

**SENATE, No. 1726**

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**STATE OF NEW JERSEY**

**212th LEGISLATURE**

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INTRODUCED MARCH 21, 2006

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Senator FRED H. MADDEN, JR.**

**District 4 (Camden and Gloucester)**

**SYNOPSIS**

Concerns the prompt payment of construction contracts.

**CURRENT VERSION OF TEXT**

As introduced.



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

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

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

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

45 e. The rights, remedies or protections provided by this section  
46 for prime contractors, subcontractors and subsubcontractors shall be  
47 in addition to other remedies provided pursuant to any other

1 provision of State law. To the extent that the provisions of this  
2 section provide greater rights, remedies or protections for prime  
3 contractors, subcontractors and subsubcontractors than other  
4 provisions of State law, the provisions of this section shall  
5 supersede those other provisions.

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

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

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

## 26 27 28 STATEMENT

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

33 The bill requires that if a prime contractor has performed in  
34 accordance with the provisions of a construction contract and the  
35 billing for the work has been approved and certified by the owner,  
36 the owner shall pay the amount due to the prime contractor each  
37 periodic payment, final payment or retainage monies not more than  
38 10 calendar days after the billing date. The billing shall be deemed  
39 approved and certified 15 days after the owner receives it unless the  
40 owner provides, before the end of the 15-day period, a written  
41 statement of the amount withheld and the reason for withholding  
42 payment. If the owner finds a portion of the work not to be in  
43 accordance with the contract, payment may be withheld for only  
44 that portion. Payment shall be made for any portion of the contract  
45 which has a separate price and for which the work has been  
46 performed in accordance with the provisions of the contract.

47 The bill provides that if payments are late, the project owner is  
48 liable for the amount of money owed under the contract, plus

1 interest at a rate equal to the prime rate plus 1%. Current law  
2 establishing that liability applies it to contractors and  
3 subcontractors, but not owners.

4 The bill permits any prime contractor, subcontractor or  
5 subsubcontractor who is not paid as required to suspend  
6 performance of a construction contract, after giving seven calendar  
7 day's written notice to the party failing to make the required  
8 payments, without penalty for breach of contract, until the required  
9 payment is made.

10 The rights, remedies or protections provided by the bill are in  
11 addition to other remedies provided under any other State law. To  
12 the extent that the bill's provisions provide greater rights, remedies  
13 or protections for prime contractors, subcontractors and  
14 subsubcontractors than other State laws, the provisions of the bill  
15 supersede the other laws.

16 The bill requires all construction contracts between owners,  
17 prime contractors, subcontractors or subsubcontractors entered into  
18 after the effective date of the bill to provide that disputes regarding  
19 whether a party has failed to make required payments, be submitted  
20 to binding arbitration, prior to any submission to a court for  
21 adjudication. Arbitration required by the bill would not apply to  
22 disputes concerning the bid solicitation or award process, or to the  
23 formation of contracts or subcontracts. The bill requires that  
24 actions and arbitrations brought to collect payments or resolve  
25 disputes pursuant to the bill be conducted inside of this State and  
26 that the prevailing party be awarded reasonable costs and attorney  
27 fees.