

ASSEMBLY, No. 5801

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED NOVEMBER 7, 2019

Sponsored by:

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

SYNOPSIS

Concerns responsibility of owners for wage claims against subcontractors.

CURRENT VERSION OF TEXT

As introduced.



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2

1 AN ACT concerning the responsibility of owners for wage claims
2 against subcontractors and supplementing chapter 11 of Title 34
3 of the Revised Statutes.

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

7
8 1. a. (1) For any contract entered into on or after January 1,
9 2020 for the erection, construction, reconstruction, alteration,
10 maintenance or repair of any building in the State, including, but
11 not limited to, any such work performed under a contract entered
12 into on or after January 1, 2020 under which workers are required
13 by any State law to be paid the prevailing wage rates set pursuant to
14 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
15 56.25 et seq.), the owner making or taking the contract shall
16 assume, and be responsible for, any debt owed to a wage claimant,
17 or third party on the wage claimant's behalf, incurred by a
18 subcontractor at any tier acting under, by, or for the owner for the
19 wage claimant's performance of labor under the contract.

20 (2) The owner's responsibility under the provisions of this
21 section shall extend only to unpaid wages, benefits and other
22 contributions, plus any interest owed, but shall not extend to
23 penalties or liquidated damages.

24 (3) An owner or any other person shall not evade, or commit
25 any act that negates, the requirements of this section. This section
26 does not prohibit an owner or subcontractor at any tier from
27 establishing by contract or enforcing any otherwise lawful remedies
28 against a subcontractor it hires for responsibility created by the
29 nonpayment of wages, benefits and other contributions, by that
30 subcontractor or by a subcontractor at any tier working under that
31 subcontractor.

32 b. (1) The Commissioner of Labor and Workforce
33 Development may enforce against an owner the responsibility for
34 unpaid wages created by this section by any action that the
35 commissioner is authorized to undertake regarding responsibility
36 for unpaid wages under the provisions of chapter 11 of Title 34 of
37 the Revised Statutes.

38 (2) A joint labor-management cooperation committee
39 established pursuant to the federal Labor Management Cooperation
40 Act of 1978 (29 U.S.C. s.175a) which includes a union representing
41 any of the workers employed in a project subject to the provisions
42 of this section may bring an action in any court of competent
43 jurisdiction against an owner or subcontractor at any tier for unpaid
44 wages, benefits and other contributions owed to a wage claimant by
45 the owner or subcontractor for the performance of any work subject
46 to the provisions of this section, including unpaid wages owed by
47 the owner, pursuant to subsection a. of this section. The court shall
48 award a prevailing plaintiff in such an action its reasonable

1 attorney's fees and costs, including expert witness fees. Prior to
2 commencement of an action against an owner to enforce the
3 responsibility created by subsection a. of this section, the committee
4 shall provide the owner and subcontractor that employed the wage
5 claimant with at least 30 days' notice by first-class mail. The notice
6 need only describe the general nature of the claim and shall not
7 limit the responsibility of the owner or preclude subsequent
8 amendments of an action to encompass additional wage claimants
9 employed by the subcontractor.

10 (3) No party other than the parties indicated in this subsection b.
11 may bring an action against an owner to enforce the responsibility
12 created by subsection a. of this section.

13 c. (1) Upon request by an owner, project manager, or
14 contractor to a subcontractor, the subcontractor shall provide
15 payroll records of its employees who are providing labor on work
16 subject to the provisions of this section, which payroll records shall
17 include wages and, as applicable, other benefit payments or
18 contributions. The payroll records shall not be modified except to
19 prevent disclosure of an individual's full social security number, but
20 shall provide the last four digits of the social security number.

21 (2) Upon request of an owner to a project manager, contractor,
22 or subcontractor, the subcontractor and any lower tier
23 subcontractors under contract to the subcontractor shall provide the
24 owner information that includes the project name, name and address
25 of the subcontractor, owner with whom the subcontractor is under
26 contract, anticipated start date, duration, and estimated
27 journeyworker and apprentice hours, and contact information for its
28 subcontractors on the project.

29 (3) A subcontractor's failure to comply with this section shall
30 not relieve an owner from any of the obligations contained in this
31 section.

32 (4) Any subcontractor who fails to provide records or
33 information requested pursuant to this subsection f. within 14 days
34 of when the request was made shall be subject to a civil penalty in
35 an amount not to exceed \$7,500 for each day the employer fails to
36 provide the notification, collectible by the commissioner in a
37 summary proceeding pursuant to the "Penalty Enforcement Law of
38 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The commissioner
39 shall have the authority to waive this penalty.

40 d. Unless otherwise provided by law, property of the owner
41 may be attached, after trial, for the payment of any judgment
42 received pursuant to this section.

43 e. An action brought pursuant to this section shall be filed
44 within two years from the date of the occurrence of the incident
45 alleged in the action.

46 f. This section shall not apply to work performed by an
47 employee of the State, a special district, a city, a county, a city and
48 county, or any political subdivision of the State.

1 g. For purposes of this section, “owner” means an entity that
2 has a direct contractual relationship with a contractor or project
3 manager and “subcontractor” means a contractor that does not have
4 a direct contractual relationship with an owner, but has a
5 contractual relationship with a project manager, a contractor or with
6 another subcontractor for work performed on work subject to the
7 provisions of this section.

8 h. Nothing in this section shall alter the obligation under any
9 other provision of State law of an owner to pay in a timely manner a
10 contractor, or of an owner to pay in a timely manner a
11 subcontractor, or any penalties for failing to do so, except that the
12 owner may withhold as “disputed” all sums owed if a subcontractor
13 does not provide in a timely manner the information requested
14 under paragraphs (1) and (2) of subsection c. of this section, until
15 that information is provided.

16
17 2. If any clause, sentence, paragraph, section or other part of
18 this act shall be adjudged by any court of competent jurisdiction to
19 be invalid, including any judgment made pursuant to R.S.1:1-10
20 that the part is unconstitutional, invalid, or inoperative, the
21 judgment shall not affect, impair or invalidate the remainder of this
22 act, but shall be confined in its operation to the clause, sentence,
23 paragraph, section or other part directly involved in the controversy
24 in which the judgment shall have been rendered.

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26 3. This act shall take effect immediately.

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29 STATEMENT

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31 This bill, for any contract for the erection, construction,
32 reconstruction, alteration, maintenance or repair of any building in
33 the State, including any such contract under which workers are
34 required to be paid prevailing wage rates set pursuant to the “New
35 Jersey Prevailing Wage Act,” requires the owner to be responsible
36 for debt owed to a wage claimant that is incurred by any
37 subcontractor acting under, by, or for the owner for the wage
38 claimant’s performance of labor under the contract.

39 The bill authorizes the Commissioner of Labor and Workforce
40 Development to bring an action under specified statutes or in a civil
41 action to enforce this responsibility. It also authorizes a joint labor-
42 management cooperation committee to bring a civil action to
43 enforce the responsibility against an owner under the bill.

44 The bill requires a subcontractor, upon request from the owner,
45 to provide specified information regarding the subcontractor’s and
46 third party’s work on the project and provides that the owner may
47 withhold disputed sums upon the subcontractor’s failure to provide
48 the requested information.

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1 The bill does not apply to any work being done by an employee
2 of the State or any political subdivision of the State, and provides
3 that its obligations and remedies are in addition to any other remedy
4 provided by law.

5 The purpose of this bill is to advance the well-established State
6 concern of ensuring the full payment of employees as required by
7 law by enhancing available remedies in certain cases of illegal
8 failure to provide compensation to employees, without reducing any
9 existing remedies.