

[First Reprint]

SENATE, No. 1726

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED MARCH 21, 2006

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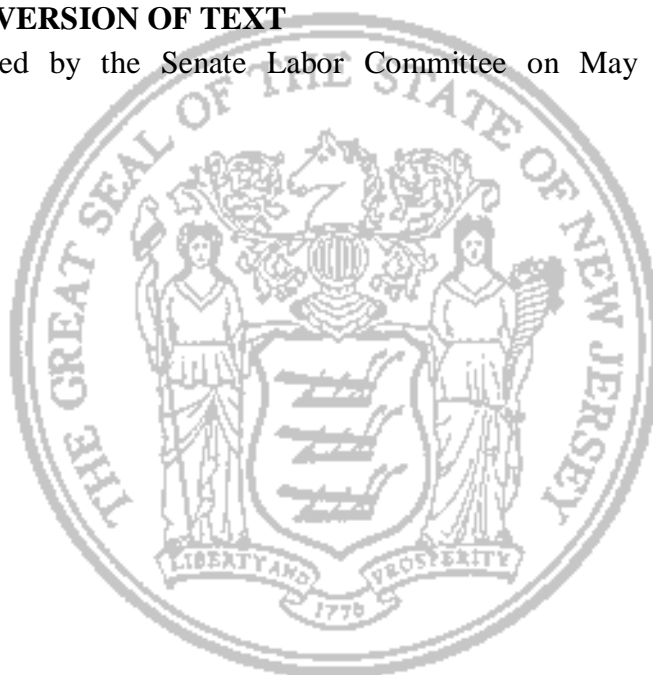
Senator Coniglio

SYNOPSIS

Concerns the prompt payment of construction contracts.

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee on May 4, 2006, with amendments.



(Sponsorship Updated As Of: 7/3/2006)

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

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.

1 provisions of a contract with the owner and the billing for the work
2 has been approved and certified by the owner or the owner's
3 'authorized' approving agent, the owner shall pay the amount due
4 to the prime contractor 'for' each periodic payment, final payment
5 or retainage monies not more than '[10] 20' calendar days after the
6 billing date, which for a periodic billing, shall be the periodic
7 billing date specified in the contract. The billing shall be deemed
8 approved and certified '[15] 10' days after the owner receives it
9 unless the owner provides, before the end of the '[15]10'-day
10 period, a written statement of the amount withheld and the reason
11 for withholding payment. '[If the owner finds a portion of the work
12 not to be in accordance with the contract, payment may be withheld
13 for the reasonable value of that portion only. Payment shall be
14 made for any portion of the contract which has a separate price and
15 for which the work has been performed in accordance with the
16 provisions of the contract.]'

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

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

42 d. Any prime contractor, subcontractor or subsubcontractor who
43 is not paid as required by this section may, after providing seven
44 calendar days' written notice to the party failing to make the
45 required payments, suspend performance of a construction contract,

1 without penalty for breach of contract, until the payment required
2 pursuant to this section is made.

3 e. ¹(1)¹ The rights, remedies or protections provided by this
4 section for prime contractors, subcontractors and subsubcontractors
5 shall be in addition to other remedies provided pursuant to any
6 other provision of State law. To the extent that the provisions of
7 this section provide greater rights, remedies or protections for prime
8 contractors, subcontractors and subsubcontractors than other
9 provisions of State law, the provisions of this section shall
10 supersede those other provisions.

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

15 f. All contracts for the improvement of structures entered into
16 after the effective date of P.L. , c. (C.) (pending before the
17 Legislature as this bill) between owners, prime contractors,
18 subcontractors or subsubcontractors shall provide that disputes
19 regarding whether a party has failed to make payments required
20 pursuant to this section shall be submitted to a process of binding
21 arbitration under the 'expedited' rules and guidelines of the
22 American Arbitration Association '[, prior to any submission to a
23 court for adjudication]'. Arbitration required by this section shall
24 not apply to disputes concerning the bid solicitation or award
25 process, or to the formation of contracts or subcontracts. In any
26 action or arbitration brought to collect payments or resolve disputes
27 pursuant to this section, the action or arbitration shall be conducted
28 inside of this State and the prevailing party shall be awarded
29 reasonable costs and attorney fees.

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

31
32 3. This act shall take effect immediately, but shall not apply to
33 contracts for the improvement of structures entered into before the
34 effective date.