

2A:44A-2

LEGISLATIVE HISTORY CHECKLIST
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(Construction liens)

NJSA: 2A:44A-2

LAWS OF: 1995 CHAPTER: 392

BILL NO: S1006

SPONSOR(S): Sinagra

DATE INTRODUCED: May 12, 1994

COMMITTEE: ASSEMBLY: Housing

SENATE: Commerce

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

DATE OF PASSAGE: ASSEMBLY: January 4, 1996

SENATE: October 27, 1994

DATE OF APPROVAL: January 10, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VE TO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

[FIRST REPRINT]

SENATE, No. 1006

STATE OF NEW JERSEY

INTRODUCED MAY 12, 1994

By Senator SINAGRA

1 AN ACT concerning construction liens for improvements made to
2 certain property and amending P.L.1993, c.318.

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

6 ¹1. Section 2 of P.L.1993, c.318 (C.2A:44A-2) is amended to
7 read as follows:

8 2. As used in this act:

9 "Claimant" means a person, as defined in R.S.1:1-2, having the
10 right to file a lien claim on real property pursuant to the
11 provisions of this act.

12 "Contract" means any agreement, or amendment thereto, in
13 writing, evidencing the respective responsibilities of the
14 contracting parties, which, in the case of a supplier, shall include
15 a delivery or order slip signed by the owner, contractor, or
16 subcontractor having a direct contractual relation with a
17 contractor, or an authorized agent of any of them.

18 "Contract price" means the amount specified in a contract for
19 the provision of work, services, material or equipment.

20 "Contractor" means any person in direct privity of contract
21 with the owner of real property for improvements thereto. A
22 construction manager who enters into a single contract with an
23 owner for the performance of all construction work within the
24 scope of a construction manager's contract, a construction
25 manager who enters into a subcontract, or a construction
26 manager who is designated as an owner's agent without entering
27 into a subcontract is also a "contractor" for the purposes of this
28 act. A licensed architect, engineer or land surveyor or certified
29 landscape architect who is not a salaried employee of the
30 contractor or the owner, performing professional services related
31 to the improvement of property in direct contract with the
32 property owner shall be considered a "contractor" for the
33 purposes of this act.

34 "County clerk" means the clerk of the county in which real
35 property to be improved is situated.

36 "Equipment" means any machinery or other apparatus,
37 including rental equipment delivered to the site to be improved or
38 used on the site to be improved, for incorporation in the improved
39 real property or for use in the construction of the improvement
40 of the real property but not incorporated therein. A lien for
41 equipment shall arise only for equipment used on site for the
42 improvement of real property, including equipment installed 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:
¹ Senate SCM committee amendments adopted October 13, 1994.

1 the improved real property. In the case of rental equipment, the
2 amount of any lien shall be limited to the rental rates as set forth
3 in the rental contract.

4 "Filing" means the lodging for record and indexing of the
5 documents authorized to be filed or recorded pursuant to this act
6 in the office of the county clerk, or, in the case of real property
7 located in more than one county, in the office of the county clerk
8 of each such county.

9 "Improvement" means any actual or proposed physical changes
10 to real property by the provision of work or services by a
11 contractor or subcontractor, pursuant to the terms of a contract,
12 whether or not such physical change is undertaken, and includes
13 the construction, reconstruction, alteration, repair, demolition or
14 removal of any building or structure, any addition to a building or
15 structure, or any construction or fixture necessary or appurtenant
16 to a building or structure for use in conjunction therewith.
17 "Improvement" includes excavation, digging, drilling, drainage,
18 dredging, filling, irrigation, land clearance, grading or
19 landscaping. "Improvement" shall not include the mining of
20 minerals or removal of timber, gravel, soil, or sod which is not
21 integral to or necessitated by the improvement to real property.
22 "Improvement" shall not include public works or improvements to
23 real property contracted for and awarded by a public entity. Any
24 work or services requiring a license for performance including,
25 but not limited to, architectural, engineering, plumbing or
26 electrical construction, shall not constitute an improvement
27 unless performed by a licensed claimant.

28 "Interest in real property" means any ownership, possessory
29 security or other enforceable interest, including, but not limited
30 to, fee title, easement rights, covenants or restrictions, leases
31 and mortgages.

32 "Lien" or "construction lien" means a lien on the owner's
33 interest in the real property arising pursuant to the provisions of
34 this act.

35 "Material" means any goods delivered to, or used on the site to
36 be improved, for incorporation in the improved real property, or
37 for consumption as normal waste in construction operations; or
38 for use on site in the construction or operation of equipment used
39 in the improvement of the real property but not incorporated
40 therein. The term "material" does not include fuel provided for
41 use in motor vehicles or equipment delivered to or used on the
42 site to be improved.

43 "Mortgage" means a loan which is secured by a lien on real
44 property.

45 "Owner" or "owner of real property" means any person,
46 including a tenant, with an estate or interest in real property who
47 personally or through an authorized agent enters into a contract
48 for improvement of the real property.

49 "Public entity" includes the State, and any county,
50 municipality, district, public authority, public agency, and any
51 other political subdivision or public body in the State.

52 "Residential construction contract" means any written
53 contract for the construction or improvement to a one- or
54 two-family dwelling, or any portion of the dwelling, which shall

1 include any residential unit in a condominium subject to the
2 provisions of P.L.1969, c.257 (C.46:8B-1 et seq.), any residential
3 unit in a housing cooperative, any residential unit contained in a
4 fee simple townhouse development, any residential unit contained
5 in a horizontal property regime as defined in section 2 of
6 P.L.1963, c.168 (C.46:8A-2), and any residential unit contained in
7 a planned unit development as defined in section 3.3 of P.L.1975,
8 c.291 (C.40:55D-6).

9 "Residential purchase agreement" means a written contract
10 between a buyer and a seller for the purchase of a one- or
11 two-family dwelling, any residential unit in a condominium
12 subject to the provisions of P.L.1969, c.257 (C.46:8B-1 et seq.),
13 any residential unit in a housing cooperative, any residential unit
14 contained in a fee simple townhouse development, any residential
15 unit contained in a horizontal property regime as defined in
16 section 2 of P.L.1963, c.168 (C.46:8A-2), and any residential unit
17 contained in a planned unit development as defined in section 3.3
18 of P.L.1975, c.291 (C.40:55D-6).

19 "Services" means professional services performed by a licensed
20 architect, engineer or land surveyor or certified landscape
21 architect who is not a salaried employee of the contractor, a
22 subcontractor or the owner and who is in direct privity of
23 contract with the owner for the preparation of plans, documents,
24 studies, or the provision of other services by a licensed architect,
25 engineer or land surveyor prepared in connection with a proposed
26 or an actual physical change to real property, whether or not such
27 physical change is undertaken.

28 "State" means the State of New Jersey and any office,
29 department, division, bureau, board, commission or agency of the
30 State.

31 "Subcontractor" means any person providing work or services
32 in connection with the improvement of real property pursuant to
33 a contract with a contractor or pursuant to a contract with a
34 subcontractor in direct privity of contract with a contractor.

35 "Supplier" means any supplier of material or equipment,
36 including rental equipment, having a direct privity of contract
37 with an owner, contractor or subcontractor in direct privity of
38 contract with a contractor. The term "supplier" shall not include
39 a person who supplies fuel for use in motor vehicles or equipment
40 delivered to or used on the site to be improved or a seller of
41 personal property who has a security agreement providing a right
42 to perfect either a security interest pursuant to Title 12A of the
43 New Jersey Statutes or a lien against the motor vehicle pursuant
44 to applicable law.

45 "Work" means any activity, including labor, performed in
46 connection with the improvement of real property. The term
47 "work" includes architectural, engineering or surveying services
48 provided by salaried employees of a contractor or subcontractor,
49 as part of the work of the contractor or subcontractor, provided,
50 however, that the right to file a lien claim for those services
51 shall be limited to the contractor or subcontractor.¹

52 (cf: P.L.1993, c.318, s.2)

53 ¹[1.]^{2.1} Section 41 of P.L.1993, c.318 is amended to read as
54 follows:

1 41. This act shall take effect [120 days after enactment] on
2 April 22, 1994 and shall apply to any improvement for which a
3 construction permit is issued on or after [that date] April 22,
4 1994 and to any improvement upon which work or services are
5 commenced on or after April 22, 1994 if a construction permit is
6 not required; and the prior law being repealed in section 40 of
7 this act shall apply to any improvement for which a construction
8 permit is issued prior to April 22, 1994 and to any improvement
9 upon which work or services are commenced prior to April 22,
10 1994 if a construction permit is not required.

11 (cf: P.L.1993, c.318, s.41)

12 ¹[2.]¹ This act shall take effective immediately and shall be
13 retroactive to December 23, 1993.

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18 Clarifies applicability of repealed and new construction lien laws.

SENATE, No. 1006

STATE OF NEW JERSEY

INTRODUCED MAY 12, 1994

By Senator SINAGRA

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14 permit is issued prior to April 22, 1994 and to any improvement
15 upon which work or services are commenced prior to April 22,
16 1994 if a construction permit is not required.

17 (cf: P.L.1993, c.318, s.41)

18 2. This act shall take effective immediately and shall be
19 retroactive to December 23, 1993.

20

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22 STATEMENT

23

24 This bill clarifies that the prior construction lien law,
25 N.J.S.2A:44-64 et seq., applies to any improvement for which a
26 construction permit is issued prior to April 22, 1994 and to any
27 improvement upon which work or services are commenced prior
28 to April 22, 1994 if a construction permit is not required; and
29 that the new construction lien law, P.L.1993, c.318 (C.2A:44A-1
30 et seq.), applies to any improvement for which a construction
31 permit is issued prior to April 22, 1994 and to any improvement
32 upon which work or services are commenced on or after April 22,
33 1994 if a construction permit is not required. The provisions of
34 the bill take effect immediately and are retroactive to December
35 23, 1993, the date on which P.L.1993, c.318 (C.2A:44A-1 et seq.)
36 was enacted.

37

38

39

40

41 Clarifies applicability of repealed and new construction lien laws.

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.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 1006

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 13, 1994

The Senate Commerce Committee reports favorably and with committee amendments Senate, No. 1006.

This bill clarifies that the prior construction lien law, N.J.S.2A:44-64 et seq., applies to any improvement for which a construction permit was issued prior to April 22, 1994 and to any improvement upon which work or services had been commenced prior to April 22, 1994 if a construction permit is not required; and that the new construction lien law, P.L.1993, c.318 (C.2A:44A-1 et seq.), applies to any improvement for which a construction permit is issued on or after April 22, 1994 and to any improvement upon which work or services are commenced on or after April 22, 1994 if a construction permit is not required. The provisions of the bill take effect immediately and are retroactive to December 23, 1993, the date on which P.L.1993, c.318 (C.2A:44A-1 et seq.) was enacted.

The committee amended the bill to specifically include certified landscape architects in the definitions of "contractor" and "services" in the new construction lien law, P.L.1993, c.318 (C.2A:44A-1 et seq.).

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 1006

STATE OF NEW JERSEY

DATED: DECEMBER 4, 1995

The Assembly Housing Committee favorably reports Senate Bill No. 1006 (1R).

This bill clarifies that the "Construction Lien Law," N.J.S. 2A:44A-1 et seq., applies to residential construction improvements upon which work or services have commenced on or after April 22, 1994 if no construction permit was required and to those improvements for which a construction permit is issued on or after April 22, 1994. The bill also clarifies that the prior construction lien law, (commonly known as the Mechanics Lien Law), N.J.S.2A:44-64 et seq., applies to any improvement upon which work or ~~se~~services had been commenced prior to April 22, 1994, or for which a ~~con~~struction permit was issued prior to April 22, 1994. The provisions of the bill take effect immediately and are retroactive to December 23, 1993, the date on which P.L.1993, c.318 (C.2A:44A-1 et seq.) was enacted.

The bill also incorporates certified landscape architect in the definitions of "contractor" and "services" in the "Construction Lien Law."