

2A:30A-1

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(Commercial  
construction  
projects--prompt  
payment)

LAWS OF: 1991

CHAPTER: 133

Bill No: A3668

Sponsor(s): Zangari & others

Date Introduced: June 11, 1990

Committee: Assembly: State Operations

Senate: -----

Amended during passage: Yes      Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: February 25, 1991

Senate: March 7, 1991

Date of Approval: May 6, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: No

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

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[SECOND REPRINT]  
ASSEMBLY, No. 3668

STATE OF NEW JERSEY

INTRODUCED JUNE 11, 1990

By Assemblymen ZANGARI, IMPREVEDUTO, Schluter,  
Kelly and Duch

1 AN ACT concerning the prompt payment of certain  
2 subcontractors.

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

6 1. As used in this act:

7 "General contractor" means a person who contracts with an  
8 owner to improve real property.

9 "Improve" means: to build, alter, repair or demolish any  
10 structure upon, connected with, on or beneath the surface of any  
11 real property; to excavate, clear, grade, fill or landscape any real  
12 property; to construct driveways and private roadways on real  
13 property; to furnish construction related materials, including  
14 trees and shrubbery, for any of the above purposes; or to perform  
15 any labor upon a structure, including any design, professional or  
16 skilled services furnished by an architect, engineer, land surveyor  
17 or landscape architect licensed or registered pursuant to the laws  
18 of this State.

19 "Structure" means all or any part of a building and other  
20 improvements to real property.

21 "Owner" means any person, including any public or  
22 governmental entity, who has an interest in the real property to  
23 be improved and who has contracted with a general contractor  
24 for such improvement to be made. "Owner" shall be deemed to  
25 include any successor in interest or agent acting on behalf of an  
26 owner.

27 "Prime rate" means the base rate on corporate loans at large  
28 United States money center commercial banks.

29 "Real property" means the real estate that is improved upon or  
30 to be improved upon <sup>1</sup>[and is designed for residential occupancy  
31 by five or more families or designed to be occupied for  
32 governmental, industrial or commercial purposes]<sup>1</sup>.

33 "Subcontractor" means any person who has contracted to  
34 furnish labor, materials or other services to a general contractor  
35 in connection with a contract to improve real property.

36 "Subsubcontractor" means any person who has contracted to  
37 furnish labor, materials or other services to a subcontractor in  
38 connection with a contract to improve real property.

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:

<sup>1</sup> Assembly ASO committee amendments adopted February 13, 1991.

<sup>2</sup> Senate floor amendments adopted March 4, 1991.

1       2. If a subcontractor or subsubcontractor has performed in  
2 accordance with the provisions of his contract with the general  
3 contractor or subcontractor and the work has been accepted by  
4 the owner or general contractor, as applicable, <sup>2</sup>and the parties  
5 have not otherwise agreed in writing,<sup>2</sup> the contractor shall pay to  
6 his subcontractor and the subcontractor shall pay to his  
7 subsubcontractor within <sup>1</sup>[seven] 10 calendar<sup>1</sup> days of the receipt  
8 of each periodic payment, final payment or receipt of retainage  
9 monies, the full amount received for the work of the  
10 subcontractor or subsubcontractor based on the work completed  
11 or the services rendered under the applicable contract. In the  
12 case of ongoing work on the same project for which partial  
13 payments are made, the amount of money owed for work already  
14 completed shall only be payable if the subcontractor or  
15 subsubcontractor is performing to the satisfaction of the  
16 contractor or subcontractor, as applicable.

17       If a payment <sup>2</sup>due pursuant to the provisions of this section<sup>2</sup> is  
18 not made in a timely manner, the delinquent party shall be liable  
19 for the amount of money owed under the contract, plus interest  
20 at a rate equal to the prime rate plus 1%. Interest on amounts  
21 due pursuant to this section shall be paid to the subcontractor or  
22 subsubcontractor for the period beginning on the day after the  
23 required payment date and ending on the day on which the check  
24 for payment has been drawn.

25       3. This act shall take effect immediately and shall be  
26 applicable to all contracts to improve real property entered into  
27 on or after the effective date.

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#### COMMERCE AND INDUSTRY

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Requires prompt payment of subcontractors.

1 his subcontractor within seven days of the receipt of each  
2 periodic payment, final payment or receipt of retainage monies,  
3 the full amount received for the work of the subcontractor or  
4 subcontractor based on the work completed or the services  
5 rendered under the applicable contract. In the case of ongoing  
6 work on the same project for which partial payments are made,  
7 the amount of money owed for work already completed shall only  
8 be payable if the subcontractor or subcontractor is performing  
9 to the satisfaction of the contractor or subcontractor, as  
10 applicable.

11 If a payment is not made in a timely manner, the delinquent  
12 party shall be liable for the amount of money owed under the  
13 contract, plus interest at a rate equal to the prime rate plus 1%.  
14 Interest on amounts due pursuant to this section shall be paid to  
15 the subcontractor or subcontractor for the period beginning on  
16 the day after the required payment date and ending on the day on  
17 which the check for payment has been drawn.

18 3. This act shall take effect immediately and shall be  
19 applicable to all contracts to improve real property entered into  
20 on or after the effective date.

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### *Sponsor* STATEMENT

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### COMMERCE AND INDUSTRY

Requires prompt payment of subcontractors.

ASSEMBLY STATE OPERATIONS AND PERSONNEL  
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3668

with committee amendments

STATE OF NEW JERSEY

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DATED: FEBRUARY 13, 1991

The Assembly State Operations and Personnel Committee reports favorably and with committee amendments Assembly Bill No. 3668.

This bill provides for the prompt payment of subcontractors and subsubcontractors furnishing labor, materials or other services to any project involving an improvement to real property. The legislation applies to private-sector projects as well as projects undertaken by public entities.

Under the bill, a subcontractor or subsubcontractor who has performed in accordance with contract provisions and whose work has been accepted by the owner or general contractor, as applicable, shall be entitled to payment from the contractor or subcontractor, as applicable, within 10 calendar days of receipt by the latter of each periodic payment, final payment or receipt of retainage monies, of the full amount received for the subcontractor's or subsubcontractor's work based on the work completed or the services rendered under the applicable contract. In the case of ongoing work on the same project for which partial payments are made, the amount of money owed for work already completed shall be payable when the subcontractor or subsubcontractor is performing to the satisfaction of the contractor or subcontractor, as applicable.

The bill provides that any late payment will be subject to interest in the amount of the prime rate plus 1%. The bill defines the prime rate as the base rate on corporate loans at large United States money center commercial banks.

COMMITTEE AMENDMENTS

The committee adopted amendments to the legislation to (1) delay the deadline by which payment to the subcontractor or subsubcontractor would have to be made to avoid penalty from seven days to 10 calendar days from the receipt by the general contractor or subcontractor of payment for the subcontractor's or subsubcontractor's work, and (2) to broaden the scope of the bill so that its provisions would be applicable to contracts involving any improvement upon real property, and not only to contracts involving an improvement which is designed for residential occupancy by five or more families or designed to be occupied for governmental, industrial or commercial purposes.