

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 122  
House Committee Substitute Favorable 8/28/97  
Third Edition Engrossed 8/28/97

Short Title: Public Contracts.

(Public)

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Sponsors:

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Referred to:

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February 17, 1997

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW A CONTRACTOR ON A PUBLIC PROJECT, ON BEHALF OF  
2 A SUBCONTRACTOR, TO FILE AN ACTION AGAINST THE OWNER  
3 REGARDING A CLAIM ARISING OUT OF THE CONTRACT BETWEEN THE  
4 SUBCONTRACTOR AND THE CONTRACTOR FOR THE SAME PROJECT  
5 THAT IS THE SUBJECT OF THE CONTRACT BETWEEN THE CONTRACTOR  
6 AND THE OWNER AND TO MAKE NO DAMAGE FOR DELAY CLAUSES IN  
7 PUBLIC CONTRACTS UNENFORCEABLE.  
8

9 The General Assembly of North Carolina enacts:

10 Section 1. Article 8 of Chapter 143 of the General Statutes is amended by  
11 adding the following new sections to read:

12 **"§ 143-134.2. Actions by contractor on behalf of subcontractor.**

13 (a) A contractor may, on behalf of a subcontractor of any tier under the contractor,  
14 file an action against an owner regarding a claim arising out of or relating to labor,  
15 materials, or services furnished by the subcontractor to the contractor pursuant to a  
16 contract between the subcontractor and the contractor for the same project that is the  
17 subject of the contract between the contractor and the owner.

1 (b) In any action filed by a contractor against an owner under subsection (a) of this  
2 section, it shall not be a defense that the costs and damages at issue were incurred by a  
3 subcontractor and that subcontractor has not been paid for these costs and damages. The  
4 owner shall not be required to pay the contractor for the costs and damages incurred by a  
5 subcontractor, unless the subcontractor submits proof to the court that the contractor has  
6 paid these costs and damages to the subcontractor.

7 **"§ 143-134.3. No damage for delay clause.**

8 No contractual language forbidding or limiting compensable damages for delays  
9 caused solely by the owner or its agent may be enforced in any construction contract let  
10 by any board or governing body of the State, or of any institution of State government, or  
11 of any county, city, town, or other political subdivision thereof. For purposes of this  
12 section, the phrase 'owner or its agent' does not include prime contractors or their  
13 subcontractors."

14 Section 2. This act becomes effective October 1, 1997, and applies to  
15 contracts entered into on or after that date.