

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

3

SENATE BILL 597

Judiciary I Committee Substitute Adopted 4/30/91

House Committee Substitute Favorable 7/4/91

Short Title: Atty. Fees/Statutory Lien Actions.

(Public)

Sponsors:

Referred to:

April 15, 1991

A BILL TO BE ENTITLED

AN ACT TO CLARIFY SUBCONTRACTORS' LIENS AND PROVIDE ATTORNEYS' FEES TO PREVAILING PARTIES IN ACTIONS RELATING TO STATUTORY LIENS ON REAL PROPERTY AND PAYMENT AND PERFORMANCE BONDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44A-23 reads as rewritten:

"§ 44A-23. Contractor's lien; perfection of subrogation rights of subcontractor.

A first, second or third tier subcontractor, who ~~gives notice as provided in this Article, has a lien upon funds as provided in G.S. 44A-18, and who gives notice as provided in this Article,~~ may, to the extent of his ~~claim~~ lien upon funds as created by and described in G.S. 44A-18, enforce the lien of the contractor created by Part 1 of Article 2 of this Chapter. The manner of such enforcement shall be as provided by G.S. 44A-7 through 44A-16. The lien is perfected as of the time set forth in G.S. 44A-10 upon filing of claim of lien pursuant to G.S. 44A-12. Upon the filing of the notice and claim of lien and the commencement of the action, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent."

Sec. 2. Chapter 44A of the General Statutes is amended by adding a new section to read:

"§ 44A-35. Attorneys' fees.

1 In any suit brought or defended under the provisions of Article 2 or Article 3 of this
2 Chapter, the presiding judge may allow a reasonable attorneys' fee to the attorney
3 representing the prevailing party. This attorneys' fee is to be taxed as part of the court
4 costs and be payable by the losing party upon a finding that there was an unreasonable
5 refusal by the losing party to fully resolve the matter which constituted the basis of the
6 suit or the basis of the defense. For purposes of this section, 'prevailing party' is a party
7 plaintiff or third-party plaintiff who obtains a judgment of at least fifty percent (50%) of
8 the monetary amount sought in a claim or is a party defendant or third-party defendant
9 against whom a claim is asserted which results in a judgment of less than fifty percent
10 (50%) of the amount sought in the claim defended. Notwithstanding the foregoing, in
11 the event an offer of judgment is served in accordance with G.S. 1A-1, Rule 68, a
12 'prevailing party' is an offeree who obtains judgment in an amount more favorable than
13 the last offer or is an offeror against whom judgment is rendered in an amount less
14 favorable than the last offer."

15 Sec. 3. This act is effective upon ratification and applies to actions filed on or
16 after the date of ratification.