

ASSEMBLY, No. 3174

STATE OF NEW JERSEY

212th LEGISLATURE

INTRODUCED JUNE 1, 2006

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Assemblyman NEIL M. COHEN

District 20 (Union)

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SYNOPSIS

Concerns the prompt payment of construction contracts.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/20/2006)

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

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

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

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

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

32 "Real property" means the real estate that is improved upon or to
33 be improved upon.

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

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

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

41

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

44 2. a. If a prime contractor has performed in accordance with the
45 provisions of a contract with the owner and the billing for the work

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 has been approved and certified by the owner or the owner's
2 authorized approving agent, the owner shall pay the amount due to
3 the prime contractor for each periodic payment, final payment or
4 retainage monies not more than 20 calendar days after the billing
5 date, which for a periodic billing, shall be the periodic billing date
6 specified in the contract. The billing shall be deemed approved and
7 certified 10 days after the owner receives it unless the owner
8 provides, before the end of the 10-day period, a written statement of
9 the amount withheld and the reason for withholding payment.

10 b. If a subcontractor or subsubcontractor has performed in
11 accordance with the provisions of ~~his~~ its contract with the
12 ~~general~~ prime contractor or subcontractor and the work has been
13 accepted by the owner, the owner's authorized approving agent, or
14 ~~general~~ the prime contractor, as applicable, and the parties have
15 not otherwise agreed in writing, the prime contractor shall pay to
16 ~~his~~ its subcontractor and the subcontractor shall pay to ~~his~~ its
17 subsubcontractor within 10 calendar days of the receipt of each
18 periodic payment, final payment or receipt of retainage monies, the
19 full amount received for the work of the subcontractor or
20 subsubcontractor based on the work completed or the services
21 rendered under the applicable contract. In the case of ongoing work
22 on the same project for which partial payments are made, the
23 amount of money owed for work already completed shall only be
24 payable if the subcontractor or subsubcontractor is performing to
25 the satisfaction of the prime contractor or subcontractor, as
26 applicable.

27 c. If a payment due pursuant to the provisions of this section is
28 not made in a timely manner, the delinquent party shall be liable for
29 the amount of money owed under the contract, plus interest at a rate
30 equal to the prime rate plus 1%. Interest on amounts due pursuant
31 to this section shall be paid to the prime contractor, subcontractor or
32 subsubcontractor for the period beginning on the day after the
33 required payment date and ending on the day on which the check
34 for payment has been drawn.

35 d. Any prime contractor, subcontractor or subsubcontractor who
36 is not paid as required by this section may, after providing seven
37 calendar days' written notice to the party failing to make the
38 required payments, suspend performance of a construction contract,
39 without penalty for breach of contract, until the payment required
40 pursuant to this section is made.

41 e. (1) The rights, remedies or protections provided by this section
42 for prime contractors, subcontractors and subsubcontractors shall be
43 in addition to other remedies provided pursuant to any other
44 provision of State law. To the extent that the provisions of this
45 section provide greater rights, remedies or protections for prime
46 contractors, subcontractors and subsubcontractors than other
47 provisions of State law, the provisions of this section shall
48 supersede those other provisions.

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

5 f. All contracts for the improvement of structures entered into
6 after the effective date of P.L. , c. (C.) (pending before the
7 Legislature as this bill) between owners, prime contractors,
8 subcontractors or subsubcontractors shall provide that disputes
9 regarding whether a party has failed to make payments required
10 pursuant to this section shall be submitted to a process of binding
11 arbitration under the expedited rules and guidelines of the American
12 Arbitration Association. Arbitration required by this section shall
13 not apply to disputes concerning the bid solicitation or award
14 process, or to the formation of contracts or subcontracts. In any
15 action or arbitration brought to collect payments or resolve disputes
16 pursuant to this section, the action or arbitration shall be conducted
17 inside of this State and the prevailing party shall be awarded
18 reasonable costs and attorney fees.

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

20
21 3. This act shall take effect immediately, but shall not apply to
22 contracts for the improvement of structures entered into before the
23 effective date.

24 25 26 STATEMENT

27
28 This bill provides procedures and remedies for prime contractors,
29 subcontractors and subsubcontractors who are not paid in a timely
30 way in connection with a public or private construction contract.

31 If a prime contractor performs in accordance with a construction
32 contract and the billing for the work has been approved and
33 certified by the owner, the bill, requires the owner to pay the
34 amount due to the prime contractor each periodic payment, final
35 payment or retainage monies not more than 20 calendar days after
36 the billing date. The billing is deemed approved and certified 10
37 days after the owner receives it unless the owner provides, before
38 the end of the 10-day period, a written statement of the amount
39 withheld and the reason for withholding payment.

40 The bill provides that if payments are late, the project owner is
41 liable for the amount of money owed under the contract, plus
42 interest at a rate equal to the prime rate plus 1%. Current law
43 establishing that liability applies it to contractors and
44 subcontractors, but not owners.

45 The bill permits any prime contractor, subcontractor or
46 subsubcontractor who is not paid as required to suspend
47 performance of a construction contract, after giving seven calendar
48 day's written notice to the party failing to make the required

1 payments, without penalty for breach of contract, until the required
2 payment is made.

3 The bill, requires all construction contracts between owners,
4 prime contractors, subcontractors or subsubcontractors entered into
5 after the effective date of the bill to provide that disputes regarding
6 whether a party has failed to make required payments be submitted
7 to binding arbitration under the expedited rules of the American
8 Arbitration Association. Arbitration required by the bill would not
9 apply to disputes concerning the bid solicitation or award process,
10 or to the formation of contracts or subcontracts. The bill requires
11 that actions and arbitrations brought to collect payments or resolve
12 disputes pursuant to the bill be conducted inside of this State and
13 that the prevailing party be awarded reasonable costs and attorney
14 fees.

15 The bill specifies that no provision of the bill shall be construed
16 as restricting the rights or remedies provided by any other
17 applicable State or federal law to an owner who is a resident
18 homeowner or purchaser with respect to the real property being
19 improved.

20 The rights, remedies or protections provided by the bill are in
21 addition to other remedies provided under any other State law. To
22 the extent that the bill's provisions provide greater rights, remedies
23 or protections for prime contractors, subcontractors and
24 subsubcontractors than other State laws, the provisions of the bill
25 supersede the other laws. At the same time, the bill specifies that it
26 does not restrict any rights or remedies provided to owners under
27 any other State or federal law.