

2A:30A-1

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 2006 **CHAPTER:** 96
NJSA: 2A:30A-1 (Concerns the prompt payment of construction contracts)

BILL NO: S1726 (Substituted for A3174)

SPONSOR(S) Sweeney and others

DATE INTRODUCED: March 21, 2006

COMMITTEE: **ASSEMBLY:**

SENATE: Labor; Budget and Appropriations

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** July 28, 2006

SENATE: July 8, 2006

DATE OF APPROVAL: September 1, 2006

FOLLOWING ARE ATTACHED IF AVAILABLE:

[FINAL TEXT OF BILL](#) (2nd reprint enacted) [Yes](#)

S1726

[SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes [Labor](#)
[5-4-2006](#)
[Budget and](#)

[Appropriations](#)

[6-30-2006](#)

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

A3174

[SPONSOR'S STATEMENT:](#) (Begins on page 4 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** Yes [Labor](#)
[6-19-06](#)
[Budget](#)
[7-7-06](#)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes 9-1-06

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 103 or <mailto:refdesk@njstatelib.org>.

REPORTS:

No

HEARINGS:

No

NEWSPAPER ARTICLES:

Yes

"Corzine signs a bill for prompt payment," 9-2-2006, Asbury Park Press, p. A3

"New law requires faster payment to state's construction contractors" 9-2-2006 Star Ledger p.21

RWH 3/12/08

P.L. 2006, CHAPTER 96, *approved September 1, 2006*
Senate, No. 1726 (*Second Reprint*)

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:

6
7 1. Section 1 of P.L.1991, c.133 (C.2A:30A-1) is amended to
8 read as follows:

9 1. As used in this act:

10 ²"Billing" means, in accordance with the terms and definitions of
11 the applicable contract, any periodic payment, final payment,
12 written approved change order or request for release of retainage.²

13 **["General"] Prime** contractor" means a person who contracts with
14 an owner to improve real property.

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

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

27 "Owner" means any person, including any public or
28 governmental entity, who has an interest in the real property to be
29 improved and who has contracted with a **["general"] prime** contractor
30 for such improvement to be made. "Owner" shall be deemed to
31 include any successor in interest or agent acting on behalf of an
32 owner.

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

35 "Real property" means the real estate that is improved upon or to
36 be improved upon.

37 "Subcontractor" means any person who has contracted to furnish
38 labor, materials or other services to a **["general"] prime** contractor in
39 connection with a contract to improve real property.

40 "Subsubcontractor" means any person who has contracted to
41 furnish labor, materials or other services to a subcontractor in

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:

¹Senate SLA committee amendments adopted May 4, 2006.

²Senate SBA committee amendments adopted June 30, 2006.

1 connection with a contract to improve real property.
2 (cf: P.L.1991, c.133, s.1)

3

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

6 2. a. If a prime contractor has performed in accordance with the
7 provisions of a contract with the owner and the billing for the work
8 has been approved and certified by the owner or the owner's
9 'authorized' approving agent, the owner shall pay the amount due
10 to the prime contractor 'for' each periodic payment, final payment
11 or retainage monies not more than '10' '20' 30² calendar days
12 after the billing date, which for a periodic billing, shall be the
13 periodic billing date specified in the contract. The billing shall be
14 deemed approved and certified '15' '10' 20² days after the
15 owner receives it unless the owner provides, before the end of the
16 '15' '10'-day' 20-day² period, a written statement of the
17 amount withheld and the reason for withholding payment², except
18 that in the case of a public or governmental entity that requires the
19 entity's governing body to vote on authorizations for each periodic
20 payment, final payment or retainage monies, the amount due may
21 be approved and certified at the next scheduled public meeting of
22 the entity's governing body, and paid during the entity's subsequent
23 payment cycle, provided this exception has been defined in the bid
24 specifications and contract documents². 'If the owner finds a
25 portion of the work not to be in accordance with the contract,
26 payment may be withheld for the reasonable value of that portion
27 only. Payment shall be made for any portion of the contract which
28 has a separate price and for which the work has been performed in
29 accordance with the provisions of the contract.】'

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

1 c. If a payment due pursuant to the provisions of this section is
2 not made in a timely manner, the delinquent party shall be liable for
3 the amount of money owed under the contract, plus interest at a rate
4 equal to the prime rate plus 1%. Interest on amounts due pursuant
5 to this section shall be paid to the prime contractor, subcontractor or
6 subsubcontractor for the period beginning on the day after the
7 required payment date and ending on the day on which the check
8 for payment has been drawn. ²The provisions of this subsection c.
9 shall not apply to any transportation project as defined in section
10 section 3 of P.L. 1984, c.73 (C.27:1B-3), if that project receives
11 federal funding and the awarding agency has been notified by the
12 federal government that it will be classified as a high risk grantee
13 pursuant to 49 C.F.R. 18.12.²

14 d. ²【Any】 A² prime contractor, subcontractor or
15 subsubcontractor ²【who is not paid as required by this section】²
16 may, after providing seven calendar days' written notice to the
17 party failing to make the required payments, suspend performance
18 of a construction contract, without penalty for breach of contract,
19 until the payment required pursuant to this section is made², if the
20 contractor, subcontractor or subsubcontractor: is not paid as
21 required by this section; is not provided a written statement of the
22 amount withheld and the reason for the withholding; and the payor
23 is not engaged in a good faith effort to resolve the reason for the
24 withholding. The provisions of this subsection d. shall not apply to
25 any transportation project as defined in section 3 of P.L. 1984, c.73
26 (C.27:1B-3), if that project receives federal funding and the
27 application of this provision would jeopardize the funding because
28 the owner could not meet the federal standards for financial
29 management systems as outlined in 49 C.F.R. 18.20².

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

38 ¹(2) No provision of this section shall be construed as restricting
39 in any way the rights or remedies provided by any other applicable
40 State or federal law to an owner who is a resident homeowner or
41 purchaser with respect to the real property being improved.¹

42 f. All contracts for the improvement of structures entered into
43 after the effective date of P.L. , c. ²【(C.)】² (pending before
44 the Legislature as this bill) between owners, prime contractors,
45 subcontractors or subsubcontractors shall provide that disputes
46 regarding whether a party has failed to make payments required
47 pursuant to this section ²【shall】 may² be submitted to a process of

1 ²binding arbitration under the ¹expedited¹ rules and guidelines of
2 the American Arbitration Association ¹, prior to any submission to
3 a court for adjudication¹. Arbitration required¹ alternative dispute
4 resolution. Alternative dispute resolution permitted² by this section
5 shall not apply to disputes concerning the bid solicitation or award
6 process, or to the formation of contracts or subcontracts. In any
7 ²civil² action ²or arbitration² brought to collect payments ²or
8 resolve disputes² pursuant to this section, the action ²or
9 arbitration² shall be conducted inside of this State and the
10 prevailing party shall be awarded reasonable costs and attorney
11 fees.

12 (cf: P.L.1991, c.133, s.2)

13

14 3. This act shall take effect immediately, but shall not apply to
15 contracts for the improvement of structures entered into before the
16 effective date.

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21

Concerns the prompt payment of construction contracts.

SENATE, No. 1726

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED MARCH 21, 2006

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns the prompt payment of construction contracts.

CURRENT VERSION OF TEXT

As introduced.



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:

6

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

9 1. As used in this act:

10 "[General] Prime contractor" means a person who contracts with
11 an owner to improve real property.

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

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

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

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

32 "Real property" means the real estate that is improved upon or to
33 be improved upon.

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

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

40 (cf: P.L.1991, c.133, s.1)

41

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

44 2. a. If a prime contractor has performed in accordance with the
45 provisions of a contract with the owner and the billing for the work

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 has been approved and certified by the owner or the owner's
2 approving agent, the owner shall pay the amount due to the prime
3 contractor each periodic payment, final payment or retainage
4 monies not more than 10 calendar days after the billing date, which
5 for a periodic billing, shall be the periodic billing date specified in
6 the contract. The billing shall be deemed approved and certified 15
7 days after the owner receives it unless the owner provides, before
8 the end of the 15-day period, a written statement of the amount
9 withheld and the reason for withholding payment. If the owner
10 finds a portion of the work not to be in accordance with the
11 contract, payment may be withheld for the reasonable value of that
12 portion only. Payment shall be made for any portion of the contract
13 which has a separate price and for which the work has been
14 performed in accordance with the provisions of the contract.

15 b. If a subcontractor or subsubcontractor has performed in
16 accordance with the provisions of [his] its contract with the
17 [general] prime contractor or subcontractor and the work has been
18 accepted by the owner, the owner's approving agent, or [general]
19 the prime contractor, as applicable, and the parties have not
20 otherwise agreed in writing, the contractor shall pay to [his] its
21 subcontractor and the subcontractor shall pay to [his] its
22 subsubcontractor within 10 calendar days of the receipt of each
23 periodic payment, final payment or receipt of retainage monies, the
24 full amount received for the work of the subcontractor or
25 subsubcontractor based on the work completed or the services
26 rendered under the applicable contract. In the case of ongoing work
27 on the same project for which partial payments are made, the
28 amount of money owed for work already completed shall only be
29 payable if the subcontractor or subsubcontractor is performing to
30 the satisfaction of the contractor or subcontractor, as applicable.

31 c. If a payment due pursuant to the provisions of this section is
32 not made in a timely manner, the delinquent party shall be liable for
33 the amount of money owed under the contract, plus interest at a rate
34 equal to the prime rate plus 1%. Interest on amounts due pursuant
35 to this section shall be paid to the prime contractor, subcontractor or
36 subsubcontractor for the period beginning on the day after the
37 required payment date and ending on the day on which the check
38 for payment has been drawn.

39 d. Any prime contractor, subcontractor or subsubcontractor who
40 is not paid as required by this section may, after providing seven
41 calendar days' written notice to the party failing to make the
42 required payments, suspend performance of a construction contract,
43 without penalty for breach of contract, until the payment required
44 pursuant to this section is made.

45 e. The rights, remedies or protections provided by this section
46 for prime contractors, subcontractors and subsubcontractors shall be
47 in addition to other remedies provided pursuant to any other

1 provision of State law. To the extent that the provisions of this
2 section provide greater rights, remedies or protections for prime
3 contractors, subcontractors and subsubcontractors than other
4 provisions of State law, the provisions of this section shall
5 supersede those other provisions.

6 f. All contracts for the improvement of structures entered into
7 after the effective date of P.L. , c. (C.) (pending before the
8 Legislature as this bill) between owners, prime contractors,
9 subcontractors or subsubcontractors shall provide that disputes
10 regarding whether a party has failed to make payments required
11 pursuant to this section shall be submitted to a process of binding
12 arbitration under the rules and guidelines of the American
13 Arbitration Association, prior to any submission to a court for
14 adjudication. Arbitration required by this section shall not apply to
15 disputes concerning the bid solicitation or award process, or to the
16 formation of contracts or subcontracts. In any action or arbitration
17 brought to collect payments or resolve disputes pursuant to this
18 section, the action or arbitration shall be conducted inside of this
19 State and the prevailing party shall be awarded reasonable costs and
20 attorney fees.

21 (cf: P.L.1991, c.133, s.2)

22

23 3. This act shall take effect immediately, but shall not apply to
24 contracts for the improvement of structures entered into before the
25 effective date.

26

27

28

STATEMENT

29

30 This bill provides procedures and remedies for prime contractors,
31 subcontractors and subsubcontractors who are not paid in a timely
32 way in connection with a public or private construction contract.

33 The bill requires that if a prime contractor has performed in
34 accordance with the provisions of a construction contract and the
35 billing for the work has been approved and certified by the owner,
36 the owner shall pay the amount due to the prime contractor each
37 periodic payment, final payment or retainage monies not more than
38 10 calendar days after the billing date. The billing shall be deemed
39 approved and certified 15 days after the owner receives it unless the
40 owner provides, before the end of the 15-day period, a written
41 statement of the amount withheld and the reason for withholding
42 payment. If the owner finds a portion of the work not to be in
43 accordance with the contract, payment may be withheld for only
44 that portion. Payment shall be made for any portion of the contract
45 which has a separate price and for which the work has been
46 performed in accordance with the provisions of the contract.

47 The bill provides that if payments are late, the project owner is
48 liable for the amount of money owed under the contract, plus

1 interest at a rate equal to the prime rate plus 1%. Current law
2 establishing that liability applies it to contractors and
3 subcontractors, but not owners.

4 The bill permits any prime contractor, subcontractor or
5 subsubcontractor who is not paid as required to suspend
6 performance of a construction contract, after giving seven calendar
7 day's written notice to the party failing to make the required
8 payments, without penalty for breach of contract, until the required
9 payment is made.

10 The rights, remedies or protections provided by the bill are in
11 addition to other remedies provided under any other State law. To
12 the extent that the bill's provisions provide greater rights, remedies
13 or protections for prime contractors, subcontractors and
14 subsubcontractors than other State laws, the provisions of the bill
15 supersede the other laws.

16 The bill requires all construction contracts between owners,
17 prime contractors, subcontractors or subsubcontractors entered into
18 after the effective date of the bill to provide that disputes regarding
19 whether a party has failed to make required payments, be submitted
20 to binding arbitration, prior to any submission to a court for
21 adjudication. Arbitration required by the bill would not apply to
22 disputes concerning the bid solicitation or award process, or to the
23 formation of contracts or subcontracts. The bill requires that
24 actions and arbitrations brought to collect payments or resolve
25 disputes pursuant to the bill be conducted inside of this State and
26 that the prevailing party be awarded reasonable costs and attorney
27 fees.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1726

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 4, 2006

The Senate Labor Committee reports favorably and with committee amendments, Senate Bill No. 1726.

This bill, as amended, provides procedures and remedies for prime contractors, subcontractors and subsubcontractors who are not paid in a timely way in connection with a public or private construction contract.

If a prime contractor performs in accordance with a construction contract and the billing for the work has been approved and certified by the owner, the bill, as amended, requires the owner to pay the amount due to the prime contractor each periodic payment, final payment or retainage monies not more than 20 calendar days after the billing date. The billing is deemed approved and certified 10 days after the owner receives it unless the owner provides, before the end of the 10-day period, a written statement of the amount withheld and the reason for withholding payment.

The bill provides that if payments are late, the project owner is liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%. Current law establishing that liability applies it to contractors and subcontractors, but not owners.

The bill permits any prime contractor, subcontractor or subsubcontractor who is not paid as required to suspend performance of a construction contract, after giving seven calendar day's written notice to the party failing to make the required payments, without penalty for breach of contract, until the required payment is made.

The bill, as amended, requires all construction contracts between owners, prime contractors, subcontractors or subsubcontractors entered into after the effective date of the bill to provide that disputes regarding whether a party has failed to make required payments be submitted to binding arbitration under the expedited rules of the American Arbitration Association. Arbitration required by the bill would not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts. The bill requires that actions and arbitrations brought to collect payments or resolve disputes pursuant to the bill be conducted inside of this State

and that the prevailing party be awarded reasonable costs and attorney fees.

As amended, the bill specifies that no provision of the bill shall be construed as restricting the rights or remedies provided by any other applicable State or federal law to an owner who is a resident homeowner or purchaser with respect to the real property being improved.

The rights, remedies or protections provided by the bill are in addition to other remedies provided under any other State law. To the extent that the bill's provisions provide greater rights, remedies or protections for prime contractors, subcontractors and subsubcontractors than other State laws, the provisions of the bill supersede the other laws. At the same time, the bill specifies that it does not restrict any rights or remedies provided to owners under any other State or federal law.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1726

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 30, 2006

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1726 (1R).

The bill, as amended, provides procedures and remedies for prime contractors, subcontractors and subsubcontractors who are not paid in a timely way in connection with a public or private construction contract.

If a prime contractor performs in accordance with a construction contract and the billing for the work has been approved and certified by the owner, the bill requires the owner to pay the amount due to the prime contractor for each periodic payment, final payment or retainage monies not more than 30 calendar days after the billing date. The billing is deemed approved and certified 20 days after the owner receives it unless the owner provides, before the end of the 20-day period, a written statement of the amount withheld and the reason for withholding payment.

The bill provides that if payments are late, the project owner is liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%. Current law establishing that liability applies it to contractors and subcontractors, but not owners.

The bill permits any prime contractor, subcontractor or subsubcontractor who is not paid as required to suspend performance of a construction contract, after giving seven calendar day's written notice to the party failing to make the required payments, without penalty for breach of contract, until the required payment is made if the contractor, subcontractor or subsubcontractor: is not paid as required by this section; is not provided a written statement of the amount withheld and the reason for the withholding; and the payor is not engaged in a good faith effort to resolve the reason for the withholding.

The bill requires all construction contracts between owners, prime contractors, subcontractors or subsubcontractors entered into after the effective date of the bill to provide that disputes regarding whether a party has failed to make required payments may be submitted to a

process of alternative dispute resolution. The alternative dispute resolution procedures permitted by the bill would not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts. The bill requires that actions brought to collect payments pursuant to the bill be conducted inside of this State and that the prevailing party be awarded reasonable costs and attorney fees.

The bill specifies that no provision of the bill shall be construed as restricting the rights or remedies provided by any other applicable State or federal law to an owner who is a resident homeowner or purchaser with respect to the real property being improved.

The rights, remedies or protections provided by the bill are in addition to other remedies provided under any other State law. To the extent that the bill's provisions provide greater rights, remedies or protections for prime contractors, subcontractors and subsubcontractors than other State laws, the provisions of the bill supersede the other laws. At the same time, the bill specifies that it does not restrict any rights or remedies provided to owners under any other State or federal law.

COMMITTEE AMENDMENTS:

The committee amendments:

1. Extend, from 20 to 30, the number of days following a billing after which payment is required, and extend, from 10 to 20, the number of days following the billing after which the billing is deemed to be approved and certified if the owner does not give a reason in writing for not paying.

2. Delete the provision of the bill requiring that all construction contracts require binding arbitration to resolve disputes regarding payments. The amendments instead require contracts to include provisions permitting the use of alternative dispute resolution for such disputes.

3. Make an exemption from the bill's provisions in the case of a public or governmental entity that requires the entity's governing body to vote on authorizations for each periodic payment, final payment or retainage monies. In such a case, the amendments allow that the amount due may be approved and certified at the next scheduled public meeting of the entity's governing body, and paid during the entity's subsequent payment cycle, provided this exception has been defined in the bid specifications and contract documents.

4. Exempt from the bill's provisions for interest penalties or work stoppage any transportation project that receives federal funding, if awarding agency has been notified by the federal government that it will be classified as a high risk grantee pursuant to 49 C.F.R. 18.12.

FISCAL IMPACT:

On a fiscal estimate to a similar Senate bill, the Office of Legislative Services stated that there could be an indeterminate State cost on contracts going beyond the process period. Additionally, current law permits 60 days to pay. This bill would have payments made sooner, whereby the State could lose up to 30 days of interest on its funds.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1726 STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JUNE 21, 2006

SUMMARY

Synopsis: Concerns the prompt payment of construction contracts.

Type of Impact: General Fund expenditure

Agencies Affected: Certain State agencies with construction contracts

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Increase - See Comments Below		

- Current law provides that State agencies have 60 calendar days from the date specified in a construction contract to submit payment to the prime contractor. This bill requires the owner to pay contractors not more than 20 days after the billing date.
- This bill could increase State expenditures or reduce State interest earnings. The bill provides that if payments are late, the project owner, which could be the State, is liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1 percent.
- The Office of Legislative Services (OLS) cannot estimate the amount of additional cost that may be incurred by the State or the amount of potential State interest earnings that may be forgone.

BILL DESCRIPTION

Senate Bill No. 1726 (1R) of 2006 provides procedures and remedies for prime contractors, subcontractors and subsubcontractors who are not paid in a timely way in connection with a public or private construction contract. If a prime contractor performs in accordance with a construction contract and the billing for the work has been approved and certified by the owner, the bill requires the owner to pay the amount due to the prime contractor for each periodic

payment, final payment or retainage monies not more than 20 calendar days after the billing date. The billing is deemed approved and certified 10 days after the owner receives it unless the owner provides, before the end of the 10-day period, a written statement of the amount withheld and the reason for withholding payment. The bill provides that if payments are late, the project owner is liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1 percent. Current law establishing that liability applies it to contractors and subcontractors, but not owners. The bill permits any prime contractor, subcontractor or subsubcontractor who is not paid as required to suspend performance of a construction contract, after giving seven calendar day's written notice to the party failing to make the required payments, without penalty for breach of contract, until the required payment is made.

The bill requires all construction contracts between owners, prime contractors, subcontractors or subsubcontractors entered into after the effective date of the bill to provide that disputes regarding whether a party has failed to make required payments be submitted to binding arbitration under the expedited rule of the American Arbitration Association. Arbitration required by the bill would not apply to disputes concerning the bid solicitation or award process, or the formation of contracts or subcontracts. The rights, remedies or protections provided by the bill are in addition to other remedies provided under any other State law.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

This bill could increase State expenditures or reduce State interest earnings. The OLS cannot estimate the amount of State expenditures for interest payments that may result from the bill's provisions. Specifically, OLS cannot determine the number of construction contracts that will not be processed or paid by State agencies within the 20 calendar day time frame. Furthermore, OLS cannot determine which, of those contracts not paid within the 20 calendar day time frame, will begin generating interest, the length of time over which the interest would be paid, or which contracts would result in arbitration. In cases when the State makes payment within 20 days, OLS cannot estimate the amount of money the State will potentially lose by making contract payouts days earlier than the 60 days prescribed by current law. The State will lose interest earnings on money that would rest in accounts up to 60 days by making payments 40 days earlier.

Section: Commerce, Labor and Industry
Analyst: Sonya S. Davis
Associate Fiscal Analyst
Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

ASSEMBLY, No. 3174

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED JUNE 1, 2006

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Mercer)

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Assemblyman NEIL M. COHEN

District 20 (Union)

i

SYNOPSIS

Concerns the prompt payment of construction contracts.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/20/2006)

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:

6

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

9 1. As used in this act:

10 "[General] Prime contractor" means a person who contracts with
11 an owner to improve real property.

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

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

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

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

32 "Real property" means the real estate that is improved upon or to
33 be improved upon.

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

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

40 (cf: P.L.1991, c.133, s.1)

41

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

44 2. a. If a prime contractor has performed in accordance with the
45 provisions of a contract with the owner and the billing for the work

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 has been approved and certified by the owner or the owner's
2 authorized approving agent, the owner shall pay the amount due to
3 the prime contractor for each periodic payment, final payment or
4 retainage monies not more than 20 calendar days after the billing
5 date, which for a periodic billing, shall be the periodic billing date
6 specified in the contract. The billing shall be deemed approved and
7 certified 10 days after the owner receives it unless the owner
8 provides, before the end of the 10-day period, a written statement of
9 the amount withheld and the reason for withholding payment.

10 b. If a subcontractor or subsubcontractor has performed in
11 accordance with the provisions of [his] its contract with the
12 [general] prime contractor or subcontractor and the work has been
13 accepted by the owner, the owner's authorized approving agent, or
14 [general] the prime contractor, as applicable, and the parties have
15 not otherwise agreed in writing, the prime contractor shall pay to
16 [his] its subcontractor and the subcontractor shall pay to [his] its
17 subsubcontractor within 10 calendar days of the receipt of each
18 periodic payment, final payment or receipt of retainage monies, the
19 full amount received for the work of the subcontractor or
20 subsubcontractor based on the work completed or the services
21 rendered under the applicable contract. In the case of ongoing work
22 on the same project for which partial payments are made, the
23 amount of money owed for work already completed shall only be
24 payable if the subcontractor or subsubcontractor is performing to
25 the satisfaction of the prime contractor or subcontractor, as
26 applicable.

27 c. If a payment due pursuant to the provisions of this section is
28 not made in a timely manner, the delinquent party shall be liable for
29 the amount of money owed under the contract, plus interest at a rate
30 equal to the prime rate plus 1%. Interest on amounts due pursuant
31 to this section shall be paid to the prime contractor, subcontractor or
32 subsubcontractor for the period beginning on the day after the
33 required payment date and ending on the day on which the check
34 for payment has been drawn.

35 d. Any prime contractor, subcontractor or subsubcontractor who
36 is not paid as required by this section may, after providing seven
37 calendar days' written notice to the party failing to make the
38 required payments, suspend performance of a construction contract,
39 without penalty for breach of contract, until the payment required
40 pursuant to this section is made.

41 e. (1) The rights, remedies or protections provided by this section
42 for prime contractors, subcontractors and subsubcontractors shall be
43 in addition to other remedies provided pursuant to any other
44 provision of State law. To the extent that the provisions of this
45 section provide greater rights, remedies or protections for prime
46 contractors, subcontractors and subsubcontractors than other
47 provisions of State law, the provisions of this section shall
48 supersede those other provisions.

1 payments, without penalty for breach of contract, until the required
2 payment is made.

3 The bill, requires all construction contracts between owners,
4 prime contractors, subcontractors or subsubcontractors entered into
5 after the effective date of the bill to provide that disputes regarding
6 whether a party has failed to make required payments be submitted
7 to binding arbitration under the expedited rules of the American
8 Arbitration Association. Arbitration required by the bill would not
9 apply to disputes concerning the bid solicitation or award process,
10 or to the formation of contracts or subcontracts. The bill requires
11 that actions and arbitrations brought to collect payments or resolve
12 disputes pursuant to the bill be conducted inside of this State and
13 that the prevailing party be awarded reasonable costs and attorney
14 fees.

15 The bill specifies that no provision of the bill shall be construed
16 as restricting the rights or remedies provided by any other
17 applicable State or federal law to an owner who is a resident
18 homeowner or purchaser with respect to the real property being
19 improved.

20 The rights, remedies or protections provided by the bill are in
21 addition to other remedies provided under any other State law. To
22 the extent that the bill's provisions provide greater rights, remedies
23 or protections for prime contractors, subcontractors and
24 subsubcontractors than other State laws, the provisions of the bill
25 supersede the other laws. At the same time, the bill specifies that it
26 does not restrict any rights or remedies provided to owners under
27 any other State or federal law.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3174

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 19, 2006

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No.3174.

This bill provides procedures and remedies for prime contractors, subcontractors and subsubcontractors who are not paid in a timely way in connection with a public or private construction contract.

If a prime contractor performs in accordance with a construction contract and the billing for the work has been approved and certified by the owner, the bill, as amended, requires the owner to pay the amount due to the prime contractor each periodic payment, final payment or retainage monies not more than 30 calendar days after the billing date. The billing is deemed approved and certified 20 days after the owner receives it unless the owner provides, before the end of the 20-day period, a written statement of the amount withheld and the reason for withholding payment.

The bill provides that if payments are late, the project owner is liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%. Current law establishing that liability applies it to contractors and subcontractors, but not owners.

The bill permits any prime contractor, subcontractor or subsubcontractor who is not paid as required to suspend performance of a construction contract, after giving seven calendar day's written notice to the party failing to make the required payments, without penalty for breach of contract, until the required payment is made.

The bill, as amended, requires all construction contracts between owners, prime contractors, subcontractors or subsubcontractors entered into after the effective date of the bill to provide that disputes regarding whether a party has failed to make required payments may be submitted to a process of alternative dispute resolution. The alternative dispute resolution procedures permitted by the bill would not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts. The bill requires that actions brought to collect payments pursuant to the bill be conducted inside of this State and that the prevailing party be awarded reasonable costs and attorney fees.

The bill specifies that no provision of the bill shall be construed as restricting the rights or remedies provided by any other applicable State or federal law to an owner who is a resident homeowner or purchaser with respect to the real property being improved.

The rights, remedies or protections provided by the bill are in addition to other remedies provided under any other State law. To the extent that the bill's provisions provide greater rights, remedies or protections for prime contractors, subcontractors and subsubcontractors than other State laws, the provisions of the bill supersede the other laws. At the same time, the bill specifies that it does not restrict any rights or remedies provided to owners under any other State or federal law.

COMMITTEE AMENDMENTS:

1. The committee amendments extend, from 20 to 30, the number of days following a billing after which payment is required, and extend, from 10 to 20, the number of days following the billing after which the billing is deemed to be approved and certified if the owner does not give a reason in writing for not paying.

2. The committee amendments delete the provision of the bill requiring that all construction contracts require binding arbitration to resolve disputes regarding payments. The amendments instead require contracts to include provisions permitting the use of alternative dispute resolution for such disputes.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3174

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JULY 7, 2006

The Assembly Budget Committee reports favorably Assembly Bill No. 3174 (1R), with committee amendments.

Assembly Bill No. 3174 (1R), as amended, provides procedures and remedies for prime contractors, subcontractors and subsubcontractors who are not paid in a timely way in connection with a public or private construction contract.

If a prime contractor performs in accordance with a construction contract and the billing for the work has been approved and certified by the owner, the bill requires the owner to pay the amount due to the prime contractor each periodic payment, final payment or retainage monies not more than 30 calendar days after the billing date. The billing is deemed approved and certified 20 days after the owner receives it unless the owner provides, before the end of the 20-day period, a written statement of the amount withheld and the reason for withholding payment.

The bill provides that if payments are late, the project owner is liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%. Current law establishing that liability applies it to contractors and subcontractors, but not owners.

The bill permits any prime contractor, subcontractor or subsubcontractor who is not paid as required to suspend performance of a construction contract, after giving seven calendar day's written notice to the party failing to make the required payments, without penalty for breach of contract, until the required payment is made if the contractor, subcontractor or subsubcontractor: is not paid as required by this section; is not provided a written statement of the amount withheld and the reason for the withholding; and the payor is not engaged in a good faith effort to resolve the reason for the withholding.

The bill requires all construction contracts between owners, prime contractors, subcontractors or subsubcontractors entered into after the effective date of the bill to provide that disputes regarding whether a party has failed to make required payments may be submitted to a process of alternative dispute resolution. The alternative dispute

resolution procedures permitted by the bill would not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts. The bill requires that actions brought to collect payments pursuant to the bill be conducted inside of this State and that the prevailing party be awarded reasonable costs and attorney fees.

The bill specifies that no provision of the bill shall be construed as restricting the rights or remedies provided by any other applicable State or federal law to an owner who is a resident homeowner or purchaser with respect to the real property being improved.

The rights, remedies or protections provided by the bill are in addition to other remedies provided under any other State law. To the extent that the bill's provisions provide greater rights, remedies or protections for prime contractors, subcontractors and subsubcontractors than other State laws, the provisions of the bill supersede the other laws. At the same time, the bill specifies that it does not restrict any rights or remedies provided to owners under any other State or federal law.

FISCAL IMPACT:

On a fiscal estimate to a similar Senate bill, the Office of Legislative Services stated that there could be an indeterminate State cost on contracts going beyond the process period. Additionally, current law permits 60 days to pay. This bill would have payments made sooner, whereby the State could lose up to 30 days of interest on its funds.

COMMITTEE AMENDMENTS:

The amendments provide an exception to the provision that a billing is deemed approved and certified 20 days after the owner receives it unless the owner provides a written statement within the 20 day period for a public or governmental entity that requires the entity's governing body to vote on authorizations for each payment or retainage. For those entities the amount due may be approved and certified at the next scheduled public meeting of the entity's governing body, and paid during the entity's subsequent payment cycle, *provided* this exception has been defined in the bid specifications and contract document.

The amendments provide an exception to the provision that if payments are late, the project owner is liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1%. The provisions will not apply to certain transportation projects that receive federal funding if the awarding agency has been federally notified that it will be classified as a "high risk grantee."

The amendments provide further conditions to the provision that a contractor, subcontractor or subsubcontractor who is not paid as required may suspend performance of a construction contract, after

giving seven calendar day's written notice. Performance may be suspended only if the contractor, subcontractor or subcontractor is not paid as required by this section and is not provided a written statement of the amount withheld and the reason for the withholding and the payor is not engaged in a good faith effort to resolve the reason for the withholding. The amendments provide an exception to the suspension of performance provision, which will not apply to certain transportation projects that receive federal funding if it would, under certain conditions, jeopardize the funding.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 3174

STATE OF NEW JERSEY 212th LEGISLATURE

DATED: JULY 28, 2006

SUMMARY

Synopsis: Concerns the prompt payment of construction contracts.

Type of Impact: General Fund expenditure

Agencies Affected: Certain State agencies with construction contracts

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Increase - See Comments Below		

- Current law provides that State agencies have 60 calendar days from the date specified in a construction contract to submit payment to the prime contractor. This bill requires the owner to pay contractors not more than 30 days after the billing date.
- This bill could increase State expenditures or reduce State interest earnings. The bill provides that if payments are late, the project owner, which could be the State, is liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1 percent.
- The Office of Legislative Services (OLS) cannot estimate the amount of additional cost that may be incurred by the State or the amount of potential State interest earnings that may be forgone.

BILL DESCRIPTION

Assembly Bill No. 3174 (1R) of 2006 provides procedures and remedies for prime contractors, subcontractors and subsubcontractors who are not paid in a timely way in connection with a public or private construction contract. If a prime contractor performs in accordance with a construction contract and the billing for the work has been approved and certified by the owner, the bill, as amended, requires the owner to pay the amount due to the prime contractor

each periodic payment, final payment or retainage monies not more than 30 calendar days after the billing date. The billing is deemed approved and certified 20 days after the owner receives it unless the owner provides, before the end of the 20-day period, a written statement of the amount withheld and the reason for withholding payment. The bill provides that if payments are late, the project owner is liable for the amount of money owed under the contract, plus interest at a rate equal to the prime rate plus 1 percent. Current law establishing that liability applies it to contractors and subcontractors, but not owners. The bill permits any prime contractor, subcontractor or subsubcontractor who is not paid as required to suspend performance of a construction contract, after giving seven calendar day's written notice to the party failing to make the required payments, without penalty for breach of contract, until the required payment is made.

The bill requires all construction contracts between owners, prime contractors, subcontractors or subsubcontractors entered into after the effective date of the bill to provide that disputes regarding whether a party has failed to make required payments may be submitted to a process of alternative dispute resolution. The alternative dispute resolution procedures permitted by the bill would not apply to disputes concerning the bid solicitation or award process, or to the formation of contracts or subcontracts. The bill requires that actions brought to collect payments pursuant to the bill be conducted inside of this State and that the prevailing party be awarded reasonable costs and attorney fees.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

This bill could increase State expenditures or reduce State interest earnings. The OLS cannot estimate the amount of State expenditures for interest payments that may result from the bill's provisions. Specifically, OLS cannot determine the number of construction contracts that will not be processed or paid by State agencies within the 30 calendar day time frame. Furthermore, OLS cannot determine which, of those contracts not paid within the 30 calendar day time frame, will begin generating interest, the length of time over which the interest would be paid, or which contracts would result in arbitration. In cases when the State makes payment within 30 days, OLS cannot estimate the amount of money the State will potentially lose by making contract payouts days earlier than the 60 days prescribed by current law. The State will lose interest earnings on money that would rest in accounts up to 60 days by making payments 30 days earlier.

Section: Commerce, Labor and Industry

Analyst: Sonya S. Davis
Associate Fiscal Analyst

Approved: David J. Rosen
Legislative Budget and Finance Officer

This fiscal estimate has been prepared pursuant to P.L. 1980, c.67.

Sept-01-06 Governor Corzine Signs Prompt Construction Payment Legislation

FOR IMMEDIATE RELEASE

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GOVERNOR CORZINE SIGNS PROMPT CONSTRUCTION PAYMENT LEGISLATION

CHERRY HILL – Governor Jon S. Corzine today signed legislation creating a standardized process for prompt payment of construction contracts to prime contractors. The new law applies to contractors and construction projects at all levels of government as well as the private sector.

“When project funds flow promptly, bottlenecks are eliminated, projects run smoothly and everyone, from sub-contractors to laborers, gets paid on time,” said Governor Corzine, who signed the legislation at the Peter J. McGuire Labor Day Observance in Cherry Hill. “This legislation will level the playing field and hold project owners to the same responsibilities and penalties that we require of contractors and subcontractors.”

The legislation requires that the contractor receive payment within 30 days of the billing date provided that the contractor meets the terms of the agreed upon construction contract and the billing meets the approval of the owner. If the owner does not make payment within the 30-day time frame, the legislation holds them to be liable for the remaining balance plus interest at a rate equal to the prime rate plus one percent.

Previously, the law only applied to contractors and subcontractors and did not hold project owners responsible for late payments or late payment interest penalties.

The legislation (S-1726/A-3174) was sponsored in the Senate by Stephen M. Sweeney and Fred H. Madden, and in the Assembly by Wilfredo Caraballo, Bonnie Watson Coleman, Joseph V. Egan, Neil M. Cohen and Thomas P. Giblin.

"This bill establishes specific guidelines for the payment of construction projects. All too often, contractors and construction companies are kept waiting for months on end to receive payment for their labor," said Senator Sweeney (D-Gloucester, Cumberland and Salem). "The 30-day period from the presentation of the bill to its payment is designed to help cut out much of the red tape that is so often associated with construction projects, while allowing property owners to question any items on their bill that they don't understand or don't agree with."

"Simple fairness requires that the men and women who help build a better New Jersey receive timely payment for their labor," said Assemblyman Caraballo (D-Essex). "Small business owners and subcontractors should never have to close their shops because they go unpaid. Families should never fear that they will be unable to pay bills or put food on the table because promised wages are being held."