

2A:44-128

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"Municipal mechanics lien-- revision"

NJSA: 2A:44-128

LAWS OF: 1996 CHAPTER: 81

BILL NO: A1034

SPONSOR(S): DiGaetano

DATE INTRODUCED: January 11, 1996

COMMITTEE: ASSEMBLY: Local Government

SENATE: ---

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: June 24, 1996

SENATE: June 27, 1996

DATE OF APPROVAL: July 25, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: statement adopted 6-17-96

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: ~~Yes~~ no

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED: REPORTS: No

HEARINGS: No

KBP:pp

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P.L. 1996, CHAPTER 81, *approved July 25, 1996*
Assembly No. 1034 (*Second Reprint*)

1 AN ACT concerning certain types of liens and amending various parts
2 of the statutory law.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.2A:44-128 is amended to read as follows:

8 2A:44-128. a. Any person who, as laborer, mechanic,
9 materialman, merchant or trader, or subcontractor, in pursuance of or
10 conformity with the terms of any contract for any public improvement
11 made between any person and a public agency as defined in [section]
12 N.J.S.2A:44-126 [of this title] and authorized by law to make
13 contracts for the making of public improvements, performs any labor
14 or furnishes any materials, including the furnishing of oil, gasoline or
15 lubricants and vehicle use, toward the performance or completion of
16 any such contract, shall, on complying with the provisions of
17 [sections] subsection b. of N.J.S.2A:44-128, N.J.S.2A:44-132 and
18 N.J.S.2A:44-133 [of this title], have a lien for the value of the labor
19 or materials, or both, upon the moneys due or to grow due under the
20 contract and in the control of the public agency, to the full value of the
21 claim or demand. The lien may be filed and, to the extent of the
22 amount due or to grow due under the contract, shall become an
23 absolute lien to the full value of the labor performed or materials
24 furnished in favor of every person and his representatives and assigns
25 employed by or furnishing materials to the contractor or
26 subcontractor.

27 No public agency shall be required to pay a greater amount than the
28 contract price of the labor performed and materials furnished or the
29 value thereof when no specific contract is made with respect to the
30 same by the contractor or subcontractor, respectively.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not
enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALJ committee amendments adopted May 13, 1996.

² Assembly floor amendments adopted June 17, 1996.

1 b. Any person who may seek to assert a lien under subsection a. of
2 this section shall, within 20 days of the first performance of work or
3 performance of work or delivery of labor or materials to a
4 subcontractor, ¹[provide to the contractor] file with the municipal
5 clerk, the ²[treasurer or other]² chief financial officer of the county or
6 the chairman of the commission, board or authority, whichever is
7 appropriate, ¹ written notice that he or she has furnished labor or
8 materials to the subcontractor. The notice shall contain the name,
9 address and telephone number of the person providing the labor or
10 materials, the name and geographical location of the public
11 improvement for which the labor or materials have been supplied, the
12 name of the subcontractor to which the labor or materials have been
13 supplied, a description of the labor or materials supplied, and the date
14 that the labor or materials were first supplied to the subcontractor.
15 ¹[The provision of] The officer of the public agency shall maintain a
16 separate file for all written notices which shall be available to the
17 public for inspection and copying during regular business hours.
18 Failure to provide¹ this written notice ¹[to the contractor] as
19 required¹ within 20 days of the first performance of work or delivery
20 of labor or materials to the subcontractor shall be a ¹[requirement for,
21 and shall be a condition of, the securing of a lien by the person
22 supplying the labor or materials] bar to secure a lien for the labor or
23 materials provided, unless there is money owing from the contractor
24 to the subcontractor to whom the labor or materials were provided, in
25 which case the lien shall be limited in value to a sum not greater than
26 the money owing from the contractor to the subcontractor.

27 ²The public entity with which the notice required by this section is
28 filed may charge an inquiry fee for information contained in the notice
29 to any person, including the contractor. The inquiry fee shall be
30 reasonable and shall be set to reflect the cost to the public entity of
31 retrieving the information.²

32 ²Notwithstanding the provisions of this section to the contrary, if
33 a notice is filed after the 20-day period, the person so filing may assert
34 a lien under subsection a. of this section for any labor or materials
35 provided on or after that filing date.²

36 No additional notice shall be required for work or materials
37 provided under the same public improvement contract subsequent to
38 the initial notice, notwithstanding that the work and materials may be
39 provided under a separate contract or purchase order¹.

40 Written notice ²[to the contractor]² shall be substantially in the
41 following form:

42
43 NOTICE ¹[TO CONTRACTOR]¹ OF THE DELIVERY OF
44 LABOR OR MATERIALS

45
46 In accordance with the terms and provisions of the "Municipal

1 Mechanics' Lien Law." N.J.S.2A:44-125 et seq., notice is hereby given
 2 that:

3 1. (Name of person supplying labor or materials) of (address of
 4 person supplying labor or materials) has on (date) provided to (name
 5 of subcontractor) the following: (description of labor or materials).
 6 My telephone number is (telephone number of person supplying labor
 7 or materials).

8 2. The (description of labor or materials) were provided for the
 9 (name of public improvement) in (name of municipality), New Jersey.

10

11

Signed: _____

12

For: _____

13

Individual, firm or corporation

14

15 c. Funds received by a contractor and paid to a subcontractor or
 16 supplier for work performed or labor or materials supplied pursuant to
 17 a contract for any public improvement shall be applied only to amounts
 18 due and owing for work performed or labor or materials supplied for
 19 such public improvement. Any 'subcontractor or' supplier who
 20 knowingly applies such payment received from the contractor on the
 21 public improvement to amounts due and owing for work performed or
 22 labor or materials supplied on a construction project other than the
 23 public improvement and then claims a lien on the public improvement
 24 for non-payment shall forfeit all lien rights under this title. A
 25 'subcontractor or' supplier forfeiting his lien rights pursuant to this
 26 section shall be liable for all damages incurred by any contractor as a
 27 result of the misapplication of such funds, including attorney's fees,
 28 and shall be liable for all court costs and reasonable legal expenses,
 29 including attorneys' fees, incurred by the contractor in defending or
 30 causing the discharge of the lien claim.

31 (cf: N.J.S.2A:44-128)

32

33 2. N.J.S.2A:44-143 is amended to read as follows:

34 2A:44-143. a. (1) When public buildings or other public works or
 35 improvements are about to be constructed, erected, altered or repaired
 36 under contract, at the expense of the State or any contracting unit, as
 37 defined in section 2 of P.L.1971, c.198 (C.40A:11-2), or school
 38 district, the board, officer or agent contracting on behalf of the State,
 39 contracting unit or school district, shall require delivery of ' [a surety
 40 performance.]' the payment and performance bond '[and payment
 41 bond]' issued in accordance with N.J.S.2A:44-147 and otherwise, as
 42 provided for by law, with an obligation '[. It shall be the obligation
 43 of the payment bond] for the performance of the contract and' for the
 44 payment by the contractor[, and by all subcontractors.] for all labor
 45 performed or materials, provisions, provender or other supplies,
 46 teams, fuels, oils, implements or machinery used or consumed in,

1 upon, for or about the construction, erection, alteration or repair of
2 such buildings, works or improvements ¹[and] ¹provided by
3 subcontractors or material suppliers in contract with the contractor, or
4 subcontractors ²or material suppliers² in contract with a
5 subcontractor ²[or material supplier]² to the contractor, ²[or material
6 suppliers to a contractor,]² which class of persons shall be the
7 beneficiaries of ¹[such surety] the payment and performance¹ bond¹.
8 The board, officer or agent¹ shall ¹also¹ require that all payment and
9 performance bonds be issued by a surety which meets the following
10 standards:

11 (a) The surety shall have the minimum surplus and capital stock or
12 net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is
13 appropriate, at the time the invitation to bid is issued; and

14 (b) With respect to all payment and performance bonds in the
15 amount of \$850,000 or more, (i) if the amount of the bond is at least
16 \$850,000 but not more than \$3.5 million, the surety shall hold a
17 current certificate of authority, issued by the United States Secretary
18 of the Treasury pursuant to 31 U.S.C. ²§² 9305, that is valid in the
19 State of New Jersey as listed annually in the United States Treasury
20 Circular 570, except that if the surety has been operational for a period
21 in excess of five years, the surety shall be deemed to meet the
22 requirements of this subparagraph if it is rated in one of the three
23 highest categories by an independent, nationally recognized United
24 States rating company that determines the financial stability of
25 insurance companies, which rating company or companies shall be
26 determined pursuant to standards promulgated by the Commissioner
27 of Insurance by regulation adopted pursuant to the "Administrative
28 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (ii) if the
29 amount of the bond is more than \$3.5 million, then the surety shall
30 hold a current certificate of authority, issued by the United States
31 Secretary of the Treasury pursuant to 31 U.S.C. ²§² 9305, that is valid
32 in the State of New Jersey as listed annually in the United States
33 Treasury Circular 570 and, if the surety has been operational for a
34 period in excess of five years, shall be rated in one of the three highest
35 categories by an independent, nationally recognized United States
36 rating company that determines the financial stability of insurance
37 companies, which rating company or companies shall be determined
38 pursuant to standards promulgated by the Commissioner of Insurance
39 by regulation adopted pursuant to the "Administrative Procedure Act,"
40 P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the
41 provisions of subparagraph (ii) of this subparagraph which does not
42 hold a certificate of authority issued by the United States Secretary of
43 the Treasury shall be exempt from the requirement to hold such a
44 certificate if the surety meets an equivalent set of standards developed
45 by the Commissioner of Insurance through regulation which at least
46 equal, and may exceed, the general criteria required for issuance of a

1 certificate of authority by the United States Secretary of the Treasury
2 pursuant to 31 U.S.C. § 9305. A surety company seeking such an
3 exemption shall, not later than the 180th day following the effective
4 date of P.L.1995, c.384 [(N.J.S.2A:44-143 et al.)], certify to the
5 appropriate contracting unit that it meets that equivalent set of
6 standards set forth by the commissioner as promulgated.

7 (2) When such contract is to be performed at the expense of the
8 State and is entered into by the Director of the Division of Building
9 and Construction or State departments designated by the Director of
10 the Division of Building and Construction, the director or the State
11 departments may: (a) establish for that contract the amount of the
12 bond at any percentage, not exceeding 100%, of the amount bid, based
13 upon the director's or department's assessment of the risk presented to
14 the State by the type of contract and other relevant factors, and (b)
15 waive the bond requirement of this section entirely if the contract is
16 for a sum not exceeding \$200,000.

17 (3) When such a contract is to be performed at the expense of a
18 contracting unit or school district, the board, officer or agent
19 contracting on behalf of the contracting unit or school district may:
20 (a) establish for that contract the amount of the bond at any
21 percentage, not exceeding 100%, of the amount bid, based upon the
22 board's, officer's or agent's assessment of the risk presented to the
23 contracting unit or school district by the type of contract and other
24 relevant factors, and (b) waive the bond requirement of this section
25 entirely if the contract is for a sum not exceeding \$100,000.

26 b. A surety's obligation shall not extend to any claim for damages
27 based upon alleged negligence that resulted in personal injury,
28 wrongful death, or damage to real or personal property, and no bond
29 shall in any way be construed as a liability insurance policy. Nothing
30 herein shall relieve the surety's obligation to guarantee the contractor's
31 performance of all conditions of the contract, including the
32 maintenance of liability insurance if and as required by the contract.
33 Only the obligee named on the bond, and any subcontractor
34 performing labor or any subcontractor or materialman providing
35 materials for the construction, erection, alteration or repair of the
36 public building, work or improvement for which the bond is required
37 pursuant to this section, shall have any claim against the surety under
38 the bond.

39 c. A board, officer or agent contracting on behalf of the State,
40 contracting unit or school district shall not accept more than one
41 payment and performance bond to cover a single construction
42 contract. The board, officer or agent may accept a single bond
43 executed by more than one surety to cover a single construction
44 contract only if the combined underwriting limitations of all the named
45 sureties, as set forth in the most current annual revision of United
46 States Treasury Circular 570, or as determined by the Commissioner

1 of Insurance pursuant to R.S.17:18-9, meet or exceed the amount of
2 the contract to be performed.

3 d. A board, officer or agent contracting on behalf of the State,
4 contracting unit or school district shall not accept a payment or
5 performance bond unless there is attached thereto a Surety Disclosure
6 Statement and Certification to which each surety executing the bond
7 shall have subscribed. This statement and certification shall be
8 complete in all respects and duly acknowledged according to law, and
9 shall have substantially the following form:

10

11 SURETY DISCLOSURE STATEMENT AND CERTIFICATION

12

13 , surety(ies) on the attached bond, hereby
14 certifies(y) the following:

15 (1) The surety meets the applicable capital and surplus
16 requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most
17 current annual filing with the New Jersey Department of Insurance.

18 (2) The capital (where applicable) and surplus, as determined in
19 accordance with the applicable laws of this State, of the surety(ies)
20 participating in the issuance of the attached bond is (are) in the
21 following amount(s) as of the calendar year ended December 31,
22 (most recent calendar year for which capital and surplus amounts are
23 available), which amounts have been certified as indicated by certified
24 public accountants (indicating separately for each surety that surety's
25 capital and surplus amounts, together with the name and address of the
26 firm of certified public accounts that shall have certified those
27 amounts):

28

29

30

31

32 (3) (a) With respect to each surety participating in the issuance of
33 the attached bond that has received from the United States Secretary
34 of the Treasury a certificate of authority pursuant to 31 U.S.C. §
35 9305, the underwriting limitation established therein and the date as of
36 which that limitation was effective is as follows (indicating for each
37 such surety that surety's underwriting limitation and the effective date
38 thereof):

39

40

41

42

43 (b) With respect to each surety participating in the issuance of the
44 attached bond that has not received such a certificate of authority from
45 the United States Secretary of the Treasury, the underwriting
46 limitation of that surety as established pursuant to R.S.17:18-9 as of

1 (date on which such limitation was so established) is as follows
 2 (indicating for each such surety that surety's underwriting limitation
 3 and the date on which that limitation was established):

4 _____
 5 _____
 6 _____
 7 _____

8 (4) The amount of the bond to which this statement and
 9 certification is attached is \$ _____

10 (5) If, by virtue of one or more contracts of reinsurance, the
 11 amount of the bond indicated under item (4) above exceeds the total
 12 underwriting limitation of all sureties on the bond as set forth in items
 13 (3)(a) or (3)(b) above, or both, then for each such contract of
 14 reinsurance:

15 (a) The name and address of each such reinsurer under that
 16 contract and the amount of that reinsurer's participation in the contract
 17 is as follows: _____

18 _____
 19 _____
 20 _____; and

21 (b) Each surety that is party to any such contract of reinsurance
 22 certifies that each reinsurer listed under item (5)(a) satisfies the credit
 23 for reinsurance requirement established under P.L.1993, c.243
 24 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the
 25 date on which the bond to which this statement and certification is
 26 attached shall have been filed with the appropriate public agency.

27 **CERTIFICATE**

28 (to be completed by an authorized certifying agent
 29 for each surety on the bond)

30
 31 I (name of agent) , as (title of agent) for (name of
 32 surety) , a corporation/mutual insurance company/other (indicating
 33 type of business organization) (circle one) domiciled in (state of
 34 domicile) , DO HEREBY CERTIFY that, to the best of my
 35 knowledge, the foregoing statements made by me are true, and
 36 ACKNOWLEDGE that, if any of those statements are false, this bond
 37 is ²**[VOID] VOIDABLE²**.

38 _____
 39 (Signature of certifying agent)

40 _____
 41 _____
 42 (Printed name of certifying agent)

43 _____
 44 _____
 45 (Title of certifying agent)

46 (cf: P.L.1995, c.384, s.1)

1 3. N.J.S.2A:44-144 is amended to read as follows:

2 2A:44-144. The bond required by this article shall be executed by
3 the contractor with such sureties in accordance with N.J.S.2A:44-147
4 as shall be approved by the board, officer or agent acting on behalf of
5 the state, contracting unit or school district, in an amount equal to [at
6 least] 100 per cent of the contract price[, and]. The payment bond
7 shall be conditioned for the payment by the contractor[, and by all
8 subcontractors, or his or their subcontractor,]of all indebtedness
9 which may accrue to any person, firm or corporation designated as a
10 "beneficiary" pursuant to N.J.S.2A:44-143, in an amount not
11 exceeding the sum specified in the bond, on account of any labor
12 performed or materials, provisions, provender or other supplies, or
13 teams, fuels, oils, implements or machinery used or consumed in,
14 upon, for or about the construction, erection, alteration or repair of
15 the public building or public work or improvement.

16 The payment bond shall be deposited with and be held by the board,
17 officer or agent acting on behalf of the state, contracting unit or school
18 district, for the use of [any party interested therein] any beneficiary
19 thereof.

20 (cf. P.L.1995, c.384, s.2)

21

22 4. N.J.S.2A:44-145 is amended to read as follows:

23 2A:44-145. Any person who may be a beneficiary of the payment
24 bond, as defined in this article, and who does not have a direct
25 contract with the contractor furnishing the bond shall, prior to
26 commencing any work, provide written notice to the contractor by
27 certified mail or otherwise, provided that he shall have proof of
28 delivery of same, that said person is a beneficiary of the bond. If a
29 beneficiary fails to provide the required written notice, the beneficiary
30 shall ²[not] ²only² have ²[any]² rights to the benefits ²[otherwise]²
31 available hereunder ²from the date the notice is provided².

32 Any [person] beneficiary, as defined in N.J.S.2A:44-143, to whom
33 any money shall be due on account of having performed any labor or
34 furnished any materials, provisions, provender or other supplies, or
35 teams, fuels, oils, implements or machinery in, upon, for or about the
36 construction, erection, alteration or repair of any public building or
37 other public work or improvement, shall, at any time before the
38 [acceptance of such building, work or improvement by the duly
39 authorized board or officer, or within 80 days thereafter] expiration
40 of one year from the last date upon which such beneficiary shall have
41 performed actual work or delivered materials to the project, in the
42 case of a material supplier, furnish the sureties on the bond required
43 by this article a statement of the amount due to him.

44 No action shall be brought against any of the sureties on the bond
45 required by this article until the expiration of [80] 90 days after [the

1 acceptance of the building, work or improvement by the duly
2 authorized board or officer] ~~provision to the sureties and the~~
3 ~~contractor of the statement of the amount due to him, but in no event~~
4 ~~later than one year from the last date upon which such beneficiary shall~~
5 ~~have performed actual work or delivered materials to the project.~~

6 (cf: N.J.S.2A:44-145)

7

8 5. N.J.S.2A:44-146 is amended to read as follows:

9 2A:44-146. If the indebtedness due to any person as shown by the
10 statement required to be filed by [section] N.J.S.2A:44-145 [of this
11 title] shall not be paid in full at the expiration of [80] 90 days from
12 the [acceptance of the building, work or improvement by the duly
13 authorized board or officer] ~~date of notice of the amount due to the~~
14 ~~person, such person [may] shall, within 1 year from the [date of such~~
15 ~~acceptance] last date that work was performed or materials were~~
16 ~~supplied by that person, bring an action in his own name upon the~~
17 ~~bond required by this article.~~

18 (cf: N.J.S.2A:44-146)

19

20 6. N.J.S.2A:44-147 is amended to read as follows:

21 2A:44-147. The bond required by this article shall be in
22 substantially the following form:

23 "Know all men by these presents, that we, the undersigned as
24 principal and as sureties, are hereby held and firmly bound unto in the
25 penal sum of dollars, for the payment of which well and truly to be
26 made, we hereby jointly and severally bind ourselves, our heirs,
27 executors, administrators, successors and assigns.

28 "Signed this day of , 19 .

29 "The condition of the above obligation is such that whereas, the
30 above named principal did on the day of , 19 , enter into a contract
31 with , which said contract is made a part of this the bond the same as
32 though set forth herein;

33 "Now, if the said shall well and faithfully do and perform the things
34 agreed by to be done and performed according to the terms of said
35 contract, and shall pay all lawful claims of [subcontractors,
36 materialmen, laborers, persons, firms or corporations] beneficiaries as
37 defined by N.J.S.2A:44-143 for labor performed or materials,
38 provisions, provender or other supplies or teams, fuels, oils,
39 implements or machinery furnished, used or consumed in the carrying
40 forward, performing or completing of said contract, we agreeing and
41 assenting that this undertaking shall be for the benefit of any
42 [subcontractor, materialman, laborer, person, firm or corporation]
43 beneficiary as defined in N.J.S.2A:44-143 having a just claim, as well
44 as for the obligee herein; then this obligation shall be void; otherwise
45 the same shall remain in full force and effect; it being expressly

1 understood and agreed that the liability of the surety for any and all
2 claims hereunder shall in no event exceed the penal amount of this
3 obligation as herein stated.

4 "The said surety hereby stipulates and agrees that no modifications,
5 omissions or additions in or to the terms of the said contract or in or
6 to the plans or specifications therefor shall in anywise affect the
7 obligation of said surety on its bond."

8 Recovery of any claimant under the bond shall be subject to the
9 conditions and provisions of this article to the same extent as if such
10 conditions and provisions were fully incorporated in the form set forth
11 above.

12 (cf. N.J.S.2A:44-147)

13

14 ²7. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to
15 read as follows:

16 13. Specifications. Any specifications for an acquisition under this
17 act, whether by purchase, contract or agreement, shall be drafted in a
18 manner to encourage free, open and competitive bidding. In particular,
19 no specifications under this act may:

20 (a) Require any standard, restriction, condition or limitation not
21 directly related to the purpose, function or activity for which the
22 purchase, contract or agreement is made; or

23 (b) Require that any bidder be a resident of, or that his place of
24 business be located in, the county or municipality in which the
25 purchase will be made or the contract or agreement performed, unless
26 the physical proximity of the bidder is requisite to the efficient and
27 economical purchase or performance of the contract or agreement;
28 except that no specification for a contract for the collection and
29 disposal of municipal solid waste shall require any bidder to be a
30 resident of, or that his place of business be located in, the county or
31 municipality in which the contract will be performed; or

32 (c) Discriminate on the basis of race, religion, sex, national origin;
33 or

34 (d) Require, with regard to any purchase, contract or agreement, the
35 furnishing of any "brand name," but may in all cases require "brand
36 name or equivalent," except that if the materials to be supplied or
37 purchased are patented or copyrighted, such materials or supplies may
38 be purchased by specification in any case in which the ordinance or
39 resolution authorizing the purchase, contract, sale or agreement so
40 indicates, and the special need for such patented or copyrighted
41 materials or supplies is directly related to the performance, completion
42 or undertaking of the purpose for which the purchase, contract or
43 agreement is made; or

44 (e) Fail to include any option for renewal, extension, or release
45 which the contracting unit may intend to exercise or require; or any
46 terms and conditions necessary for the performance of any extra work;

1 or fail to disclose any matter necessary to the substantial performance
2 of the contract or agreement.

3 Any specification adopted by the governing body, which knowingly
4 excludes prospective bidders by reason of the impossibility of
5 performance, bidding or qualification by any but one bidder, except as
6 provided herein, shall be null and void and of no effect and subject
7 purchase, contract or agreement shall be readvertised, and the original
8 purchase, contract or agreement shall be set aside by the governing
9 body.

10 Any specification adopted by the governing body for a contract for
11 the collection and disposal of municipal solid waste shall conform to
12 the uniform bid specifications for municipal solid waste collection
13 contracts established pursuant to section 22 of P.L.1991, c.381
14 (C.48:13A-7.22).

15 Any specification adopted by the governing body may include an
16 item for the cost, which shall be paid by the contractor, of creating a
17 file to maintain the notices of the delivery of labor or materials
18 required by N.J.S.2A:44-128.²

19 (cf: P.L.1991, c.381, s.48)

20

21 ²[7.] 8.² This act shall take effect on the 30th day next following
22 enactment.

23

24

25

26

27 Revises certain aspects of "Municipal Mechanics' Lien Law."

1 above named principal did on the day of , 19 , enter into a contract
2 with , which said contract is made a part of this the bond the same as
3 though set forth herein;

4 "Now, if the said shall well and faithfully do and perform the things
5 agreed by to be done and performed according to the terms of said
6 contract, and shall pay all lawful claims of **【subcontractors,**
7 **materialmen, laborers, persons, firms or corporations】** beneficiaries as
8 defined by N.J.S.2A:44-143 for labor performed or materials,
9 provisions, provender or other supplies or teams, fuels, oils,
10 implements or machinery furnished, used or consumed in the carrying
11 forward, performing or completing of said contract, we agreeing and
12 assenting that this undertaking shall be for the benefit of any
13 **【subcontractor, materialman, laborer, person, firm or corporation】**
14 beneficiary as defined in N.J.S.2A:44-143 having a just claim, as well
15 as for the obligee herein; then this obligation shall be void; otherwise
16 the same shall remain in full force and effect; it being expressly
17 understood and agreed that the liability of the surety for any and all
18 claims hereunder shall in no event exceed the penal amount of this
19 obligation as herein stated.

20 "The said surety hereby stipulates and agrees that no modifications,
21 omissions or additions in or to the terms of the said contract or in or
22 to the plans or specifications therefor shall in anywise affect the
23 obligation of said surety on its bond."

24 Recovery of any claimant under the bond shall be subject to the
25 conditions and provisions of this article to the same extent as if such
26 conditions and provisions were fully incorporated in the form set forth
27 above.

28 (cf: N.J.S.2A:44-147)

29

30 7. This act shall take effect on the 30th day next following
31 enactment.

32

33

34

STATEMENT

35

36 The intent of this bill is to eliminate the problems that sometimes
37 arise on construction sites when there are many subcontractors on a
38 construction project.

39 In many cases, a general contractor will hire a subcontractor to
40 perform certain parts of a construction job, and the subcontractor will
41 hire a sub-subcontractor. Oftentimes, the general contractor is not
42 aware that the sub-subcontractor has been hired and is working on the
43 construction project. It is the responsibility of the subcontractor who
44 employs a sub-subcontractor to pay the sub-subcontractor for work
45 performed or materials delivered, after receiving his payment from the
46 general contractor. If a sub-subcontractor does not receive payment,

1 a lien is usually filed by him against the contractor, or against the bond
2 or bonds posted by the general contractor.

3 In order to eliminate the potential for confusion in such cases, the
4 bill requires that any subcontractor, or any laborer, mechanic,
5 materialman, merchant or trader, seeking to assert a lien for payment
6 due, must within 20 days of the first performance of work or delivery
7 of labor or materials to a subcontractor, provide to the contractor
8 written notice that he or she has furnished labor or materials to the
9 subcontractor. The notice must contain the name, address and
10 telephone number of the person providing the labor or materials, the
11 name and geographical location of the public improvement for which
12 the labor or materials have been supplied, the name of the
13 subcontractor to which the labor or materials have been supplied, a
14 description of the labor or materials supplied, and the date that the
15 labor or materials were first supplied to the subcontractor. If no such
16 notice is given, a lien cannot be secured.

17 The bill also requires that funds received by a contractor and paid
18 to a subcontractor or supplier for work performed or labor or
19 materials supplied pursuant to a contract for any public improvement
20 shall be applied only to amounts due and owing for work performed
21 or labor or materials supplied for such public improvement. Any
22 supplier who knowingly applies such payment received from the
23 contractor on the public improvement to amounts due and owing for
24 work performed or labor or materials supplied on a construction
25 project other than the public improvement and then claims a lien on the
26 public improvement for non-payment shall forfeit all lien rights under
27 this title. A supplier forfeiting his lien rights pursuant to this section
28 shall be liable for all damages incurred by any contractor as a result of
29 the misapplication of such funds, including attorney's fees, and shall be
30 liable for all court costs and reasonable legal expenses, including
31 attorneys' fees, incurred by the contractor in defending or causing the
32 discharge of the lien claim.

33

34

35

36

37 Revises certain aspects of "Municipal Mechanics' Lien Law."

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1034

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 13, 1996

The Assembly Local Government Committee reports favorably Assembly Bill No. 1034, with committee amendments.

The intent of Assembly Bill No. 1034 is to eliminate certain payment problems that sometimes arise on public improvement construction sites when a general contractor has hired subcontractors who, in turn, have hired other subcontractors that are unknown to the general contractor.

Generally, it is the responsibility of the subcontractor who receives payment from the general contractor to pay any "sub-subcontractors" for work performed or materials delivered with regard to the subcontractor's project obligations. A "sub-subcontractor" that does not receive payment from the subcontractor may file a mechanics' lien for work performed or materials supplied against the general contractor or against the bonds posted by the general contractor.

In order to discharge a valid mechanics' lien the general contractor must often pay a "sub-subcontractor" for materials or labor for which the subcontractor has already received payment. In order to eliminate the potential for confusion in such cases, the amended bill requires that any subcontractor, or any laborer, mechanic, materialman, merchant or trader, seeking to assert a lien for payment due, must within 20 days of the first performance of work or delivery of materials to a public improvement, file with the municipal clerk, the treasurer or other chief financial officer of the county or the chairman of the commission, board or authority, whichever is appropriate, written notice that he or she has furnished labor or materials to a subcontractor on the project. The notice must contain the name, address and telephone number of the person providing the labor or materials, the name and geographical location of the public improvement for which the labor or materials have been supplied, the name of the subcontractor to which the labor or materials have been supplied, a description of the labor or materials supplied, and the date that the labor or materials were first supplied to the subcontractor. If no such notice is given, a mechanics' lien cannot be secured by the "sub-subcontractor." The "sub-subcontractor" would still have the option of suing the subcontractor for payment. The bill,

as introduced by the sponsors, provided that the required notice was to be provided to the contractor. The committee deleted that requirement and amended the bill to provide filing with a public official so that the filings will be public records.

The amended bill also requires that the officer of the public agency with whom these notices are to be filed must maintain a separate file for the notices, and that the file must be available to the public for inspection and copying during regular business hours.

The amended bill also requires that failure to provide the required notice will be a bar to secure a lien for labor or materials provided, unless there is money owing from the contractor to the subcontractor to whom the labor or materials were provided. In this case, the lien is limited in value to an amount not greater than the money owing from the contractor to the subcontractor.

The amended bill provides that a subcontractor or supplier who knowingly applies payment received from a contractor on a public improvement to amounts due and owing for work performed or labor or materials supplied on a construction project other than that public improvement will forfeit all lien rights under the "Municipal Mechanics' Lien Law," N.J.S.2A:44-125 et seq., and be liable for all damages incurred by a contractor as a result of the misapplication of the funds, including but not limited to attorney fees. As originally introduced by the sponsor, this penalty would have only been applied to suppliers.

The amendments also require that any subcontractor or supplier who knowingly applies payment received from a contractor on the public improvement to amounts due and owing on any construction project other than the public improvement, and then claims a lien against the public improvement for non-payment, shall forfeit all lien rights and be liable for all damages, court costs and reasonable legal expenses, including attorney's fees, incurred by the contractor in defending or causing the discharge of the lien claim. Under the bill introduced by the sponsor, this forfeiture of lien rights and liability for monetary amounts applied only to a supplier.

The committee amended section 2 of the bill to conform the amendatory language of the sponsors' bill with changes to N.J.S.2A:44-143 that resulted from the enactment of P.L.1995, c.384. The committee's amendments in this section also clarify that a payment and performance bond shall have an obligation for the performance of the contract as well as payment by the contractor for labor and materials used in the work contracted for.

Assembly Bill No. 1034 was pre-filed for introduction in the 1996-1997 legislative session pending technical review. As reported by the committee, the bill contains the changes required by technical review, which has been performed.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 1034

with Assembly Floor Amendments
(Proposed By Assemblyman DiGAETANO)

ADOPTED: JUNE 17, 1996

These amendments make various technical and substantive changes to the bill. The bill deletes a reference to the county treasurer in section 1, so that notices of the delivery of labor or materials will be filed on the county level with the county chief financial officer. The bill also deletes a reference to the filing of the notice with a contractor, to reflect that such notices are to be filed with local officials, such as a municipal clerk, a county chief financial officer, or a chairman of a commission, board or authority. The amendments also include a provision that permits a person filing a notice after the 20-day period to assert a lien for any labor or materials provided after the filing date of the notice, and permit the public entity with which the notice is filed to charge an inquiry fee for information contained in the notice to any person, including the contractor. The inquiry fee must be reasonable and must be set to the cost to the public entity of retrieving the information.

The amendments in section 2 of the bill are technical as well as substantive in nature. The substantive changes require that the delivery of a payment bond under that section will require payment by the contractor for work or materials provided by subcontractors or material suppliers in contract with the contractor, or subcontractors or material suppliers in contract with a subcontractor to the contractor, and change the wording of the model certification at the end of that section from "void" to "voidable."

Section 3 of the bill contains language that states that with respect to the payment bond, if a beneficiary of the bond fails to provide the required written notice, the beneficiary shall only have rights to the benefits of that section of law, from the date the notice is provided.

Finally, the amendments add a new section 7 to the bill, which amends the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.), to permit any specification adopted by the governing body to include an item for the cost, which shall be paid by the contractor, of creating a file to maintain the notices of the delivery of labor or materials required by N.J.S.2A:44-128.

[Second Reprint]
ASSEMBLY, No. 1034

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen DiGAETANO and DORIA

1 AN ACT concerning certain types of liens and amending various parts
2 of the statutory law.

3

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

6

7 1. N.J.S.2A:44-128 is amended to read as follows:

8 2A:44-128. a. Any person who, as laborer, mechanic,
9 materialman, merchant or trader, or subcontractor, in pursuance of or
10 conformity with the terms of any contract for any public improvement
11 made between any person and a public agency as defined in [section]
12 N.J.S.2A:44-126 [of this title] and authorized by law to make
13 contracts for the making of public improvements, performs any labor
14 or furnishes any materials, including the furnishing of oil, gasoline or
15 lubricants and vehicle use, toward the performance or completion of
16 any such contract, shall, on complying with the provisions of
17 [sections] subsection b. of N.J.S.2A:44-128, N.J.S.2A:44-132 and
18 N.J.S.2A:44-133 [of this title], have a lien for the value of the labor
19 or materials, or both, upon the moneys due or to grow due under the
20 contract and in the control of the public agency, to the full value of the
21 claim or demand. The lien may be filed and, to the extent of the
22 amount due or to grow due under the contract, shall become an
23 absolute lien to the full value of the labor performed or materials
24 furnished in favor of every person and his representatives and assigns
25 employed by or furnishing materials to the contractor or
26 subcontractor.

27 No public agency shall be required to pay a greater amount than the
28 contract price of the labor performed and materials furnished or the
29 value thereof when no specific contract is made with respect to the
30 same by the contractor or subcontractor, respectively.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALG committee amendments adopted May 13, 1996.

² Assembly floor amendments adopted June 17, 1996.

1 b. Any person who may seek to assert a lien under subsection a. of
2 this section shall, within 20 days of the first performance of work or
3 performance of work or delivery of labor or materials to a
4 subcontractor, ¹ **provide to the contractor** file with the municipal
5 clerk, the ² **treasurer or other** ² chief financial officer of the county or
6 the chairman of the commission, board or authority, whichever is
7 appropriate, ¹ written notice that he or she has furnished labor or
8 materials to the subcontractor. The notice shall contain the name,
9 address and telephone number of the person providing the labor or
10 materials, the name and geographical location of the public
11 improvement for which the labor or materials have been supplied, the
12 name of the subcontractor to which the labor or materials have been
13 supplied, a description of the labor or materials supplied, and the date
14 that the labor or materials were first supplied to the subcontractor.
15 ¹ **The provision of** The officer of the public agency shall maintain a
16 separate file for all written notices which shall be available to the
17 public for inspection and copying during regular business hours.
18 Failure to provide ¹ this written notice ¹ **to the contractor** as
19 required ¹ within 20 days of the first performance of work or delivery
20 of labor or materials to the subcontractor shall be a ¹ **requirement for,**
21 and shall be a condition of, the securing of a lien by the person
22 supplying the labor or materials **bar to secure a lien for the labor or**
23 **materials provided, unless there is money owing from the contractor**
24 **to the subcontractor to whom the labor or materials were provided, in**
25 **which case the lien shall be limited in value to a sum not greater than**
26 **the money owing from the contractor to the subcontractor.**

27 ² **The public entity with which the notice required by this section is**
28 **filed may charge an inquiry fee for information contained in the notice**
29 **to any person, including the contractor. The inquiry fee shall be**
30 **reasonable and shall be set to reflect the cost to the public entity of**
31 **retrieving the information.** ²

32 ² **Notwithstanding the provisions of this section to the contrary, if**
33 **a notice is filed after the 20-day period, the person so filing may assert**
34 **a lien under subsection a. of this section for any labor or materials**
35 **provided on or after that filing date.** ²

36 No additional notice shall be required for work or materials
37 provided under the same public improvement contract subsequent to
38 the initial notice, notwithstanding that the work and materials may be
39 provided under a separate contract or purchase order ¹.

40 Written notice ² **to the contractor** ² shall be substantially in the
41 following form:

42

43 NOTICE ¹ **TO CONTRACTOR** ¹ OF THE DELIVERY OF
44 LABOR OR MATERIALS

45

46 In accordance with the terms and provisions of the "Municipal

1 Mechanics' Lien Law." N.J.S.2A:44-125 et seq., notice is hereby given
2 that:

3 1. (Name of person supplying labor or materials) of (address of
4 person supplying labor or materials) has on (date) provided to (name
5 of subcontractor) the following: (description of labor or materials).
6 My telephone number is (telephone number of person supplying labor
7 or materials).

8 2. The (description of labor or materials) were provided for the
9 (name of public improvement) in (name of municipality), New Jersey.

10

11 Signed: _____

12 For: _____

13 Individual, firm or corporation

14

15 c. Funds received by a contractor and paid to a subcontractor or
16 supplier for work performed or labor or materials supplied pursuant to
17 a contract for any public improvement shall be applied only to amounts
18 due and owing for work performed or labor or materials supplied for
19 such public improvement. Any 'subcontractor or' supplier who
20 knowingly applies such payment received from the contractor on the
21 public improvement to amounts due and owing for work performed or
22 labor or materials supplied on a construction project other than the
23 public improvement and then claims a lien on the public improvement
24 for non-payment shall forfeit all lien rights under this title. A
25 'subcontractor or' supplier forfeiting his lien rights pursuant to this
26 section shall be liable for all damages incurred by any contractor as a
27 result of the misapplication of such funds, including attorney's fees,
28 and shall be liable for all court costs and reasonable legal expenses,
29 including attorneys' fees, incurred by the contractor in defending or
30 causing the discharge of the lien claim.

31 (cf: N.J.S.2A:44-128)

32

33 2. N.J.S.2A:44-143 is amended to read as follows:

34 2A:44-143. a. (1) When public buildings or other public works or
35 improvements are about to be constructed, erected, altered or repaired
36 under contract, at the expense of the State or any contracting unit, as
37 defined in section 2 of P.L.1971, c.198 (C.40A:11-2), or school
38 district, the board, officer or agent contracting on behalf of the State,
39 contracting unit or school district, shall require delivery of ' [a surety
40 performance] ' the payment and performance bond ' [and payment
41 bond] ' issued in accordance with N.J.S.2A:44-147 and otherwise, as
42 provided for by law, with an obligation ' [. It shall be the obligation
43 of the payment bond] for the performance of the contract and ' for the
44 payment by the contractor [, and by all subcontractors,] for all labor
45 performed or materials, provisions, provender or other supplies,
46 teams, fuels, oils, implements or machinery used or consumed in,

1 upon, for or about the construction, erection, alteration or repair of
2 such buildings, works or improvements ¹[and]¹ provided by
3 subcontractors or material suppliers in contract with the contractor, or
4 subcontractors ²or material suppliers² in contract with a
5 subcontractor ²[or material supplier]² to the contractor, ²[or material
6 suppliers to a contractor,]² which class of persons shall be the
7 beneficiaries of ¹[such surety] the payment and performance¹ bond¹.
8 The board, officer or agent¹ shall ¹also¹ require that all payment and
9 performance bonds be issued by a surety which meets the following
10 standards:

11 (a) The surety shall have the minimum surplus and capital stock or
12 net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is
13 appropriate, at the time the invitation to bid is issued; and

14 (b) With respect to all payment and performance bonds in the
15 amount of \$850,000 or more, (i) if the amount of the bond is at least
16 \$850,000 but not more than \$3.5 million, the surety shall hold a
17 current certificate of authority, issued by the United States Secretary
18 of the Treasury pursuant to 31 U.S.C. ²§² 9305, that is valid in the
19 State of New Jersey as listed annually in the United States Treasury
20 Circular 570, except that if the surety has been operational for a period
21 in excess of five years, the surety shall be deemed to meet the
22 requirements of this subparagraph if it is rated in one of the three
23 highest categories by an independent, nationally recognized United
24 States rating company that determines the financial stability of
25 insurance companies, which rating company or companies shall be
26 determined pursuant to standards promulgated by the Commissioner
27 of Insurance by regulation adopted pursuant to the "Administrative
28 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and (ii) if the
29 amount of the bond is more than \$3.5 million, then the surety shall
30 hold a current certificate of authority, issued by the United States
31 Secretary of the Treasury pursuant to 31 U.S.C. ²§² 9305, that is valid
32 in the State of New Jersey as listed annually in the United States
33 Treasury Circular 570 and, if the surety has been operational for a
34 period in excess of five years, shall be rated in one of the three highest
35 categories by an independent, nationally recognized United States
36 rating company that determines the financial stability of insurance
37 companies, which rating company or companies shall be determined
38 pursuant to standards promulgated by the Commissioner of Insurance
39 by regulation adopted pursuant to the "Administrative Procedure Act,"
40 P.L.1968, c.410 (C.52:14B-1 et seq.). A surety subject to the
41 provisions of subparagraph (ii) of this subparagraph which does not
42 hold a certificate of authority issued by the United States Secretary of
43 the Treasury shall be exempt from the requirement to hold such a
44 certificate if the surety meets an equivalent set of standards developed
45 by the Commissioner of Insurance through regulation which at least
46 equal, and may exceed, the general criteria required for issuance of a

1 certificate of authority by the United States Secretary of the Treasury
2 pursuant to 31 U.S.C. ²§² 9305. A surety company seeking such an
3 exemption shall, not later than the 180th day following the effective
4 date of P.L.1995, c.384 ²[(N.J.S.2A:44-143 et al.)]², certify to the
5 appropriate contracting unit that it meets that equivalent set of
6 standards set forth by the commissioner as promulgated.

7 (2) When such contract is to be performed at the expense of the
8 State and is entered into by the Director of the Division of Building
9 and Construction or State departments designated by the Director of
10 the Division of Building and Construction, the director or the State
11 departments may: (a) establish for that contract the amount of the
12 bond at any percentage, not exceeding 100%, of the amount bid, based
13 upon the director's or department's assessment of the risk presented to
14 the State by the type of contract ²,² and other relevant factors, and (b)
15 waive the bond requirement of this section entirely if the contract is
16 for a sum not exceeding \$200,000.

17 (3) When such a contract is to be performed at the expense of a
18 contracting unit or school district, the board, officer or agent
19 contracting on behalf of the contracting unit or school district may:
20 (a) establish for that contract the amount of the bond at any
21 percentage, not exceeding 100%, of the amount bid, based upon the
22 board's, officer's or agent's assessment of the risk presented to the
23 contracting unit or school district by the type of contract and other
24 relevant factors, and (b) waive the bond requirement of this section
25 entirely if the contract is for a sum not exceeding \$100,000.

26 b. A surety's obligation shall not extend to any claim for damages
27 based upon alleged negligence that resulted in personal injury,
28 wrongful death, or damage to real or personal property, and no bond
29 shall in any way be construed as a liability insurance policy. Nothing
30 herein shall relieve the surety's obligation to guarantee the contractor's
31 performance of all conditions of the contract, including the
32 maintenance of liability insurance if and as required by the contract.
33 Only the obligee named on the bond, and any subcontractor
34 performing labor or any subcontractor or materialman providing
35 materials for the construction, erection, alteration or repair of the
36 public building, work or improvement for which the bond is required
37 pursuant to this section, shall have any claim against the surety under
38 the bond.

39 c. A board, officer or agent contracting on behalf of the State,
40 contracting unit or school district shall not accept more than one
41 payment and performance bond to cover a single construction
42 contract. The board, officer or agent may accept a single bond
43 executed by more than one surety to cover a single construction
44 contract only if the combined underwriting limitations of all the named
45 sureties, as set forth in the most current annual revision of United
46 States Treasury Circular 570, or as determined by the Commissioner

1 of Insurance pursuant to R.S.17:18-9, meet or exceed the amount of
2 the contract to be performed.

3 d. A board, officer or agent contracting on behalf of the State,
4 contracting unit or school district shall not accept a payment or
5 performance bond unless there is attached thereto a Surety Disclosure
6 Statement and Certification to which each surety executing the bond
7 shall have subscribed. This statement and certification shall be
8 complete in all respects and duly acknowledged according to law, and
9 shall have substantially the following form:

10

11 SURETY DISCLOSURE STATEMENT AND CERTIFICATION

12

13 _____, surety(ies) on the attached bond, hereby
14 certifies(y) the following:

15 (1) The surety meets the applicable capital and surplus
16 requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most
17 current annual filing with the New Jersey Department of Insurance.

18 (2) The capital (where applicable) and surplus, as determined in
19 accordance with the applicable laws of this State, of the surety(ies)
20 participating in the issuance of the attached bond is (are) in the
21 following amount(s) as of the calendar year ended December 31,
22 (most recent calendar year for which capital and surplus amounts are
23 available), which amounts have been certified as indicated by certified
24 public accountants (indicating separately for each surety that surety's
25 capital and surplus amounts, together with the name and address of the
26 firm of certified public accounts that shall have certified those
27 amounts):

28

29

30

31

_____.

32 (3) (a) With respect to each surety participating in the issuance of
33 the attached bond that has received from the United States Secretary
34 of the Treasury a certificate of authority pursuant to 31 U.S.C. ²§²
35 9305, the underwriting limitation established therein and the date as of
36 which that limitation was effective is as follows (indicating for each
37 such surety that surety's underwriting limitation and the effective date
38 thereof):

39

40

41

42

_____.

43 (b) With respect to each surety participating in the issuance of the
44 attached bond that has not received such a certificate of authority from
45 the United States Secretary of the Treasury, the underwriting
46 limitation of that surety as established pursuant to R.S.17:18-9 as of

1 (date on which such limitation was so established) is as follows
2 (indicating for each such surety that surety's underwriting limitation
3 and the date on which that limitation was established):

4 _____
5 _____
6 _____
7 _____

8 (4) The amount of the bond to which this statement and
9 certification is attached is \$ _____.

10 (5) If, by virtue of one or more contracts of reinsurance, the
11 amount of the bond indicated under item (4) above exceeds the total
12 underwriting limitation of all sureties on the bond as set forth in items
13 (3)(a) or (3)(b) above, or both, then for each such contract of
14 reinsurance:

15 (a) The name and address of each such reinsurer under that
16 contract and the amount of that reinsurer's participation in the contract
17 is as follows: _____

18 _____
19 _____
20 _____; and

21 (b) Each surety that is party to any such contract of reinsurance
22 certifies that each reinsurer listed under item (5)(a) satisfies the credit
23 for reinsurance requirement established under P.L.1993, c.243
24 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the
25 date on which the bond to which this statement and certification is
26 attached shall have been filed with the appropriate public agency.

27 CERTIFICATE

28 (to be completed by an authorized certifying agent
29 for each surety on the bond)

30
31 I (name of agent) , as (title of agent) for (name of
32 surety) , a corporation/mutual insurance company/other (indicating
33 type of business organization) (circle one) domiciled in (state of
34 domicile) , DO HEREBY CERTIFY that, to the best of my
35 knowledge, the foregoing statements made by me are true, and
36 ACKNOWLEDGE that, if any of those statements are false, this bond
37 is ²**[VOID] VOIDABLE²**.

38 _____
39 (Signature of certifying agent)

40
41 _____
42 (Printed name of certifying agent)

43
44 _____
45 (Title of certifying agent)

46 (cf: P.L.1995, c.384, s.1)

1 3. N.J.S.2A:44-144 is amended to read as follows:

2 2A:44-144. The bond required by this article shall be executed by
3 the contractor with such sureties in accordance with N.J.S.2A:44-147
4 as shall be approved by the board, officer or agent acting on behalf of
5 the state, contracting unit or school district, in an amount equal to [at
6 least] 100 per cent of the contract price [, and]. The payment bond
7 shall be conditioned for the payment by the contractor[, and by all
8 subcontractors, or his or their subcontractor,]of all indebtedness
9 which may accrue to any person, firm or corporation designated as a
10 "beneficiary" pursuant to N.J.S.2A:44-143, in an amount not
11 exceeding the sum specified in the bond, on account of any labor
12 performed or materials, provisions, provender or other supplies, or
13 teams, fuels, oils, implements or machinery used or consumed in,
14 upon, for or about the construction, erection, alteration or repair of
15 the public building or public work or improvement.

16 The payment bond shall be deposited with and be held by the board,
17 officer or agent acting on behalf of the state, contracting unit or school
18 district, for the use of [any party interested therein] any beneficiary
19 thereof.

20 (cf: P.L.1995, c.384, s.2)

21

22 4. N.J.S.2A:44-145 is amended to read as follows:

23 2A:44-145. Any person who may be a beneficiary of the payment
24 bond, as defined in this article, and who does not have a direct
25 contract with the contractor furnishing the bond shall, prior to
26 commencing any work, provide written notice to the contractor by
27 certified mail or otherwise, provided that he shall have proof of
28 delivery of same, that said person is a beneficiary of the bond. If a
29 beneficiary fails to provide the required written notice, the beneficiary
30 shall ²[not] ²only² have ²[any]² rights to the benefits ²[otherwise]²
31 available hereunder ²from the date the notice is provided².

32 Any [person] beneficiary, as defined in N.J.S.2A:44-143, to whom
33 any money shall be due on account of having performed any labor or
34 furnished any materials, provisions, provender or other supplies, or
35 teams, fuels, oils, implements or machinery in, upon, for or about the
36 construction, erection, alteration or repair of any public building or
37 other public work or improvement, shall, at any time before the
38 [acceptance of such building, work or improvement by the duly
39 authorized board or officer, or within 80 days thereafter] expiration
40 of one year from the last date upon which such beneficiary shall have
41 performed actual work or delivered materials to the project, in the
42 case of a material supplier, furnish the sureties on the bond required
43 by this article a statement of the amount due to him.

44 No action shall be brought against any of the sureties on the bond
45 required by this article until the expiration of [80] 90 days after [the

1 acceptance of the building, work or improvement by the duly
2 authorized board or officer] provision to the sureties and the
3 contractor of the statement of the amount due to him, but in no event
4 later than one year from the last date upon which such beneficiary shall
5 have performed actual work or delivered materials to the project.

6 (cf: N.J.S.2A:44-145)

7

8 5. N.J.S.2A:44-146 is amended to read as follows:

9 2A:44-146. If the indebtedness due to any person as shown by the
10 statement required to be filed by [section] N.J.S.2A:44-145 [of this
11 title] shall not be paid in full at the expiration of [80] 90 days from
12 the [acceptance of the building, work or improvement by the duly
13 authorized board or officer] date of notice of the amount due to the
14 person, such person [may] shall, within 1 year from the [date of such
15 acceptance] last date that work was performed or materials were
16 supplied by that person, bring an action in his own name upon the
17 bond required by this article.

18 (cf: N.J.S.2A:44-146)

19

20 6. N.J.S.2A:44-147 is amended to read as follows:

21 2A:44-147. The bond required by this article shall be in
22 substantially the following form:

23 "Know all men by these presents, that we, the undersigned as
24 principal and as sureties, are hereby held and firmly bound unto in the
25 penal sum of dollars, for the payment of which well and truly to be
26 made, we hereby jointly and severally bind ourselves, our heirs,
27 executors, administrators, successors and assigns.

28 "Signed this day of , 19 .

29 "The condition of the above obligation is such that whereas, the
30 above named principal did on the day of , 19 , enter into a contract
31 with , which said contract is made a part of this the bond the same as
32 though set forth herein;

33 "Now, if the said shall well and faithfully do and perform the things
34 agreed by to be done and performed according to the terms of said
35 contract, and shall pay all lawful claims of [subcontractors,
36 materialmen, laborers, persons, firms or corporations] beneficiaries as
37 defined by N.J.S.2A:44-143 for labor performed or materials,
38 provisions, provender or other supplies or teams, fuels, oils,
39 implements or machinery furnished, used or consumed in the carrying
40 forward, performing or completing of said contract, we agreeing and
41 assenting that this undertaking shall be for the benefit of any
42 [subcontractor, materialman, laborer, person, firm or corporation]
43 beneficiary as defined in N.J.S.2A:44-143 having a just claim, as well
44 as for the obligee herein; then this obligation shall be void; otherwise
45 the same shall remain in full force and effect; it being expressly

1 understood and agreed that the liability of the surety for any and all
2 claims hereunder shall in no event exceed the penal amount of this
3 obligation as herein stated.

4 "The said surety hereby stipulates and agrees that no modifications,
5 omissions or additions in or to the terms of the said contract or in or
6 to the plans or specifications therefor shall in anywise affect the
7 obligation of said surety on its bond."

8 Recovery of any claimant under the bond shall be subject to the
9 conditions and provisions of this article to the same extent as if such
10 conditions and provisions were fully incorporated in the form set forth
11 above.

12 (cf: N.J.S.2A:44-147)

13

14 ²7. Section 13 of P.L.1971, c.198 (C.40A:11-13) is amended to
15 read as follows:

16 13. Specifications. Any specifications for an acquisition under this
17 act, whether by purchase, contract or agreement, shall be drafted in a
18 manner to encourage free, open and competitive bidding. In particular,
19 no specifications under this act may:

20 (a) Require any standard, restriction, condition or limitation not
21 directly related to the purpose, function or activity for which the
22 purchase, contract or agreement is made; or

23 (b) Require that any bidder be a resident of, or that his place of
24 business be located in, the county or municipality in which the
25 purchase will be made or the contract or agreement performed, unless
26 the physical proximity of the bidder is requisite to the efficient and
27 economical purchase or performance of the contract or agreement;
28 except that no specification for a contract for the collection and
29 disposal of municipal solid waste shall require any bidder to be a
30 resident of, or that his place of business be located in, the county or
31 municipality in which the contract will be performed; or

32 (c) Discriminate on the basis of race, religion, sex, national origin;
33 or

34 (d) Require, with regard to any purchase, contract or agreement, the
35 furnishing of any "brand name," but may in all cases require "brand
36 name or equivalent," except that if the materials to be supplied or
37 purchased are patented or copyrighted, such materials or supplies may
38 be purchased by specification in any case in which the ordinance or
39 resolution authorizing the purchase, contract, sale or agreement so
40 indicates, and the special need for such patented or copyrighted
41 materials or supplies is directly related to the performance, completion
42 or undertaking of the purpose for which the purchase, contract or
43 agreement is made; or

44 (e) Fail to include any option for renewal, extension, or release
45 which the contracting unit may intend to exercise or require; or any
46 terms and conditions necessary for the performance of any extra work;

1 or fail to disclose any matter necessary to the substantial performance
2 of the contract or agreement.

3 Any specification adopted by the governing body, which knowingly
4 excludes prospective bidders by reason of the impossibility of
5 performance, bidding or qualification by any but one bidder, except as
6 provided herein, shall be null and void and of no effect and subject
7 purchase, contract or agreement shall be readvertised, and the original
8 purchase, contract or agreement shall be set aside by the governing
9 body.

10 Any specification adopted by the governing body for a contract for
11 the collection and disposal of municipal solid waste shall conform to
12 the uniform bid specifications for municipal solid waste collection
13 contracts established pursuant to section 22 of P.L.1991, c.381
14 (C.48:13A-7.22).

15 Any specification adopted by the governing body may include an
16 item for the cost, which shall be paid by the contractor, of creating a
17 file to maintain the notices of the delivery of labor or materials
18 required by N.J.S.2A:44-128.²

19 (cf: P.L.1991, c.381, s.48)

20

21 ²[7.] ~~8.~~² This act shall take effect on the 30th day next following
22 enactment.

23

24

25

26

27 Revises certain aspects of "Municipal Mechanics' Lien Law."