

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1400

Short Title: Payment Bond Revisions.

(Public)

Sponsors: Representatives McMahan; Baddour and Cox (Primary Sponsors).

Referred to: Finance.

April 29, 1999

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING CLAIMS AGAINST PAYMENT BONDS ON PUBLIC PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44A-27 reads as rewritten:

"§ 44A-27. Actions on payment bonds; service of notice.

(a) Subject to the provision of subsection (b) hereof, any claimant who has performed labor or furnished materials in the prosecution of the work required by any contract for which a payment bond has been given pursuant to the provisions of this Article, and who has not been paid in full therefor before the expiration of 90 days after the day on which the claimant performed the last such labor or furnished the last such materials for which he claims payment, may bring an action on such payment bond in his own name, to recover any amount due him for such labor or materials and may prosecute such action to final judgment and have execution on the judgment.

(b) Any claimant who has a direct contractual ~~relationship~~ relationship, valued at more than ten thousand dollars (\$10,000), with any subcontractor but has no contractual relationship, express or implied, with the contractor, may bring an action on the payment bond ~~only if he has given written notice to the contractor within 180 days from the date on which the claimant performed the last of the labor or furnished the last of the materials for which~~

1 ~~he claims payment, stating with substantial accuracy the amount claimed and the name of the~~
2 ~~person for whom the work was performed or to whom the material was furnished. if:~~

3 (1) The contractor, within 30 days of the date established in the notice to
4 proceed issued by the owner, has filed with the Office of State
5 Construction a Notice of Contract as provided in subsection (g) of this
6 section.

7 (2) The claimant, within 90 days after (i) the contractor's filing of the
8 Notice of Contract pursuant to subdivision (1) of this subsection or (ii)
9 beginning work on or furnishing materials to the project, whichever is
10 later, provided written notice to the contractor that the claimant is
11 working on or furnishing materials to the project and written notice of
12 the name of the person with whom the claimant has a contractual
13 relationship.

14 (3) The claimant, within 120 days of the date of last providing the labor or
15 materials for which a claim is made, notifies the contractor of the claim,
16 stating with substantial accuracy the amount claimed and the name of
17 the person for whom work was performed or to whom materials were
18 furnished. For retained payments, the 120 day period begins to run on
19 the date the owner releases the retainage covering the work performed
20 or materials furnished by the claimant.

21 ~~(c) The notice notices required by subsection (b), above, subdivisions (2) and (3) of~~
22 ~~subsection (b) of this section shall be served by registered or certified first class mail,~~
23 ~~postage prepaid, in an envelope addressed to such the contractor at any a place where his~~
24 ~~office is regularly maintained for the transaction of business or served in any manner~~
25 ~~provided by law for the service of summons. by facsimile or e-mail.~~

26 (d) A claimant's service of notice pursuant to subdivision (2) of subsection (b) of
27 this section is prima facie evidence that the claimant has in good faith sold and delivered
28 the materials or provided the labor under the reasonable belief that the labor or materials
29 are for the improvement of the contract on which the payment bond claim is made.

30 (e) Failure by the contractor to file a Notice of Contract relieves the claimant of
31 the duty to file the notice in subdivision (2) of subsection (b) of this section and does not
32 bar the claimant from pursuing a claim pursuant to this section.

33 (f) A claimant who has a direct contractual relationship, valued at ten thousand
34 dollars (\$10,000) or less, with a subcontractor but who has no contractual relationship,
35 express or implied, with the contractor, may bring an action on the payment bond only if
36 the subcontractor provides the notice required by subdivision (3) of subsection (b) of this
37 section.

38 (g) The form of the Notice of Contract shall be substantially as follows. The
39 contractor shall pay a filing fee to the Office of State Construction of fifteen dollars
40 (\$15.00):

41 **'NOTICE OF CONTRACT-BONDED PUBLIC PROJECT**

42 (1) Name and address of the contractor

43 (2) Name and address of the public owner as shown in the contract

1 (3) Project number, project location and description of the project, as
2 shown in the contract

3 (4) Name and address of the company furnishing the payment bond

4 (5) Name and address of the person, firm, or corporation filing this
5 NOTICE OF CONTRACT

6 Dated

7 Contractor

8 Filed this day of _____, _____.

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11 (Person filing the document)'."

12 Section 2. This act becomes effective October 1, 1999, and applies to actions
13 commenced on payment bonds for contracts awarded on or after that date.