

52:32-40

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(State contracts prompt payment)

NJSA: 52:32-40

LAWS OF: 1991 CHAPTER: 507

BILL NO: A5293

SPONSOR(S): Bryant

DATE INTRODUCED: January 6, 1992

COMMITTEE: ASSEMBLY: State Operations

SENATE: —

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
by asterisk

DATE OF PASSAGE: ASSEMBLY: January 13, 1992

SENATE: January 13, 1992

DATE OF APPROVAL: January 18, 1992

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG/pp

LEGISLATIVE HISTORY COPY
Do Not Remove From Library

P.L.1991, CHAPTER 507, approved January 18, 1992
1991 Assembly No. 5293 (First Reprint)

1 AN ACT concerning certain State contracts and supplementing
2 Title 52 of the Revised Statutes.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. As used in this act:

7 "Prime contractor" means any person who has a construction
8 contract with a State agency and who subcontracts all or a part
9 of that contract.

10 "State agency" means any of the principal departments in the
11 Executive Branch of the State Government, and any division,
12 board, bureau, office, commission or other instrumentality within
13 or created by such department, the Legislature of the State and
14 any office, board, bureau or commission within or created by the
15 Legislative Branch, and any independent State authority,
16 commission, instrumentality or agency which is authorized by law
17 to award construction contracts. A county or municipality shall
18 not be deemed an agency or instrumentality of the State.

19 "Subcontractor" means any person who enters into a contract
20 with a prime contractor to perform a specific part of the work
21 for which the prime contractor is responsible under a
22 construction contract with a State agency.

23 "Supplier" means any person who enters into a contract with a
24 prime contractor to provide materials to that prime contractor in
25 connection with a State construction contract.

26 2. a. Prior to the issuance of a progress payment by a State
27 agency to a prime contractor, the prime contractor shall certify
28 to the State agency that a subcontractor or supplier has been paid
29 any amount due from any previous progress payment and shall be
30 paid any amount due from the current progress payment, or that
31 ¹[a performance dispute exists which prevents the subcontractor
32 or supplier from being paid by the prime contractor] there exists
33 a valid basis under the terms of the subcontractor's or supplier's
34 contract to withhold payment from the subcontractor or supplier
35 and therefore payment is withheld¹. ¹[Notice of a performance
36 dispute shall be in the form of a letter to the subcontractor or
37 supplier detailing the dispute in question and the amount of
38 payment withheld, with copies provided to the bonding company

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.

Matter enclosed in superscript numerals has been adopted as follows:
¹ Assembly ASO committee amendments adopted January 6, 1992.

1 providing the performance bond for the prime contractor and the
2 State agency.]¹

3 b. ¹[If there is no performance dispute, the prime contractor
4 shall pay the amount due the subcontractor or supplier from that
5 progress payment as provided for in the contract between the
6 parties. If the prime contractor does not pay the subcontractor
7 or supplier the amount due, the prime contractor shall not
8 receive any further progress payment from the State agency until
9 the subcontractor or supplier is so paid.]

10 If the prime contractor withholds payment from a
11 subcontractor or supplier, the prime contractor shall provide to
12 the subcontractor or supplier written notice of a withholding of
13 payment. The notice shall detail the reason for withholding
14 payment and state the amount of payment withheld. A copy of
15 the notice shall be provided to the bonding company providing the
16 performance bond for the general contractor and to the State
17 agency.¹

18 c. In addition to any amount due, a subcontractor or supplier
19 shall also receive from a prime contractor interest on the amount
20 due at a rate equal to the prime rate plus 1% if a subcontractor
21 or supplier is not paid within 10 calendar days after receipt by
22 the prime contractor of payment by a State agency for
23 ¹completed¹ work ¹[satisfactorily completed by the
24 subcontractor or for materials provided by the supplier] which is
25 the subject of a subcontract or a material supply agreement and
26 if no valid basis exists for withholding payment¹. This interest
27 shall begin to accrue on the 10th calendar day after receipt of
28 payment by the prime contractor. ¹In addition, a subcontractor
29 or supplier shall receive any court costs incurred by the
30 subcontractor or supplier to collect payments withheld without a
31 valid basis by the prime contractor.

32 d. If court action is taken by a subcontractor or supplier to
33 collect payments withheld by a prime contractor and it is
34 determined that a valid basis existed for the withholding of those
35 payments, the subcontractor or supplier shall be liable for any
36 court costs incurred by the prime contractor in connection with
37 the action.¹

38 3. This act shall take effect immediately and shall apply to
39 any State construction contract executed on or after the
40 effective date of this act.

41

42

43

STATE OPERATIONS.

44

45 Requires timely payments by prime contractors with State
46 construction contracts to subcontractors and suppliers.

1 receive any further progress payment from the State agency until
2 the subcontractor or supplier is so paid.

3 c. In addition to any amount due, a subcontractor or supplier
4 shall also receive from a prime contractor interest on the amount
5 due at a rate equal to the prime rate plus 1% if a subcontractor
6 or supplier is not paid within 10 calendar days after receipt by
7 the prime contractor of payment by a State agency for work
8 satisfactorily completed by the subcontractor or for materials
9 provided by the supplier. This interest shall begin to accrue on
10 the 10th calendar day after receipt of payment by the prime
11 contractor.

12 3. This act shall take effect immediately and shall apply to
13 any State construction contract executed on or after the
14 effective date of this act.

15
16
17 *SPONSOR'S* STATEMENT
18

19 This bill concerns State construction contracts. It provides
20 that prior to the issuance of a progress payment by a State
21 agency to a prime contractor, the prime contractor shall certify
22 to the State agency that a subcontractor or supplier has been paid
23 any amount due from any previous progress payment and shall be
24 paid any amount due from the current progress payment, or that
25 a performance dispute exists which prevents the subcontractor or
26 supplier from being paid by the prime contractor. Notice of a
27 performance dispute shall be in the form of a letter to the
28 subcontractor or supplier detailing the dispute in question and the
29 amount of payment withheld, with copies provided to the bonding
30 company providing the performance bond for the prime
31 contractor and the State agency. If there is no performance
32 dispute, the prime contractor shall pay the amount due the
33 subcontractor or supplier from that progress payment as provided
34 for in the contract between the parties. If the prime contractor
35 does not pay the subcontractor or supplier the amount due, the
36 prime contractor shall not receive any further progress payment
37 from the State agency until the subcontractor or supplier is so
38 paid. In addition to any amount due, a subcontractor or supplier
39 shall also receive from a prime contractor interest on the amount
40 due at a rate equal to the prime rate plus 1% if a subcontractor
41 or supplier is not paid within 10 calendar days after receipt by
42 the prime contractor of payment by a State agency for work
43 satisfactorily completed by the subcontractor or for materials
44 provided by the supplier. This interest shall begin to accrue on
45 the 10th calendar day after receipt of payment by the prime
46 contractor.

47 This act shall take effect immediately and shall apply to any
48 State construction contract executed on or after the effective
49 date of this act.

ASSEMBLY STATE OPERATIONS AND
PERSONNEL COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5293

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 6, 1992

The Assembly State Operations and Personnel Committee reports favorably and with committee amendments Assembly, No. 5293.

This bill concerns State construction contracts. It provides that prior to the issuance of a progress payment by a State agency to a prime contractor, the prime contractor shall certify to the State agency that a subcontractor or supplier has been paid any amount due from any previous progress payment and shall be paid any amount due from the current progress payment, or that there exists a valid basis under the terms of the subcontractor's or supplier's contract to withhold payment and payment is withheld. If a prime contractor withholds payment, the prime contractor shall provide to the subcontractor or supplier written notice giving the reason for withholding payment and the amount withheld. In addition to any amount due, a subcontractor or supplier shall receive from a prime contractor interest on the amount due at a rate equal to the prime rate plus 1% if a subcontractor or supplier is not paid within 10 calendar days after receipt by the prime contractor of payment by a State agency for completed work and if no valid basis exists for withholding payment. This interest shall begin to accrue on the 10th calendar day after receipt of payment by the general contractor. If a subcontractor or supplier incurs court costs to collect payments withheld without a valid basis, the prime contractor shall pay those court costs. However, if it is determined there was a valid basis for withholding payments, the subcontractor or supplier shall pay the prime contractor's court costs.

This act shall take effect immediately and shall apply to any State construction contract executed on or after the effective date of this act.

COMMITTEE AMENDMENTS

The committee amended the bill to: (1) provide that instead of the prime contractor having to certify that a performance dispute exists which prevents a subcontractor or supplier from being paid by the prime contractor, the prime contractor must certify that there exists a valid basis under the terms of the subcontractor's or supplier's contract to withhold payment and payment is withheld;

(2) delete the requirement that if proper payment is not made by a prime contractor to a subcontractor, the State agency making payments to the prime contractor shall not pay any further progress payment to the prime contractor until the subcontractor or supplier is paid; (3) require that written notice be given by the prime contractor to the subcontractor or supplier if payment is to be withheld and that the notice state the reason for the withholding and the amount withheld; (4) require a prime contractor to pay court costs incurred by a subcontractor or supplier in collecting payments withheld without a valid basis; and (5) require a subcontractor or supplier to pay any court costs incurred by the prime contractor in response to any court action by the subcontractor or supplier if it is determined there was a valid basis for the prime contractor to withhold payment.