

27:1A-5.2 to 27:1A-5.6

LEGISLATIVE HISTORY CHECKLIST

NJSA: 27:1A-5.2 to 27:1A-5.6 (Public contractors-- indemnification for certain claims)

LAWS OF: 1986

CHAPTER 81

BILL NO: A2360

Sponsor(s): Rafferty

Date Introduced: March 13, 1986

Committee: Assembly: Insurance; Appropriations

Senate: -----

Amended during passage: Yes Substituted for S2209 (not attached since identical to S2209). Amendments during passage denoted by asterisks.

Date of Passage: Assembly: June 26, 1986

Senate: July 17, 1986

Date of Approval: August 6, 1986

Following statements are attached if available:

Sponsor statement: Yes Attached: Assembly amendments, adopted 6-23-86 (with statement)

Committee statement: Assembly Yes 5-8-86 5-22-86

Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

DO NOT REMOVE FROM LIBRARY

81
8-6-86
86

[SECOND OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2360

STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1986

By Assemblymen RAFFERTY, CHINNICI, MUZIANI, Assemblywoman RANDALL, Assemblymen KAVANAUGH, GENOVA, KERN, PALAIA, PENN, Assemblywoman MUHLER, Assemblymen MARTIN, DiGAETANO, ALBOHN, DEVERIN and LOVEYS

AN ACT authorizing the indemnification of certain persons for claims made against them in performing certain public contracts and supplementing P. L. 1966, c. 301 (C. 27:1A-1 et seq.).

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

1 1. The Commissioner of Transportation*, *in consultation with*
2 *the Attorney General,** may agree****[***, *for a period of time not to*
2A *exceed 36 months after the effective date of this act,*]*** to defend
2B and indemnify any person who, pursuant to a written contract with
3 the Department of Transportation, constructs public works or im-
4 provements or provides services to the department for claims,
5 ***causes of action,*** demands, costs or judgments against that
6 person arising as a direct result of the contamination of the environ-
7 ment by hazardous substances if the contamination is a direct
8 result of the construction or services. The commissioner shall not
9 agree to indemnify a person unless the commissioner determines
10 that ****[sufficient]**** ***adequate environmental*** liability in-
10A surance is either unavailable to that person in connection with a
11 particular contract or that the cost therefor is prohibitive.

12 The commissioner is authorized to enter into an agreement to
13 defend and indemnify a person upon the terms and limitations the
14 commissioner deems reasonable and appropriate. ***The commis-*

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted May 8, 1986.

**—Assembly amendments adopted June 23, 1986.

15 sioner shall not enter into an agreement to provide legal defense and
 16 indemnification to any person pursuant to this section after
 17 January 1, 1988.** The commissioner shall not agree to **defend
 17A or** indemnify any person for acts which arise from **gross
 17B negligence,** willful misconduct, fraud, intentional tort, bad faith
 17C or criminal wrongdoing or for claims for punitive or exemplary
 17D damages.

18 An agreement to defend and indemnify pursuant to this section
 19 does not bar, reduce, limit or affect any remedies which the depart-
 20 ment may have to enforce its contract **or to assert a claim** for
 21 damages to which the department may be entitled arising out of the
 22 persons's failure to perform the contract**, *or for the recovery of*
 22A *funds expended for the defense of a person if the defense was under-*
 22B *taken in response to a claim or cause of action brought against the*
 22C *person which is proven to have arisen from gross negligence, willful*
 22D *misconduct, fraud, intentional tort, bad faith, or criminal mis-*
 22E *conduct**.*

23 No one other than the person performing construction or services
 24 pursuant to a written contract with the department has the right
 25 to enforce any agreement for **defense or** indemnification between
 26 that person and the commissioner. For purposes of this section, the
 27 term "person" means public or private corporations, companies,
 28 associations, societies, firms, partnerships, joint stock companies, in-
 29 dividuals, public authorities, the United States, the State of New
 30 Jersey and any of its political subdivisions or agents. The term
 31 "services" means work performed by design or other expert con-
 32 sultants and work or technical functions performed by nonexperts
 33 on projects for public works, building or improvements, including
 34 work preliminary to construction under a contract and work which
 35 results in or from a contract modification. **The term "hazardous*
 36 *substances" shall have the same meaning as provided in section 3*
 37 *of P. L. 1976, c. 141 (C. 58:10-23.11b).**

1 **2. Notwithstanding the time limitation established by section 1*
 2 *of this act, the commissioner may defend and indemnify any person*
 3 *covered by an agreement which was made by him prior to **[the*
 4 *expiration of the 36 months]** **January 1, 1988**.*

1 *3. The Commissioner of Transportation may adopt rules and*
 2 *regulations to effectuate the purposes of this act.**

1 **[2.]* *4.* This act shall take effect immediately**, and shall*
 2 *apply to contracts entered into prior to the effective date of this*
 3 *act on which work is still in progress on the effective date of this*
 4 *act and to contracts entered into on the effective date of this act**.*

TRANSPORTATION — GENERAL

Authorizes the Commissioner of Transportation to defend and indemnify certain contractors for claims and judgments arising from the contamination of the environment as a result of their public contract.

ASSEMBLY, No. 2360
STATE OF NEW JERSEY

INTRODUCED MARCH 13, 1986

By Assemblymen RAFFERTY, CHINNICI, MUZIANI, Assemblywoman RANDALL, Assemblymen KAVANAUGH, GENOVA, KERN, PALAIA, PENN, Assemblywoman MUHLER, Assemblymen MARTIN, DiGAETANO, ALBOHN, DEVERIN and LOVEYS

AN Act authorizing the indemnification of certain persons for claims made against them in performing certain public contracts and supplementing P. L. 1966, c. 301 (C. 27:1A-1 et seq.).

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

1 L. The Commissioner of Transportation may agree to defend and
2 indemnify any person who, pursuant to a written contract with the
3 Department of Transportation, constructs public works or im-
4 provements or provides services to the department for claims,
5 demands, costs or judgments against that person arising as a direct
6 result of the contamination of the environment by hazardous sub-
7 stances if the contamination is a direct result of the construction
8 or services. The commissioner shall not agree to indemnify a
9 person unless the commissioner determines that sufficient liability
10 insurance is either unavailable to that person in connection with a
11 particular contract or that the cost therefor is prohibitive.

12 The commissioner is authorized to enter into an agreement to
13 defend and indemnify a person upon the terms and limitations the
14 commissioner deems reasonable and appropriate. The commissioner
15 shall not agree to indemnify any person for acts which arise from
16 willful misconduct, fraud, intentional tort, bad faith or criminal
17 wrongdoing or for claims for punitive or exemplary damages.

18 An agreement to defend and indemnify pursuant to this section
19 does not bar, reduce, limit or affect any remedies which the depart-
20 ment may have to enforce its contract for damages to which the
21 department may be entitled arising out of the person's failure to
22 perform the contract.

23 No one other than the person performing construction or services
24 pursuant to a written contract with the department has the right
25 to enforce any agreement for indemnification between that person
26 and the commissioner. For purposes of this section, the term
27 "person" means public or private corporations, companies, associa-
28 tions, societies, firms, partnerships, joint stock companies, in-
29 dividuals, public authorities, the United States, the State of New
30 Jersey and any of its political subdivisions or agents. The term
31 "services" means work performed by design or other expert con-
32 sultants and work or technical functions performed by nonexperts
33 on projects for public works, building or improvements, including
34 work preliminary to construction under a contract and work which
35 results in or from a contract modification.

1 2. This act shall take effect immediately.

STATEMENT

This bill authorizes the Commissioner of the Department of Transportation to contractually agree to defend and indemnify certain contractors against claims or judgments arising as the result of a contract. Specifically, this bill addresses the situation where the contamination of the environment by hazardous substances has occurred as the direct result of the contract. Before the commissioner can agree to indemnify a contractor, a determination must be made that adequate liability insurance is either unavailable or the cost prohibitive for that person in connection with a particular contract. The bill authorizes the commissioner to place certain conditions and limitations upon the obligation to defend and indemnify a contractor and provides that the commissioner may not agree to indemnify a contractor for acts arising from willful misconduct, fraud, intentional tort, bad faith, criminal wrongdoing or in connection with claims for punitive or exemplary damages. The bill specifies that an agreement to defend and indemnify a contractor shall not in any way affect the department's ability to enforce the contract or to collect damages resulting from the contractor's failure to perform the contract. Also, no one other than the contractor involved shall have the right to enforce the indemnification agreement.

TRANSPORTATION — GENERAL

Authorizes the Commissioner of Transportation to defend and indemnify certain contractors for claims and judgments arising from the contamination of the environment as a result of their public contract.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT ON

Assembly, Bill No. 2360 Aca

DATED: May 8, 1986

This bill permits the Commissioner of Transportation to agree to defend and indemnify any person who, pursuant to a written contract with the Department of Transportation, constructs public works or improvements or provides services to the department for claims, demands, costs or judgments against that person arising as a direct result of the contamination of the environment by hazardous substances. The commissioner could agree to indemnify the person if the contamination is a direct result of the construction or services and if the commissioner determines that sufficient amounts of liability insurance are unavailable or that the cost of the insurance is prohibitive.

The commissioner would be permitted to enter into an agreement to defend and indemnify persons upon terms and limitations which the commissioner deems appropriate. The commissioner would be prohibited from agreeing to indemnify any person for acts which arise from willful misconduct, fraud, intentional tort, bad faith or criminal wrongdoing or for claims for punitive or exemplary damages.

Because of the risk exposure which is associated with handling hazardous material, contractors have had difficulty in obtaining proper insurance coverage. This situation has been exacerbated by the present liability insurance crisis. This bill would make it easier for the Department of Transportation to obtain contractors to do necessary work which involves hazardous materials; some have not been able to perform such work because of their inability to procure coverage.

The Assembly Insurance Committee has made technical amendments to the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2360

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 22, 1986

The Assembly Appropriations Committee favorably reports this bill.

Assembly Bill No. 2360 (Aca) authorizes the Commissioner of Transportation to enter into an agreement to defend and indemnify persons under contract with the department for services, who have claims, demands, costs or judgments made against them arising from the contract in which hazardous substances result in contamination of the environment.

Due to exposure from the handling of hazardous materials, contractors are in a difficult position in obtaining proper liability insurance coverage. This bill would help if sufficient amounts of liability coverage are unavailable or if the costs of the insurance is prohibitive. However, the commissioner may not agree to indemnify those persons for acts arising from willful misconduct, fraud, intentional tort, bad faith or criminal wrongdoing or for claims for punitive or exemplary damages.

FISCAL IMPACT:

Any future costs to the State would largely depend on those incidents, if or when they happen, while under contractual agreements for services.

ASSEMBLY Amendments

to

ASSEMBLY Bill No. 2360 (OCR)

Sec. Line

willful misconduct, fraud, intentional tort, bad faith, or criminal misconduct"

2 2 3-4 Omit "the expiration of the 36 months" insert "January 1, 1988"

2 4 1 After "immediately" insert ", and shall apply to contracts entered into prior to the effective date of this act on which work is still in progress on the effective date of this act and to contracts entered into on the effective date of this act"

STATEMENT

This amendment adds gross negligence to the actions which the Department of Transportation may not indemnify or defend. This amendment also prohibits the defense for certain culpability. A sunset date of January 1, 1986 is added. This amendment establishes a lack of adequate environmental liability insurance as a criteria before the department will agree to defend or indemnify a contractor. This amendment also provides for the department to recover their costs of defense if certain culpability is shown and provides that the bill is retroactive to work and contracts already in existence.

361



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001

Contact: JOHN SAMERJAN
609-292-8956 OR 292-6000 EXT. 207

TRENTON, N.J. 08625

Release: THUR., AUG. 7, 1986

Governor Thomas H. Kean today signed legislation authorizing the Commissioner of Transportation to agree to defend and indemnify its contractors for claims arising out of environmental contamination resulting from performance of the contract.

A-2360, sponsored by Assemblyman Jack Rafferty, R-Mercer, provides that the Commissioner of Transportation, in consultation with the Attorney General, can agree to defend and indemnify contractors if a determination is made that adequate environmental liability insurance is either unattainable or that the cost of such insurance is prohibitive.

The Department of Transportation will not indemnify contractors for acts arising from gross negligence, willful misconduct, fraud, intentional tort, bad faith or criminal wrongdoing.

This legislation is similar in concept to the bill Governor Kean recently signed allowing the Department of Environmental Protection to indemnify and defend its contractors.

The legislation is effective immediately and applies to contracts entered into prior to the effective date on which work is still in progress and to contracts entered into on the effective date of this act.

PROPERTY OF
NEW JERSEY STATE LIBRARY

#

SEP 4 1985

185 W. State Street
Trenton, N. J.