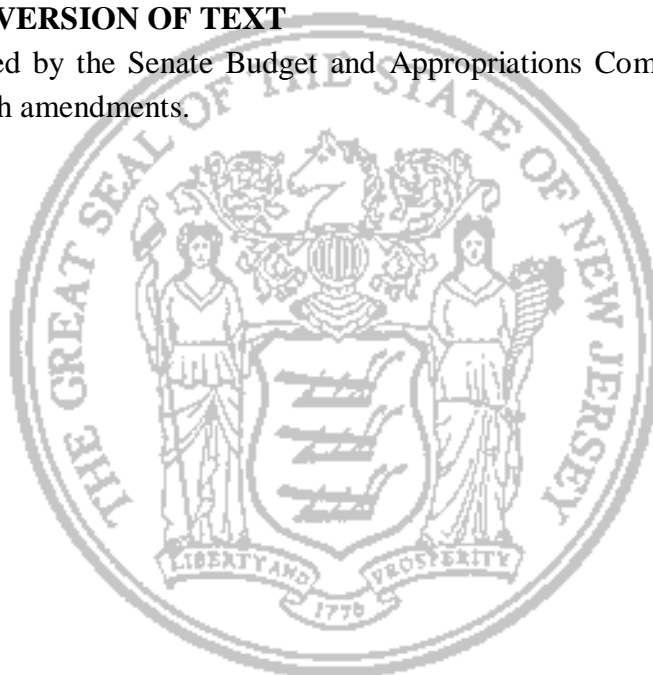
Senators Coniglio and Rice

SYNOPSIS

Concerns the prompt payment of construction contracts.

CURRENT VERSION OF TEXT

As reported by the Senate Budget and Appropriations Committee on June 30, 2006, with amendments.



(Sponsorship Updated As Of: 7/10/2006)

1 AN ACT concerning the prompt payment of construction contracts
2 and amending P.L.1991, c.133.

3

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

6

7 1. Section 1 of P.L.1991, c.133 (C.2A:30A-1) is amended to
8 read as follows:

9 1. As used in this act:

10 ²"Billing" means, in accordance with the terms and definitions of
11 the applicable contract, any periodic payment, final payment,
12 written approved change order or request for release of retainage.²

13 "[General] Prime contractor" means a person who contracts with
14 an owner to improve real property.

15 "Improve" means: to build, alter, repair or demolish any structure
16 upon, connected with, on or beneath the surface of any real
17 property; to excavate, clear, grade, fill or landscape any real
18 property; to construct driveways and private roadways on real
19 property; to furnish construction related materials, including trees
20 and shrubbery, for any of the above purposes; or to perform any
21 labor upon a structure, including any design, professional or skilled
22 services furnished by an architect, engineer, land surveyor or
23 landscape architect licensed or registered pursuant to the laws of
24 this State.

25 "Structure" means all or any part of a building and other
26 improvements to real property.

27 "Owner" means any person, including any public or
28 governmental entity, who has an interest in the real property to be
29 improved and who has contracted with a [general] prime contractor
30 for such improvement to be made. "Owner" shall be deemed to
31 include any successor in interest or agent acting on behalf of an
32 owner.

33 "Prime rate" means the base rate on corporate loans at large
34 United States money center commercial banks.

35 "Real property" means the real estate that is improved upon or to
36 be improved upon.

37 "Subcontractor" means any person who has contracted to furnish
38 labor, materials or other services to a [general] prime contractor in
39 connection with a contract to improve real property.

40 "Subsubcontractor" means any person who has contracted to
41 furnish labor, materials or other services to a subcontractor in
42 connection with a contract to improve real property.

43 (cf: P.L.1991, c.133, s.1)

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted May 4, 2006.

²Senate SBA committee amendments adopted June 30, 2006.

1 2. Section 2 of P.L.1991, c.133 (C.2A:30A-2) is amended to
2 read as follows:

3 2. a. If a prime contractor has performed in accordance with the
4 provisions of a contract with the owner and the billing for the work
5 has been approved and certified by the owner or the owner's
6 'authorized' approving agent, the owner shall pay the amount due
7 to the prime contractor 'for' each periodic payment, final payment
8 or retainage monies not more than '[10] ²[20¹] 30² calendar days
9 after the billing date, which for a periodic billing, shall be the
10 periodic billing date specified in the contract. The billing shall be
11 deemed approved and certified '[15] ²[10¹] 20² days after the
12 owner receives it unless the owner provides, before the end of the
13 '[15] ²[10¹-day] 20-day² period, a written statement of the
14 amount withheld and the reason for withholding payment², except
15 that in the case of a public or governmental entity that requires the
16 entity's governing body to vote on authorizations for each periodic
17 payment, final payment or retainage monies, the amount due may
18 be approved and certified at the next scheduled public meeting of
19 the entity's governing body, and paid during the entity's subsequent
20 payment cycle, provided this exception has been defined in the bid
21 specifications and contract documents². '[If the owner finds a
22 portion of the work not to be in accordance with the contract,
23 payment may be withheld for the reasonable value of that portion
24 only. Payment shall be made for any portion of the contract which
25 has a separate price and for which the work has been performed in
26 accordance with the provisions of the contract.]'¹

27 b. If a subcontractor or subsubcontractor has performed in
28 accordance with the provisions of [his] its contract with the
29 [general] prime contractor or subcontractor and the work has been
30 accepted by the owner, the owner's 'authorized' approving agent,
31 or [general] the prime contractor, as applicable, and the parties
32 have not otherwise agreed in writing, the 'prime' contractor shall
33 pay to [his] its subcontractor and the subcontractor shall pay to
34 [his] its subsubcontractor within 10 calendar days of the receipt of
35 each periodic payment, final payment or receipt of retainage
36 monies, the full amount received for the work of the subcontractor
37 or subsubcontractor based on the work completed or the services
38 rendered under the applicable contract. In the case of ongoing work
39 on the same project for which partial payments are made, the
40 amount of money owed for work already completed shall only be
41 payable if the subcontractor or subsubcontractor is performing to
42 the satisfaction of the 'prime' contractor or subcontractor, as
43 applicable.

44 c. If a payment due pursuant to the provisions of this section is
45 not made in a timely manner, the delinquent party shall be liable for
46 the amount of money owed under the contract, plus interest at a rate

1 equal to the prime rate plus 1%. Interest on amounts due pursuant
2 to this section shall be paid to the prime contractor, subcontractor or
3 subsubcontractor for the period beginning on the day after the
4 required payment date and ending on the day on which the check
5 for payment has been drawn. ²The provisions of this subsection c.
6 shall not apply to any transportation project as defined in section
7 section 3 of P.L. 1984, c.73 (C.27:1B-3), if that project receives
8 federal funding and the awarding agency has been notified by the
9 federal government that it will be classified as a high risk grantee
10 pursuant to 49 C.F.R. 18.12.²

11 d. ²[Any] A² prime contractor, subcontractor or
12 subsubcontractor ²[who is not paid as required by this section]²
13 may, after providing seven calendar days' written notice to the
14 party failing to make the required payments, suspend performance
15 of a construction contract, without penalty for breach of contract,
16 until the payment required pursuant to this section is made², if the
17 contractor, subcontractor or subsubcontractor: is not paid as
18 required by this section; is not provided a written statement of the
19 amount withheld and the reason for the withholding; and the payor
20 is not engaged in a good faith effort to resolve the reason for the
21 withholding. The provisions of this subsection d. shall not apply to
22 any transportation project as defined in section 3 of P.L. 1984, c.73
23 (C.27:1B-3), if that project receives federal funding and the
24 application of this provision would jeopardize the funding because
25 the owner could not meet the federal standards for financial
26 management systems as outlined in 49 C.F.R. 18.20².

27 e. ¹(1)¹ The rights, remedies or protections provided by this
28 section for prime contractors, subcontractors and subsubcontractors
29 shall be in addition to other remedies provided pursuant to any
30 other provision of State law. To the extent that the provisions of
31 this section provide greater rights, remedies or protections for prime
32 contractors, subcontractors and subsubcontractors than other
33 provisions of State law, the provisions of this section shall
34 supersede those other provisions.

35 ¹(2) No provision of this section shall be construed as restricting
36 in any way the rights or remedies provided by any other applicable
37 State or federal law to an owner who is a resident homeowner or
38 purchaser with respect to the real property being improved.¹

39 f. All contracts for the improvement of structures entered into
40 after the effective date of P.L. , c. ²[(C.)]² (pending before
41 the Legislature as this bill) between owners, prime contractors,
42 subcontractors or subsubcontractors shall provide that disputes
43 regarding whether a party has failed to make payments required
44 pursuant to this section ²[shall] may² be submitted to a process of
45 ²[binding arbitration under the 'expedited' rules and guidelines of
46 the American Arbitration Association ¹[, prior to any submission to
47 a court for adjudication]¹. Arbitration required] alternative dispute

1 resolution. Alternative dispute resolution permitted² by this section
2 shall not apply to disputes concerning the bid solicitation or award
3 process, or to the formation of contracts or subcontracts. In any
4 ²civil² action ²[or arbitration]² brought to collect payments ²[or
5 resolve disputes]² pursuant to this section, the action ²[or
6 arbitration]² shall be conducted inside of this State and the
7 prevailing party shall be awarded reasonable costs and attorney
8 fees.

9 (cf: P.L.1991, c.133, s.2)

10

11 3. This act shall take effect immediately, but shall not apply to
12 contracts for the improvement of structures entered into before the
13 effective date.