

12/14/87

34:11A-1 to 34:11A-12

LEGISLATIVE HISTORY CHECKLIST

NJSA: 34:11A-1 to 34:11A-12 (construction workers' fringe benefits funds-- certain protections)

CHAPTER 150

Laws Of: 1987

Bill No: S1597

Sponsor(s): Jackman and Garibaldi

Date Introduced: February 3, 1986

Committee: Assembly: Labor

Senate: Labor, Industry and Professions

Amended during passage: Yes Amendments denoted by asterisks according to Governor's recommendations

Date of Passage: Assembly: January 22, 1987 Re-enacted 6-18-87

Senate: July 7, 1986 Re-enacted 3-11-87

Date of Approval: June 25, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: No

Hearings: No

150

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SENATE, No. 1597

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1986

By Senators JACKMAN and GARIBALDI

Referred to Committee on Labor, Industry and Professions

AN ACT concerning construction union fringe benefits and supplementing Title 2A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Construction
2 Workers' Fringe Benefit Security Act."

1 2. As used in this act:

2 a. "Construction employer" means a person in the business of
3 building, constructing, altering or repairing any building, road,
4 bridge or structure in this State;

5 b. "Construction fund" means all moneys in the custody of the
6 owner of a project, which moneys are designated for the construc-
7 tion, alteration or repair of any private or public project;

8 c. "Fringe benefits" means any benefits agreed to be paid by a
9 construction employer to a fringe benefit fund;

10 d. "Fringe benefit fund" means any fund established pursuant
11 to the terms of a collective bargaining agreement entered into
12 between a construction employer and a representative labor organ-
13 ization, or pursuant to the terms of a fringe benefit trust indenture
14 entered into between the trustees of a fund and the construction
15 employer, for the collection, investment and payment of fringe
16 benefits;

17 e. "Prime contractor" means a construction employer who has a
18 direct contract with the owner of a public or private project;

19 f. "Private project" means the construction, repair or alteration
20 of any building, road, bridge or structure or any other improve-

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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate amendments adopted in accordance with Governor's recommendations March 9, 1987.**

21 ments to real property for any person other than this State, any
 22 agency, commission or department thereof, or any county, munici-
 23 pality or school district or any agency or instrumentality thereof;

24 g. "Public project" means the construction, alteration or repair
 25 of any building, road, bridge or structure or any other improve-
 26 ments to real property for this State, any agency, commission or
 27 department thereof, or any county, **municipality** or school district
 28 or any agency or instrumentality thereof;

29 h. "Public project owner" means the head of the public agency
 30 with jurisdiction over the public project;

31 i. "Subcontractor" means a construction employer who has a
 32 contract with a prime contractor or with the subcontractor of the
 33 prime contractor; and

34 j. "Worker" means any person engaged in a skilled or unskilled
 35 construction trade or craft in this State.

1 3. The provisions of this act shall apply only to fringe benefit
 2 funds which are a. located within and established for the benefit of
 3 workers in this State or b. located outside of the State but
 4 which cover workers employed by any construction employer in
 5 the construction, repair or alteration of any private project or
 6 public project within this State.

1 4. a. (1) If a subcontractor is **at least four weeks** delinquent in
 2 the payment of fringe benefits*, *as certified by the trustees of the*
 3 *specific fringe benefit fund or by their designated representative**,
 4 the fringe benefit fund shall be entitled to the relief provided pur-
 5 suant to section 5 of this act provided that the fringe benefit fund
 6 shall have given written notice within 45 days of the date of the
 7 existence of a delinquency by certified mail, return receipt requested,
 8 to the prime contractor and the subcontractor advising them of the
 9 delinquency.

10 (2) If the delinquency is not rectified within ***[15]*** **30** days
 11 after receipt of notice by the prime contractor, the fringe benefit
 12 fund shall give written notice, by certified mail, return receipt re-
 13 quested, to the subcontractor, prime contractor and private or public
 14 project owner of the fringe benefit funds claimed for payment of
 15 fringe benefits from the construction fund.

15A b. If a prime contractor is **at least four weeks** delinquent in the
 15B payment of fringe benefits*, *as certified by the trustees of the spe-*
 16 *cific fringe benefit fund or by their designated representative**, the
 17 fringe benefit fund shall be entitled to the relief provided pursuant
 18 to section 5 of this act provided that the fringe benefit fund shall
 19 have given written notice within 45 days of the date of the existence

20 of a delinquency by certified mail, return receipt requested, to the
20A prime contractor and the private or public project owner, advising
20B them of the delinquency.

21 c. The written notices required under this section shall not be
22 filed with any county clerk or in any public registry. If the notices
23 cannot be delivered by certified mail, they may be sent *by regular
24 mail or * by personal service.

25 d. The remedies provided herein are effective as against the
26 construction fund. No rights against the real property upon which
27 the project is constructed, altered or repaired shall be created
28 by this act.

1 5. a. Upon receipt of the notice required by paragraph (2) of
2 subsection a. of section 4 of this act or subsection b. of section 4
3 of this act, a private or public project owner shall withhold from the
4 sums otherwise due the prime contractor, a sum equal to the amount
5 claimed due by the fringe benefit fund and any further sums sub-
6 sequently demanded by the fringe benefit fund arising out of work
7 performed at the private or public project, which sums shall be
8 segregated from the construction fund and held in trust by the
9 private or public project owner or deposited with the clerk of the
10 Superior Court and paid to the fringe benefit fund claiming the
10A delinquency.

11 b. The amount withheld or deposited by the private or public
12 project owner shall not exceed the amount due and owing from that
13 owner to the prime contractor at the time notice is received by the
14 owner.

15 c. The extent to which notice for a subcontractor delinquency
16 shall create liability upon the owner shall be limited to the amount
17 due and owing, at the time notice is received, by the owner to the
18 prime contractor, or by the prime contractor to the delinquent
19 subcontractor or by the subcontractor who is in privity with the
20 delinquent subcontractor, whichever is less.

21 d. Payment by the private or public project owner to the fringe
22 benefit fund shall be made within 45 days of such demand, unless
23 and only to the extent that the subcontractor or prime contractor
24 against whom such delinquency claim has been asserted notifies
25 the owner and the fringe benefit fund in writing by certified mail,
26 return receipt requested, prior to the expiration of the 45 day
27 period that it contests the claim of the fringe benefit fund. When-
28 ever a notice of contest has been sent by the claimed delinquent
29 construction employer, the private or public project owner shall
30 hold a sum in the amount claimed due by the fringe benefit fund as

31 trustee and payment therefrom shall be made upon the entry of a
32 final judgment of a court of competent jurisdiction or upon receipt
33 of the consent of all of the parties.

1 6. Any private or public project owner, prime contractor or sub-
2 contractor who makes a proper payment to a fringe benefit fund
3 or deposits the payment with the clerk of the Superior Court, in
4 accordance with section 5 of this act, shall be released of any
5 obligation to any party in privity with that private or public pro-
6 ject owner, prime contractor or subcontractor, to the extent of the
7 payment or deposit made.

1 7. With regard to actions commenced by a fringe benefit fund
2 in the courts of this State, the private or public project owner
3 shall not be named a party in such action if the total delinquent
4 sum demanded by the fringe benefit fund is deposited with the
5 clerk of the Superior Court prior to the commencement of an action.

1 8. Fringe benefit funds entitled to the remedies against a private
2 or public project owner provided pursuant to sections 4 and 5 of
3 this act are entitled only to those fringe benefits earned by workers
4 on the particular project constructed for the owner.

1 9. If a construction employer files for insolvency or makes an
2 assignment of rights pursuant to the laws of this State, any de-
3 linquent fringe benefits shall be entitled to the same priority as
4 delinquent wages in such proceedings.

1 10. If a notice filed pursuant to section 4 of this act is willfully
2 or knowingly in excess of the amounts due the fringe benefit fund,
3 the fund shall be responsible for any damages incurred.

1 11. All costs and fees arising out of the procedures established
2 in section 5 of this act shall be the responsibility of the delinquent
3 party. **Where no delinquency is determined, the costs, fees, and*
4 *damages arising out of the procedures established in section 5 of*
5 *this act shall be the responsibility of the fringe benefit fund.**

1 12. The remedies provided pursuant to the act shall be in addi-
2 tion and not in lieu of any other remedies provided under the laws
3 of this State.

1 13. This act shall take effect 30 days after enactment.

LABOR RELATIONS AND EMPLOYMENT

Provides for certain protections of construction workers' fringe benefit funds if prime contractors or subcontractors are delinquent in their payments thereto.

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5 obligation to any party in privity with that private or public pro-
6 ject owner, prime contractor or subcontractor, to the extent of the
7 payment or deposit made.

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2 in the courts of this State, the private or public project owner
3 shall not be named a party in such action if the total delinquent
4 sum demanded by the fringe benefit fund is deposited with the
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STATEMENT

This bill would satisfy the need for a remedy to protect union fringe benefit funds from employers who have defaulted in their payment of such benefits. This bill would provide for the notification of a delinquency to the prime contractor and the withholding or depositing in Superior Court by the project owner of the amount claimed delinquent as a remedy for delinquencies in payments to fringe benefit funds.

LABOR RELATIONS AND EMPLOYMENT

Provides for certain protections of construction workers' fringe benefit funds if prime contractors or subcontractors are delinquent in their payments thereto.

ASSEMBLY LABOR COMMITTEE
STATEMENT TO
SENATE, No. 1597

STATE OF NEW JERSEY

DATED: DECEMBER 15, 1986

The Assembly Labor Committee reports favorably Senate Bill No. 1597.

This bill, entitled the "Construction Workers' Fringe Benefit Security Act," establishes a remedy for construction workers' fringe benefit funds to ensure proper payment by contractors and subcontractors who are delinquent in their payment to those funds.

The bill applies to fringe benefit funds established pursuant to collective bargaining agreements between a construction employer and a collective bargaining representative labor organization and to fringe benefit fund indentures entered into between the trustees of a fund and the construction employer.

The bill provides these protections for fringe benefit funds:

1. In the case where a subcontractor is delinquent, the fund must provide written notice to the delinquent subcontractor or contractor within 45 days of any delinquency. In cases where a prime contractor is delinquent, the 45-day notice must be sent to the prime contractor and project owner.

2. If the delinquent subcontractor does not rectify the delinquency 15 days after receipt of the notice, the fringe benefit fund is required to provide written notice of the claim for payment to the project owner, the prime contractor and the subcontractor.

3. The project owner is required to make payment to the fringe benefit fund within 45 days of receipt of the notice of claim for payment, provided that the alleged delinquent does not contest the claim within this period.

Payment is to be made by withholding the amount claimed from funds otherwise due the prime contractor. The project owner may either hold the funds in trust for the fund or deposit them with the clerk of the Superior Court. The amount withheld or deposited is not to exceed the amount the project owner owes the prime contractor.

SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

SENATE, No. 1597

STATE OF NEW JERSEY

DATED: JUNE 16, 1986

Designated the "Construction Workers' Fringe Benefit Security Act," this bill is designed to provide a mechanism to protect construction workers' fringe benefit funds from contractors or subcontractors who have defaulted in their payment to those funds.

The bill applies to fringe benefit funds established pursuant to a collective bargaining agreement or a fringe benefit trust indenture that covers workers on any private or public construction project in the State regardless of where the fund is located.

The bill provides the following mechanism for the protection of fringe benefit funds:

1. In the case where a subcontractor is delinquent, the fund shall provide written notice to the delinquent subcontractor and prime contractor within 45 days of any delinquency. In cases where a prime contractor is delinquent, the 45-day notice must be sent to the prime contractor and project owner.

2. If the delinquent subcontractor does not rectify the delinquency 15 days after receipt of the notice, the fringe benefit fund is required to provide written notice of the claim for payment to the project owner, the prime contractor and the subcontractor.

3. The project owner is required to make payment to the fringe benefit fund within 45 days of receipt of the notice of claim for payment provided that the alleged delinquent does not contest the claim within this period.

Payment is to be made by withholding the amount claimed from funds otherwise due the prime contractor. The project owner may either hold the funds in trust for the fund or deposit them with the clerk of the Superior Court. The amount withheld or deposited is not to exceed the amount the project owner owes the prime contractor.

STATE OF NEW JERSEY
HEALTH DEPARTMENT

MARCH 5, 1987

SENATE BILL NO. 1597

To the Senate.

Pursuant to Article V, Section 1, Paragraph 14 of the New Jersey Constitution, I herewith return Senate Bill No. 1597 with my objections, for reconsideration.

Senate Bill No. 1597 would create a mechanism for the collection of money due and owing to a fringe benefit fund from a prime contractor or subcontractor engaged in the construction, repair or alteration of any building, road, bridge or other structure in the State. The bill sets forth various notice requirements that must be met by a fringe benefit fund before the fringe benefit fund will be entitled to relief under the act. A public or private project owner would be required to set aside the amount in controversy from the construction fund designated for the project and will be required to pay the amount in controversy to the fringe benefit fund within 45 days of receipt of the fringe benefit fund's demand for payment, unless the fringe benefit fund's claim is contested by the allegedly delinquent prime contractor or subcontractor.

I support the concept expressed in Senate Bill No. 1597. This bill is designed to ensure that employees will be paid fringe benefits that are due and owing to them by prime contractors and subcontractors. However, while I support the concept expressed in Senate Bill No. 1597, I must return the bill and recommend that it be amended in several areas.

I recommend that municipal projects be inserted into the definition for the term "public project." I can only assume that the failure to include municipal projects within the definition was an inadvertent oversight, as all other public projects are included. Public projects included in the definition are projects of the State, any agency, commission or department of the State, any county or school district and any agency or instrumentality of any county or school district.

I am concerned that the provision allowing the administrators of a fringe benefit fund to commence the notice procedure when the prime contractor

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

of subcontractor is even one day delinquent is too harsh. I recommend that Senate Bill No. 1597 be amended so that the administrators may not commence the notice procedure until a prime contractor or subcontractor is at least four weeks delinquent.

The requirement giving the subcontractor or prime contractor only 15 days after receipt of notice to rectify a delinquency by the subcontractor is an insufficient amount of time. I recommend that the 15 day period be extended to 30 days. I am confident that a 30 day period will better enable the parties to resolve many disputes so that the administrators of a fringe benefit fund will not have to avail themselves of the notice and recovery procedures set forth in the bill.

I recommend that the provision allowing the administrators of a fringe benefit fund to notify a prime contractor, subcontractor or project owner by regular mail, if service by certified mail cannot be accomplished, be deleted. It is important that a prime contractor, subcontractor and project owner receive notice of a delinquency. Adequate notice can be assured, only if service is by personal service or by certified mail.

I am recommending that Senate Bill No. 1597 be amended to require the trustees of a fringe benefit fund, or their designated representative, to certify that a delinquency exists before the notice and recovery procedures established in Senate Bill No. 1597 can commence. I am confident that requiring the trustees or their designated representative to certify that a delinquency exists will reduce the number of frivolous claims for fringe benefits.

Finally, Senate Bill No. 1597 is silent on the issue of which party will pay the costs, fees and damages, if any, if it is determined that no delinquency on the part of the prime contractor or subcontractor exists. Since it is the administrators of the fringe benefit fund who will have made the erroneous claim for fringe benefits, fundamental fairness requires that it be the fringe benefit fund that pays any costs, fees or damages that result from an erroneous claim.

STATE OF NEW JERSEY
LEGISLATIVE COUNCIL

Accordingly, I herewith return Senate Bill No. 159 and recommend that it be amended as follows:

Page 1, Section 1, Line 27: After "county," INSERT "municipality"

Page 1, Section 4, Line 1: After "subcontractor is" INSERT "at least four weeks"

Page 2, Section 4, Line 2: After "fringe benefits" INSERT ", as certified by the trustees of the specific fringe benefit fund or by their designated representative"

Page 2, Section 4, Line 8: DELETE "15" INSERT "30"

Page 2, Section 4, Line 14: After "contractor is" INSERT "at least four weeks"

Page 2, Section 4, Line 15: After "benefits" INSERT ", as certified by the trustees of the specific fringe benefit fund or by their designated representative"

Page 3, Section 4, Lines 23-24: DELETE "by regular mail or"

Page 4, Section 11, Line 3: After "." INSERT "Where no delinquency is determined, the costs, fees, and damages arising out of the procedures established in section 5 of this act shall be the responsibility of the fringe benefit fund."

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ Michael R. Cole

Chief Counsel