

ASSEMBLY, No. 249

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman WAYNE P. DEANGELO

District 14 (Mercer and Middlesex)

Assemblyman ERIC HOUGHTALING

District 11 (Monmouth)

SYNOPSIS

Requires prompt payment of certain construction contracts.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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:*

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

9 2. a. If a prime contractor has performed in accordance with
10 the provisions of a contract with the owner and the billing for the
11 work has been approved and certified by the owner or the owner's
12 authorized approving agent, the owner shall pay the amount due to
13 the prime contractor for each periodic payment, final payment or
14 retainage monies not more than 30 calendar days after the billing
15 date, which for a periodic billing, shall be the periodic billing date
16 specified in the contract. The billing shall be deemed approved and
17 certified 20 days after the owner receives it unless the owner
18 provides, before the end of the 20-day period, a written statement of
19 the amount withheld and the reason for withholding payment,
20 except that in the case of a public or governmental entity that
21 requires the entity's governing body to vote on authorizations for
22 each periodic payment, final payment or retainage monies, the
23 amount due may be approved and certified at the next scheduled
24 public meeting of the entity's governing body, and paid during the
25 entity's subsequent payment cycle, provided this exception has been
26 defined in the bid specifications and contract documents.

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

43 c. If a payment due pursuant to the provisions of this section is
44 not made in a timely manner, the delinquent party shall be liable for
45 the amount of money owed under the contract, plus interest at a rate

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 equal to the prime rate plus 1%. Interest on amounts due pursuant to
2 this section shall be paid to the prime contractor, subcontractor or
3 subsubcontractor for the period beginning on the day after the
4 required payment date and ending on the day on which the check
5 for payment has been drawn. The provisions of this subsection c.
6 shall not apply to any transportation project as defined in section 3
7 of P.L. 1984, c.73 (C.27:1B-3), if that project receives federal
8 funding and the awarding agency has been notified by the federal
9 government that it will be classified as a high risk grantee pursuant
10 to 49 C.F.R. 18.12.

11 d. A prime contractor, subcontractor or subsubcontractor may,
12 after providing seven calendar days' written notice to the party
13 failing to make the required payments, suspend performance of a
14 construction contract, without penalty for breach of contract, until
15 the payment required pursuant to this section is made, if the
16 contractor, subcontractor or subsubcontractor: is not paid as
17 required by this section; is not provided a written statement of the
18 amount withheld and the reason for the withholding; and the payor
19 is not engaged in a good faith effort to resolve the reason for the
20 withholding. The provisions of this subsection d. shall not apply to
21 any transportation project as defined in section 3 of P.L. 1984, c.73
22 (C.27:1B-3), if that project receives federal funding and the
23 application of this provision would jeopardize the funding because
24 the owner could not meet the federal standards for financial
25 management systems as outlined in 49 C.F.R. 18.20.

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

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

39 f. All contracts for the improvement of structures entered into
40 after the effective date of P.L.2006, c.96 between owners, prime
41 contractors, subcontractors or subsubcontractors shall provide that
42 disputes regarding whether a party has failed to make payments
43 required pursuant to this section may be submitted to a process of
44 alternative dispute resolution. Alternative dispute resolution
45 permitted by this section shall not apply to disputes concerning the
46 bid solicitation or award process, or to the formation of contracts or
47 subcontracts. In any civil action brought to collect payments
48 pursuant to this section, the action shall be conducted inside of this

1 State and the prevailing party shall be awarded reasonable costs and
2 attorney fees.

3 g. (1) All money paid by an owner to the prime contractor, all
4 money paid by the prime contractor to the subcontractor, and all
5 money paid by the subcontractor to the subsubcontractor, pursuant
6 to the provisions of any contract for the improvement of real
7 property shall constitute a trust fund in the hands of the prime
8 contractor, the subcontractor, or the subsubcontractor, until all
9 claims for labor, materials and other charges incurred in connection
10 with the performance of the contract have been fully paid. A
11 contract for the improvement of real property shall not contain any
12 provision allowing any party to the contract to deviate from the
13 imposition of a trust fund as provided in this subsection, and any
14 provision of the contract to that effect shall be void and
15 unenforceable.

16 (2) In the event of any violation, misuse diversion, or any other
17 unlawful use of all or part of the trust funds by a corporate entity,
18 the responsibilities of maintaining and discharging the trust funds
19 shall accrue personally to any corporate officer of the prime
20 contractor, subcontractor, or subsubcontractor, who shall have
21 responsibility for the finances of the project and the obligation to
22 pay subcontractors, subsubcontractors and suppliers in accordance
23 with the provisions of this section, or to any employee of the
24 corporate entity who has executed a false certification regarding
25 alleged payments to subcontractors, subsubcontractors or suppliers.
26 The corporate officer, or employee of the corporate entity, shall be
27 held personally liable for participation in the corporate entity's
28 wrongdoing even if the corporate officer, or employee of the
29 corporate entity, derived no personal benefit.

30 (cf: P.L.2006, c.96, s.2)

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32 2. This act shall take effect immediately.

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STATEMENT

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37 This bill amends section 2 of P.L.1991, c.133 (C.2A:30A-2),
38 which provides for the prompt payment of a prime contractor,
39 subcontractor, or subsubcontractor in connection with a public or
40 private contract. This bill requires, with regard to a contract for the
41 improvement of real property, that all money paid by an owner to a
42 prime contractor, by a prime contractor to a subcontractor, or by a
43 subcontractor to a subsubcontractor, constitutes a trust fund in the
44 hands of the prime contractor, subcontractor, or subsubcontractor,
45 until all claims for labor, materials and other charges incurred in
46 connection with the performance of the contract have been fully
47 paid.

1 The bill prohibits any contract for the improvement of real
2 property to include a provision allowing any party to the contract to
3 deviate from the imposition of a trust fund as required by the bill.
4 The bill also provides that in the event of any violation, misuse,
5 diversion, or any other unlawful use of all or part of the trust funds
6 by a corporate entity, the responsibilities of maintaining and
7 discharging the trust funds shall accrue personally to any corporate
8 officer of the prime contractor, subcontractor, or subsubcontractor
9 and the corporate officer shall be held personally liable for
10 participation in the corporate entity's wrongdoing even if the
11 corporate officer derived no personal benefit.