

P.L. 2006, CHAPTER 96, *approved September 1, 2006*
Senate, No. 1726 (*Second Reprint*)

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

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 connection with a contract to improve real property.
2 (cf: P.L.1991, c.133, s.1)

3
4 2. Section 2 of P.L.1991, c.133 (C.2A:30A-2) is amended to
5 read as follows:

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

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

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

14 d. ²Any ^A² prime contractor, subcontractor or
15 subsubcontractor ²who is not paid as required by this section²
16 may, after providing seven calendar days' written notice to the
17 party failing to make the required payments, suspend performance
18 of a construction contract, without penalty for breach of contract,
19 until the payment required pursuant to this section is made², if the
20 contractor, subcontractor or subsubcontractor: is not paid as
21 required by this section; is not provided a written statement of the
22 amount withheld and the reason for the withholding; and the payor
23 is not engaged in a good faith effort to resolve the reason for the
24 withholding. The provisions of this subsection d. shall not apply to
25 any transportation project as defined in section 3 of P.L. 1984, c.73
26 (C.27:1B-3), if that project receives federal funding and the
27 application of this provision would jeopardize the funding because
28 the owner could not meet the federal standards for financial
29 management systems as outlined in 49 C.F.R. 18.20².

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

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

42 f. All contracts for the improvement of structures entered into
43 after the effective date of P.L. , c. ²[(C.)]² (pending before
44 the Legislature as this bill) between owners, prime contractors,
45 subcontractors or subsubcontractors shall provide that disputes
46 regarding whether a party has failed to make payments required
47 pursuant to this section ²[shall] may² be submitted to a process of

1 ²binding arbitration under the ¹expedited¹ rules and guidelines of
2 the American Arbitration Association ¹[, prior to any submission to
3 a court for adjudication]¹. Arbitration required² alternative dispute
4 resolution. Alternative dispute resolution permitted² by this section
5 shall not apply to disputes concerning the bid solicitation or award
6 process, or to the formation of contracts or subcontracts. In any
7 ²civil² action ²[or arbitration]² brought to collect payments ²[or
8 resolve disputes]² pursuant to this section, the action ²[or
9 arbitration]² shall be conducted inside of this State and the
10 prevailing party shall be awarded reasonable costs and attorney
11 fees.

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

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

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21 _____
Concerns the prompt payment of construction contracts.