

ASSEMBLY, No. 1136

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

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SYNOPSIS

Concerns responsibility of contractors for wage claims against subcontractors.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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:*

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8 1. a. (1) For any contract entered into on or after January 1,
9 2020 for construction, reconstruction, demolition, alteration,
10 maintenance, including painting and decorating, or repair in the
11 State other than work on an owner-occupied residence, including,
12 but not limited to, any such work performed under a contract
13 entered into on or after January 1, 2020 under which workers are
14 required by any State law to be paid the prevailing wage rates set
15 pursuant to the “New Jersey Prevailing Wage Act,” P.L.1963, c.150
16 (C.34:11-56.25 et seq.), the contractor entering into a contract shall
17 assume, and be responsible for, any debt owed to a worker, or third
18 party on the worker’s behalf, incurred by a subcontractor at any tier
19 acting under, by, or for the contractor for the worker’s performance
20 of labor under the contract, unless the worker’s performance of
21 labor under the contract is pursuant to a collective bargaining
22 agreement to which the employing contractor or subcontractor is
23 signatory, wherein there are lawful remedies by which unpaid
24 wages may be collected.

25 (2) The contractor’s responsibility under the provisions of this
26 section shall extend to unpaid wages plus any interest owed, and
27 shall extend to penalties or liquidated damages.

28 (3) A contractor or any other person shall not evade, or commit
29 any act that negates, the requirements of this section. This section
30 does not prohibit a contractor or subcontractor at any tier from
31 establishing by contract or enforcing any otherwise lawful remedies
32 against a subcontractor it hires for responsibility created by the
33 nonpayment of wages by that subcontractor or by a subcontractor at
34 any tier working under that subcontractor.

35 b. (1) The Commissioner of Labor and Workforce
36 Development may enforce against a contractor the responsibility for
37 unpaid wages created by this section by any action that the
38 commissioner is authorized to undertake regarding responsibility
39 for unpaid wages under the provisions of chapter 11 of Title 34 of
40 the Revised Statutes, unless the worker’s performance of labor
41 under the contract is pursuant to a collective bargaining agreement
42 to which the employing contractor or subcontractor is signatory,
43 wherein there are lawful remedies by which unpaid wages may be
44 collected.

45 (2) A joint labor-management cooperation committee
46 established pursuant to the federal Labor Management Cooperation
47 Act of 1978 (29 U.S.C. s.175a) which includes a union representing
48 any of the workers employed in a project subject to the provisions

1 of this section may bring an action in any court of competent
2 jurisdiction against a contractor or subcontractor at any tier for
3 unpaid wages owed to a worker's by the contractor or subcontractor
4 for the performance of any work subject to the provisions of this
5 section, including unpaid wages owed by the contractor, pursuant to
6 subsection a. of this section. The committee shall notify the
7 Department of Labor and Workforce Development when the
8 committee brings the action. The court shall award a prevailing
9 plaintiff in such an action its reasonable attorney's fees and costs,
10 including expert witness fees. Prior to commencement of an action
11 against a contractor to enforce the responsibility created by
12 subsection a. of this section, the committee shall provide the
13 contractor and subcontractor that employed the worker with at least
14 30 days' notice by first-class mail. The notice need only describe
15 the general nature of the claim and shall not limit the responsibility
16 of the contractor or preclude subsequent amendments of an action to
17 encompass additional workers employed by the subcontractor,
18 unless the worker's performance of labor under the contract is
19 pursuant to a collective bargaining agreement to which the
20 employing contractor or subcontractor is signatory, wherein there
21 are lawful remedies by which unpaid wages may be collected.

22 (3) No party other than the parties indicated in this subsection b.
23 may bring an action against a contractor to enforce the
24 responsibility created by subsection a. of this section.

25 c. (1) Upon request by a contractor, project manager, or
26 contractor to a subcontractor, the subcontractor shall provide
27 payroll records of its employees who are providing labor on work
28 subject to the provisions of this section, which payroll records shall
29 include all wages. The payroll records shall not be modified except
30 to prevent disclosure of an individual's full social security number,
31 but shall provide the last four digits of the social security number.

32 (2) Upon request of a contractor to a project manager,
33 contractor, or subcontractor, the subcontractor and any lower tier
34 subcontractors under contract to the subcontractor shall provide the
35 contractor information that includes the project name, name and
36 address of the subcontractor, contractor with whom the
37 subcontractor is under contract, anticipated start date, duration, and
38 estimated journeyworker and apprentice hours, and contact
39 information for its subcontractors on the project.

40 (3) A subcontractor's failure to comply with this section shall
41 not relieve a contractor from any of the obligations contained in this
42 section.

43 (4) Any subcontractor who fails to provide records or
44 information requested pursuant to this subsection within 14 days of
45 when the request was made shall be subject to a civil penalty in an
46 amount not to exceed \$7,500 for each day the employer fails to
47 provide the requested records or information, collectible by the
48 commissioner in a summary proceeding pursuant to the "Penalty

1 Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).

2 The commissioner shall have the authority to waive this penalty.

3 d. Unless otherwise provided by law, property of the contractor
4 may be attached, after trial, for the payment of any judgment
5 received pursuant to this section.

6 e. An action brought pursuant to this section shall be filed
7 within two years from the date of the occurrence of the incident
8 alleged in the action.

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

12 g. For purposes of this section, “contractor” means a contractor
13 that has a direct contractual relationship with an owner and
14 “subcontractor” means a contractor that does not have a direct
15 contractual relationship with an owner, including a contractor that
16 has a contractual relationship with a contractor or with another
17 subcontractor.

18 h. Nothing in this section shall alter the obligation under any
19 other provision of State law of a contractor to pay in a timely
20 manner a contractor, or of a contractor to pay in a timely manner a
21 subcontractor, or any penalties for failing to do so, except that the
22 contractor may withhold as “disputed” all sums owed if a
23 subcontractor does not provide in a timely manner the information
24 requested under paragraphs (1) and (2) of subsection c. of this
25 section, until that information is provided.

26

27 2. If any clause, sentence, paragraph, section or other part of
28 this act shall be adjudged by any court of competent jurisdiction to
29 be invalid, including any judgment made pursuant to R.S.1:1-10
30 that the part is unconstitutional, invalid, or inoperative, the
31 judgment shall not affect, impair or invalidate the remainder of this
32 act, but shall be confined in its operation to the clause, sentence,
33 paragraph, section or other part directly involved in the controversy
34 in which the judgment shall have been rendered.

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36 3. This act shall take effect immediately.

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STATEMENT

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41 This bill, for any contract for the erection, construction,
42 reconstruction, alteration, maintenance or repair of any building in the
43 State other than a owner-occupied residence, including any such
44 contract under which workers are required to be paid prevailing wage
45 rates set pursuant to the “New Jersey Prevailing Wage Act,” requires
46 the contractor to be responsible for debt owed to a worker that is
47 incurred by any subcontractor acting under, by, or for the contractor
48 for the wage claimant’s performance of labor under the contract.

1 The bill authorizes the Commissioner of Labor and Workforce
2 Development to bring an action under specified statutes or in a civil
3 action to enforce this responsibility. It also authorizes a joint labor-
4 management cooperation committee to bring a civil action to enforce
5 the responsibility against a contractor under the bill.

6 The bill requires a subcontractor, upon request from the contractor,
7 to provide specified information regarding the subcontractor's and
8 third party's work on the project and provides that the contractor may
9 withhold disputed sums upon the subcontractor's failure to provide the
10 requested information.

11 The bill does not apply to any work being done by an employee of
12 the State or any political subdivision of the State, and provides that its
13 obligations and remedies are in addition to any other remedy provided
14 by law. As amended, the bill also does not apply to work under
15 collective bargaining agreements when there are lawful remedies for
16 the collection of unpaid wages.

17 This bill: 1) requires a labor-management committee to notify
18 the Department of Labor and Workforce Development when it
19 brings an action under the bill; and 2) provides that the contractor's
20 responsibility under the bill include the payment of penalties or
21 liquidated damages.

22 The purpose of this bill is to advance the well-established State
23 concern of ensuring the full payment of employees as required by law
24 by enhancing available remedies in certain cases of illegal failure to
25 provide compensation to employees, without reducing any existing
26 remedies.