

SENATE LABOR COMMITTEE

A M E N D M E N T S

to

SENATE, No. 4064

(Sponsored by Senators SINGLETON and SWEENEY)

REPLACE SECTION 1 TO READ:

1. a. (1) For any contract entered into on or after January 1, 2020 for the erection, construction, reconstruction, alteration, maintenance or repair of any building in the State 'other than an owner-occupied residence', including, but not limited to, any such work performed under a contract entered into on or after January 1, 2020 under which workers are required by any State law to be paid the prevailing wage rates set pursuant to the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), the '[owner] contractor' making or taking the contract shall assume, and be responsible for, any debt owed to a wage claimant, or third party on the wage claimant's behalf, incurred by a subcontractor at any tier acting under, by, or for the '[owner] contractor' for the wage claimant's performance of labor under the contract', unless the wage claimant's performance of labor under the contract is pursuant to a collective bargaining agreement to which the employing contractor or subcontractor is signatory, wherein there are lawful remedies by which unpaid wages contributions may be collected'.

(2) The '[owner's] contractor's' responsibility under the provisions of this section shall extend only to unpaid wages'[, benefits and other contributions,]' plus any interest owed, but shall not extend to penalties or liquidated damages.

(3) An '[owner] contractor' or any other person shall not evade, or commit any act that negates, the requirements of this section. This section does not prohibit '[an owner] a contractor' or subcontractor at any tier from establishing by contract or enforcing any otherwise lawful remedies against a subcontractor it hires for responsibility created by the nonpayment of wages'[, benefits and other contributions,]' by that subcontractor or by a subcontractor at any tier working under that subcontractor.

b. (1) The Commissioner of Labor and Workforce Development may enforce against '[an owner] a contractor' the responsibility for unpaid wages created by this section by any action that the commissioner is authorized to undertake regarding responsibility for

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unpaid wages under the provisions of chapter 11 of Title 34 of the Revised Statutes', unless the wage claimant's performance of labor under the contract is pursuant to a collective bargaining agreement to which the employing contractor or subcontractor is signatory, wherein there are lawful remedies by which unpaid wages contributions may be collected'.

(2) A joint labor-management cooperation committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. s.175a) which includes a union representing any of the workers employed in a project subject to the provisions of this section may bring an action in any court of competent jurisdiction against '[an owner] a contractor' or subcontractor at any tier for unpaid wages', benefits and other contributions]' owed to a wage claimant by the '[owner] contractor' or subcontractor for the performance of any work subject to the provisions of this section, including unpaid wages owed by the '[owner] contractor', pursuant to subsection a. of this section. The court shall award a prevailing plaintiff in such an action its reasonable attorney's fees and costs, including expert witness fees. Prior to commencement of an action against an '[owner] contractor' to enforce the responsibility created by subsection a. of this section, the committee shall provide the '[owner] contractor' and subcontractor that employed the wage claimant with at least 30 days' notice by first-class mail. The notice need only describe the general nature of the claim and shall not limit the responsibility of the '[owner] contractor' or preclude subsequent amendments of an action to encompass additional wage claimants employed by the subcontractor', unless the wage claimant's performance of labor under the contract is pursuant to a collective bargaining agreement to which the employing contractor or subcontractor is signatory, wherein there are lawful remedies by which unpaid wages contributions may be collected'.

(3) No party other than the parties indicated in this subsection b. may bring an action against '[an owner] a contractor' to enforce the responsibility created by subsection a. of this section.

c. (1) Upon request by '[an owner] a contractor', project manager, or contractor to a subcontractor, the subcontractor shall provide payroll records of its employees who are providing labor on work subject to the provisions of this section, which payroll records shall include 'all' wages '[and, as applicable, other benefit payments or contributions]'. The payroll records shall not be modified except to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number.

(2) Upon request of '[an owner] a contractor' to a project manager, contractor, or subcontractor, the subcontractor and any lower tier subcontractors under contract to the subcontractor shall provide the '[owner] contractor' information that includes the project name, name and address of the subcontractor, '[owner] contractor' with whom the subcontractor is under contract, anticipated start date, duration, and

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estimated journeyworker and apprentice hours, and contact information for its subcontractors on the project.

(3) A subcontractor's failure to comply with this section shall not relieve '[an owner] a contractor' from any of the obligations contained in this section.

(4) Any subcontractor who fails to provide records or information requested pursuant to this subsection f. within 14 days of when the request was made shall be subject to a civil penalty in an amount not to exceed \$7,500 for each day the employer fails to provide the notification, collectible by the commissioner in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The commissioner shall have the authority to waive this penalty.

d. Unless otherwise provided by law, property of the '[owner] contractor' may be attached, after trial, for the payment of any judgment received pursuant to this section.

e. An action brought pursuant to this section shall be filed within two years from the date of the occurrence of the incident alleged in the action.

f. This section shall not apply to work performed by an employee of the State, a special district, a city, a county, a city and county, or any political subdivision of the State.

g. For purposes of this section, "[owner]" "contractor" means '[an entity] contractor' that has a direct contractual relationship with '[a contractor or project manager] an owner' and "subcontractor" means a contractor that does not have a direct contractual relationship with an owner, '[but] including a contractor that' has a contractual relationship with '[a project manager,]' a contractor or with another subcontractor '[for work performed on work subject to the provisions of this section]'.

h. Nothing in this section shall alter the obligation under any other provision of State law of '[an owner] a contractor' to pay in a timely manner a contractor, or of '[an owner] a contractor' to pay in a timely manner a subcontractor, or any penalties for failing to do so, except that the '[owner] contractor' may withhold as "disputed" all sums owed if a subcontractor does not provide in a timely manner the information requested under paragraphs (1) and (2) of subsection c. of this section, until that information is provided.

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