

2A:44-143

LEGISLATIVE HISTORY CHECKLIST  
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(State construction--contracts)

NJSA: 2A:44-143

LAWS OF: 1991 CHAPTER: 454

BILL NO: S3193

SPONSOR(S): Lipman

DATE INTRODUCED: January 8, 1991

COMMITTEE: ASSEMBLY: State Operations; Appropriations  
SENATE: State Government

AMENDED DURING PASSAGE: Yes Amendments during passage denoted by asterisks

DATE OF PASSAGE: ASSEMBLY: January 6, 1992  
SENATE: February 14, 1991

DATE OF APPROVAL: January 18, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes 3-18-91 & 8-1-91  
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS:

HEARINGS:

KBG/pp

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[SECOND REPRINT]

SENATE, No. 3193

STATE OF NEW JERSEY

INTRODUCED JANUARY 8, 1991

By Senators LIPMAN, STOCKMAN and McMANIMON

AN ACT concerning bonds of contractors on public works and improvements and amending N.J.S.2A:44-143.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2A:44-143 is amended to read as follows:

2A:44-143. a. When public buildings or other public works or improvements are about to be constructed, erected, altered or repaired under contract, at the expense of the State or any county, municipality or school district thereof, the board, officer or agent contracting on behalf of the State, county, municipality or school district, shall require the usual bond, as provided for by law, with good and sufficient sureties, with an additional obligation for the payment by the contractor, and by all subcontractors, for all labor performed or materials, provisions, provender or other supplies, teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction, erection, alteration or repair of such buildings, works or improvements.

When such contract is to be performed at the expense of the State and is entered into by the Director of the Division of Building and Construction or State departments designated by the Director of the Division of Building and Construction, <sup>1</sup>[and such contract is for a sum not exceeding ~~(\$20,000.00)~~ <sup>1</sup>\$100,000.], the director or the State departments may <sup>1</sup>[at their discretion] <sup>(1)</sup> establish for that contract the amount of the bond at any percentage<sup>2</sup> not exceeding 100%,<sup>2</sup> of the amount bid, based upon the director's or department's assessment of the risk presented to the State by the type of contract, past experience with a particular contractor and other relevant factors, and <sup>(2)</sup><sup>1</sup> waive the bond requirement of this section <sup>1</sup>entirely if the contract is for a sum not exceeding \$100,000<sup>1</sup>.

b. A surety's obligation shall not extend to any claim for damages based upon alleged negligence that resulted in personal injury, wrongful death, or damage to real or personal property, and no bond shall in any way be construed as a liability insurance policy. Nothing herein shall relieve the surety's obligation to guarantee the contractor's performance of all conditions of the

[EXPLANATION--Matter enclosed in bold-faced brackets [this] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined [this] is new matter

Matter enclosed in superscripted numerals has been adopted as follows:

<sup>1</sup> Senate SSG committee amendments adopted January 10, 1991.

<sup>2</sup> Assembly ASG committee amendments adopted March 10, 1991.

S3193 [2R]

2

1 contract, including the maintenance of liability insurance if and  
2 as required by the contract. Only the obligee named on the bond,  
3 and any subcontractor performing labor or any subcontractor or  
4 materialman providing materials for the construction, erection,  
5 alteration or repair of the public building, work or improvement  
6 for which the bond is required pursuant to this section, shall have  
7 any claim against the surety under the bond.  
8 (cf: P.L. 1989, c.316, s.1)

9 2. This act shall take effect immediately.  
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#### 12 STATE OPERATIONS

13  
14 Permits waiver or partial waiver of bond requirements for State  
15 construction contracts under certain circumstances.

SENATE, No. 3193  
STATE OF NEW JERSEY

INTRODUCED JANUARY 8, 1991

By Senator LIPMAN

1 **AN ACT** concerning bonds of contractors on public works and  
2 improvements and amending N.J.S.2A:44-143.

3

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

6 1. N.J.S.2A:44-143 is amended to read as follows:

7 2A:44-143. a. When public buildings or other public works or  
8 improvements are about to be constructed, erected, altered or  
9 repaired under contract, at the expense of the State or any  
10 county, municipality or school district thereof, the board, officer  
11 or agent contracting on behalf of the State, county, municipality  
12 or school district, shall require ~~the usual bond, as~~ provided for by  
13 law, with good and sufficient sureties, with an additional  
14 obligation for the payment by the contractor, and by all  
15 subcontractors, for all labor performed or materials, provisions,  
16 provender or other supplies, teams, fuels, oils, implements or  
17 machinery used or consumed in, upon, for or about the  
18 construction, erection, alteration or repair of such buildings,  
19 works or improvements.

20 When such contract is to be performed at the expense of the  
21 State and is entered into by the Director of the Division of  
22 Building and Construction or State departments designated by the  
23 Director of the Division of Building and Construction, and such  
24 contract is for a sum not exceeding ~~[\$20,000.00]~~ **\$100,000**, the  
25 director or the State departments may at their discretion waive  
26 the bond requirement of this section.

27 b. A surety's obligation shall not extend to any claim for  
28 damages based upon alleged negligence that resulted in personal  
29 injury, wrongful death, or damage to real or personal property,  
30 and no bond shall in any way be construed as a liability insurance  
31 policy. Nothing herein shall relieve the surety's obligation to  
32 guarantee the contractor's performance of all conditions of the  
33 contract, including the maintenance of liability insurance if and  
34 as required by the contract. Only the obligee named on the bond,  
35 and any subcontractor performing labor or any subcontractor or  
36 materialman providing materials for the construction, erection,  
37 alteration or repair of the public building, work or improvement  
38 for which the bond is required pursuant to this section, shall have  
39 any claim against the surety under the bond.

40 (cf: P.L.1989, c.316, s.1)

41 2. This act shall take effect immediately.

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.

S3193

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STATEMENT

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At present, the law provides that when the amount of a State public works construction contract does not exceed \$20,000 the Director of the Division of Building and Construction or a State department authorized by the director may waive the requirement that the contractor post a bond. This bill amends existing law to permit waiver of the bond requirement for State construction contracts which do not exceed \$100,000. Increasing the ability of State officials to waive the bond requirement should reduce costs for contractors and the State and make it easier for small firms to compete for State construction contracts.

STATE OPERATIONS

Permits waiver of bond requirements for State construction contracts which do not exceed \$100,000.

ASSEMBLY STATE OPERATIONS AND PERSONNEL  
COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 3193

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 18, 1991

The Assembly State Operations and Personnel Committee reports favorably and with committee amendments Senate Bill No. 3193 (1R).

This bill amends existing law to enhance the Director of the Division of Building and Construction's or a State department's discretionary power and provides them with the authority to (1) establish for a contract the amount of the bond at a percentage of the amount bid, based upon the director's or the department's assessment of the risk, past experience with a particular contractor or other relevant factors, and (2) waive the bond requirement entirely if a contract is for \$100,000 or less. At present, when the amount of a State public works construction contract is \$20,000 or less, the Director of the Division of Building and Construction or a State department authorized by the director may waive the requirement that the contractor post a bond.

Increasing the ability of State officials to waive or reduce bond requirements should reduce costs for contractors and therefore make it easier for small firms to compete for State construction contracts.

COMMITTEE AMENDMENTS

The committee adopted amendments to the bill to clarify that, in setting the bond for a State contract, the Director of the Division of Building and Construction or the responsible State department could not establish the amount of that bond at greater than 100% of the amount bid on the contract.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO  
[SECOND REPRINT]  
SENATE, No. 3193

STATE OF NEW JERSEY

DATED: AUGUST 1, 1991

The Assembly Appropriations Committee reports favorably Senate Bill No. 3193 (2R).

Senate Bill No. 3193 (2R) provides that, in setting the amount of contractor bond for a State construction project, the Director of the Division of Building and Construction or the relevant State department may establish the amount of the bond at a percentage of the amount bid, not to exceed 100 percent, based upon the director's or the department's assessment of the risk, past experience with a particular contractor or other relevant factors. The bill provides that the bond requirement may be waived entirely if a contract is for \$100,000 or less.

Current law generally requires bond in an amount equal to at least 100 percent of the contract price, and allows discretionary waiver of the bond requirement if the contract amount does not exceed \$20,000.

The sponsor's statement to the bill, as introduced, indicated that increasing the ability of State officials to waive or reduce bond requirements should reduce costs for contractors and therefore make it easier for small firms to compete for State construction contracts.

Senate Bill No. 3193 (2R) is identical to Assembly Bill No. 4441 (1R).

FISCAL IMPACT

This bill has not been certified for a fiscal note. The bill will likely have no direct significant impact on State costs; however, it could result in cost savings to the extent that smaller firms are awarded contracts based on lower bids, or in cost increases to the extent that defaults occur on projects that are unbonded or bonded at less than 100 percent of cost.

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SR 0006  
TR 0006

ASSEMBLY STATE OPERATIONS AND PERSONNEL  
COMMITTEE

AMENDMENTS

to

SENATE, No. 3193 (IR)  
(Sponsored by Senator LIPMAN)

ADOPTED  
MAR 18 1991

REPLACE SECTION 1 TO READ:

1. N.J.S.2A:44-143 is amended to read as follows:

2A:44-143. a. When public buildings or other public works or improvements are about to be constructed, erected, altered or repaired under contract, at the expense of the State or any county, municipality or school district thereof, the board, officer or agent contracting on behalf of the State, county, municipality or school district, shall require the usual bond, as provided for by law, with good and sufficient sureties, with an additional obligation for the payment by the contractor, and by all subcontractors, for all labor performed or materials, provisions, provender or other supplies, teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction, erection, alteration or repair of such buildings, works or improvements.

When such contract is to be performed at the expense of the State and is entered into by the Director of the Division of Building and Construction or State departments designated by the Director of the Division of Building and Construction, <sup>1</sup>[and such contract is for a sum not exceeding [\$20,000.00] ~~\$100,000.~~<sup>1</sup> the director or the State departments may <sup>1</sup>[at their discretion] : (1) establish for that contract the amount of the bond at any percentage<sup>2</sup>, not exceeding 100%,<sup>2</sup> of the amount bid, based upon the director's or department's assessment of the risk presented to the State by the type of contract, past experience with a particular contractor and other relevant factors, and (2)<sup>1</sup> waive the bond requirement of this section <sup>1</sup>entirely if the contract is for a sum not exceeding \$100,000<sup>1</sup>.

b. A surety's obligation shall not extend to any claim for damages based upon alleged negligence that resulted in personal injury, wrongful death, or damage to real or personal property, and no bond shall in any way be construed as a liability insurance policy. Nothing herein shall relieve the surety's obligation to guarantee the contractor's performance of all conditions of the contract, including the maintenance of liability insurance if and as required by the contract. Only the obligee named on the bond, and any subcontractor performing labor or any subcontractor or



materialman providing materials for the construction, erection, alteration or repair of the public building, work or improvement for which the bond is required pursuant to this section, shall have any claim against the surety under the bond.  
(cf: P.L.1989, c.316, s.1)

SENATE STATE GOVERNMENT AND FEDERAL  
AND INTERSTATE RELATIONS COMMITTEE

STATEMENT TO

SENATE, No. 3193

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 10, 1991

The Senate State Government and Federal and Interstate Relations Committee reports favorably and with committee amendments Senate, No. 3193.

At present, when the amount of a State public works construction contract is \$20,000 or less, the Director of the Division of Building and Construction or a State department authorized by the director may waive the requirement that the contractor post a bond. This bill amends existing law to enhance the director's or a department's discretionary power and provides them with the authority to (1) establish for a contract the amount of the bond at any percentage of the amount bid, based upon the director's or the department's assessment of the risk, past experience with a particular contractor or other relevant factors, and (2) waive the bond requirement entirely if a contract is for \$100,000 or less.

Increasing the ability of State officials to waive or reduce bond requirements should reduce costs for contractors and therefore make it easier for small firms to compete for State construction contracts.

COMMITTEE AMENDMENTS

The committee amended the bill to increase the discretionary power of the director or a department by allowing them to establish for a contract the amount of the bond at any percentage of the amount bid.

SENATE SSG COMMITTEE

AMENDMENTS

to

SENATE, No. 3193  
(Sponsored by Senator Lipman)

ADOPTED  
JAN 10 1991

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b. A surety's obligation shall not extend to any claim for damages based upon alleged negligence that resulted in personal injury, wrongful death, or damage to real or personal property, and no bond shall in any way be construed as a liability insurance policy. Nothing herein shall relieve the surety's obligation to guarantee the contractor's performance of all conditions of the contract, including the maintenance of liability insurance if<sup>3</sup> and as required by the contract. Only the obligee named on the bond, and any subcontractor performing labor or any subcontractor or materialman providing materials for the construction, erection, alteration or repair of the public building, work or improvement for which the bond is required pursuant to this section, shall have any claim against the surety under the bond.

(cf: P.L. 1989, c.316, s.1)

**REPLACE SYNOPSIS TO READ:**

**Permits waiver or partial waiver of bond requirements for State construction contracts under certain circumstances.**

[FIRST REPRINT]  
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S3193 [1R]

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### STATE OPERATIONS

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Permits waiver or partial waiver ~~requirements~~ requirements for State  
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