

52:32-32 to 52:32-39

1/5/88

LEGISLATIVE HISTORY CHECKLIST

NJSA: 52:32-32 to 52:32-39 "New Jersey Prompt Payment Act"

LAWS OF: 1987 CHAPTER: 184

Bill No: S1644

Sponsor(s): Lipman

Date Introduced: February 3, 1986

Committee: Assembly: State Government; Appropriations

Senate: Revenue, Finance and Appropriations; State Government, Federal and Interstate Relations and Veterans' Affairs.

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: June 8, 1987

Senate: September 18, 1986

Date of Approval: July 14, 1987

Following statements are attached if available:

Sponsor statement: Yes Attached: Senate ammendments, adopted 9-15-87

Committee statement: Assembly Yes 2-2-87 and 5-18-87

Senate Yes 9-3-86 and 6-9-86

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

Reports: No

Hearings: No

Report, mentioned in statements, not available as of 12-1-87.



[FOURTH OFFICIAL COPY REPRINT]

SENATE, No. 1644

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1986

By Senator LIPMAN

Referred to Committee on State Government and Federal and
Interstate Relations and Veterans Affairs

AN ACT concerning prompt payments on State contracts *****and
making an appropriation therefor*****.

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

1 1. This act shall be known and may be cited as the "New Jersey
2 Prompt Payment Act."

1 2. As used in this act:

2 a. "Business concern" means any person engaged in a trade or
3 business****,**** **[and]** **including** private nonprofit
3A entities operating as contractors****, and operating pursuant to a
3B State contract requiring either a single payment or multiple pay-
3C ments**** **, but shall not include any ****[person who enters
3D into a contract with the State ***[for the construction of improve-
3E ments to real property]** which provides for a multiple payment
3F schedule during the course of the contract**]***** ****"public
3G utility" as that term is defined under section 1 of P. L. 1946, c. 219
3H (C. 48:2-13)****;

4 b. "Using agency" means the appropriate agency of the State*,
5 including the Office of Legislative Services and the legislative
6 branch of State government,* which receives or uses the goods or
7 services provided under the contract between the State*[, including
8 the Office of Legislative Services and the legislative branch of
9 State government,]* and a business concern;

10 c. "Director" means the Director of the Division of Budget and
11 Accounting in the Department of the Treasury;

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:

*—Senate committee amendments adopted June 9, 1986.

**—Senate committee amendments adopted September 8, 1986.

***—Senate amendment adopted September 15, 1986.

****—Assembly committee amendments adopted February 2, 1987.

*****—Assembly committee amendments adopted May 18, 1987.

12 *d. "Division" means the Division of Budget and Accounting in
13 the Department of the Treasury;*

14 ***[d.]*** *e.* "Properly executed State invoice" means a State
15 invoice which contains all the information which the director may
16 require by regulation;

17 ***[e.]*** *f.* "State" means the State of New Jersey and any
18 office, department, division, bureau, board, commission, or agency
19 of the State, the Office of Legislative Services, and the legislative
20 branch of State government, but shall not include any entity which
21 is statutorily authorized to sue and be sued.

1 3. a. Interest shall be paid on the amount due to a business con-
2 cern pursuant to a properly executed State invoice if the required
3 payment is not made on or before the required payment date.

4 b. The required payment date shall be 60 *calendar** days from
5 the receipt of a properly executed State invoice, or 60 *calendar**
6 days from the receipt of goods or services, whichever is later.

7 c. The using agency shall have ***[40]*** *35 calendar** days from
8 the receipt of a properly executed State invoice or ***[40]*** *35*
9 *calendar** days from the receipt of goods or services, whichever is
10 later, to submit the request for payment to the ***[Office of Man-**
11 **agement and Budget. The Office of Management and Budget]***
12 *division. The division** shall have ***[20]*** *25 calendar** days
13 from the date the request for payment is submitted by the using
14 agency to make the required payment to a business concern.

1 4. a. Interest on amounts due shall be paid to the business con-
2 cern for the period beginning on the day after the required pay-
3 ment date and ending on the date on which the check for payment
4 is drawn. The interest shall be paid at a rate which the State
5 Treasurer shall specify as applicable on the 30th day after the en-
6 actment of this ******[1986 amendatory and supplementary]******
7 act and by the 30th day after the end of each ***[fiscal]*** *fiscal**
7A year thereafter.

8 In determining the rate, the Treasurer shall take into considera-
9 tion current private commercial rates of interest for new loans
10 maturing in approximately five years. The ***[treasurer]*** *Trea-*
11 *surer** shall publish the rate.

12 b. No interest charge as required by this act shall become a debt
13 of the State until its exceeds \$5.00.

14 c. Interest may be paid by separate payment to a business con-
15 cern, but shall be paid within 30 days of payment of the original
16 invoice.

17 d. No appropriation of funds shall be made for the payment of
 18 interest required by this section. The ***[Office of Management and**
 19 **Budget]*** *division* or using agency, whichever is responsible for
 20 the late payment, shall pay any interest charges required by this
 21 act out of the funds available for the administration of ***[office]***
 22 *division* or agency programs.

1 5. a. The director shall adopt rules and regulations to effectuate
 2 the purposes of this act pursuant to the "Administrative Procedure
 3 Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.) ***[on or before July**
 4 **1, 1986]***.

5 b. The director shall by regulation provide that:

6 (1) Separate required payment dates shall exist for property
 7 or services provided in a series of partial executions or deliveries
 8 to the extent the contract provides for separate payment for each
 9 partial execution or delivery;

10 (2) The using agency shall notify the business concern within
 11 30 *calendar* days of any defect or impropriety in any invoice
 12 submitted *or of any defect or impropriety in goods or services*
 12A *provided* which would prevent the running of the time period
 13 specified in section 3 of this ********[1986 amendatory and supple-**
 13A **mentary]******** act.

14 c. The director may by regulation provide that the required pay-
 15 ment date shall be within a specified number of days after the date
 16 of delivery in the case of contracts for the provision of perishable
 17 goods.

1 6. ***[a.]*** The State Treasurer shall have the right to waive the
 2 interest payment for delinquencies due to circumstances beyond
 3 the control of the using agency or the ***[Office of Management and**
 4 **Budget]*** *division*, including but not limited to strikes and natural
 5 disasters, and for contracts entered into prior to the effective date
 6 of this ********[1986 amendatory and supplementary]******** act.

1 ***[b.]*** *7. a.* Each using agency and the ***[Office of Manage-**
 2 **ment and Budget]*** *division* shall file with the director a detailed
 3 report on any interest payments made ***[during the preceding fiscal**
 4 **year]*** *for the 12-month period after the effective date of this act*
 5 *and for each 12-month period thereafter*.

6 ***[c.]*** *b.* The report shall include the number, amounts, and
 7 frequency of interest payments and the reasons the interest pay-
 8 ments were not avoided by prompt payment.

9 ***[d.]*** *c.* The report shall be delivered to the director within
 10 90 days after the end of each ***[fiscal year]*** *12-month period*.

11 ***[7.]*** *d.* The director shall submit to the Senate ***[and Gen-**
 12 **eral Assembly]*** Revenue, Finance and Appropriations ***[Com-**

13 mittees]* **Committee and the Assembly Appropriations Com-*
 14 *mittee**, within 150 days after the end of each **[fiscal year]* *12-*
 15 *month period**, a report on State compliance with the requirements
 16 of this act. The report shall include a summary of the report sub-
 17 mitted by each using agency and the **[Office of Management and*
 18 *Budget]* *division** and an analysis of the progress made in re-
 19 ducing interest payments by that agency or the **[office]* *division**
 20 from previous years. **Upon evaluating the director's report, the*
 21 *committees shall reassess the time provisions set forth in subsec-*
 22 *tions b. and c. of section 3 of this act with the intent of reducing*
 23 *these time periods, if practicable.**

1 8. Nothing in this act shall be construed as permitting the accrual
 2 of prejudgment interest in the case of a disputed contract for
 3 which a notice of claim has been filed under the "New Jersey Con-
 4 tractual Liability Act," N. J. S. 59:13-1 et seq., as provided in
 5 N. J. S. 59:13-8.

1 9. There is appropriated from the General Fund the
 2 sum of ***[\$250,000.00]*** ******[**\$150,000.00**]******
 3 ******\$250,000.00****** to the **[Office of Management and Budget]**
 4 ***Department of the Treasury for the use of the** *Division of*
 5 *Budget and Accounting** to effectuate the purposes of this act.

1 10. This act shall take effect on **[July 1, 1986]* *the 180th day*
 2 *after the date of enactment**, except that section 5 shall take effect
 3 immediately.

STATE GOVERNMENT—GENERAL

Requires State agencies to pay interest on overdue payments to
 business concerns providing goods and services to the State,
 approps. \$250,000.00.

1 5. (New section) Any member of a board of education who falsely
2 affirms or declares that he has never been convicted of a crime of
3 the first, second or third degree is, in addition to immediate dis-
4 qualification for office, guilty of a crime of false swearing and is
5 subject to the penalty provided pursuant to N. J. S. 2C:28-2.

1 6. (New section) Any candidate for membership on a board of
2 education who falsely affirms or declares that he has never been
3 convicted of a crime of the first, second or third degree is, in addi-
4 tion to immediate disqualification for office, guilty of a crime of
5 false swearing and is subject to the penalty provided pursuant to
6 N. J. S. 2C:28-2.

1 7. This act shall take effect immediately.

STATEMENT

This bill provides that an individual who has been convicted of a crime of the first, second or third degree is disqualified from membership on a board of education. Such a conviction would result in an individual's removal from the board.

Further, a candidate would have to specifically affirm that he had never been convicted of such a crime upon filing a nominating petition for board membership, and make a similar declaration upon taking the oath of office. A false declaration would be a crime of the fourth degree, and make the individual subject to a fine of up to \$7,500.00 and a prison sentence of up to 18 months.

EDUCATION—GENERAL

Disqualifies from school board membership persons convicted of certain crimes.

ASSEMBLY STATE GOVERNMENT COMMITTEE
STATEMENT TO

SENATE, No. 1644

[THIRD OFFICIAL COPY REPRINT]

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 2, 1987

The Assembly State Government Committee reports favorably and with committee amendments Senate Bill No. 1644 3OCR.

This bill requires State agencies, including the Office of Legislative Services and the legislative branch of State Government, to pay interest on the amount due to a business concern pursuant to a properly executed State invoice if that amount is not paid on or before the required payment date. The required payment date will be 60 calendar days from the receipt of a properly executed State invoice or 60 calendar days from the receipt of goods and services, whichever is later. The State Treasurer shall establish the interest rate to be paid, based on private commercial rates for new five year loans. Interest will not be paid for late payment on contracts providing for progress payments, or for goods or services which are found to be defective.

The bill provides that no appropriation of funds shall be made for the payment of interest required by this act. Interest charges are to be paid out of funds available for the administration of division or agency programs.

Each using agency and the Division of Budget and Accounting is required to file with the Director of the Division of Budget and Accounting a report on interest payments made during the 12-month period following enactment of the bill, and for each 12-month period thereafter, within 90 calendar days after the end of such 12-month periods. The director shall submit to the Senate Revenue, Finance and Appropriations Committee and the Assembly Appropriations Committee a report on State compliance with this act within 150 days after the end of each 12-month period.

The bill appropriates \$150,000.00 to effectuate its purposes.

It is the sense of the committee in reporting this bill that the intent of the legislation is to discourage delinquency by State agencies in the

payment of their bills, and that the legislation shall not be construed to authorize or encourage any agency currently making timely payment on such obligations to delay such payments until the 60-day grace period provided under the bill has run.

COMMITTEE AMENDMENT:

The committee amended the bill to (1) extend the scope of the legislation to progress payment and other installment contracts, (2) make the bill's provisions inapplicable to public utilities, for which separate provision is made under another statute, and (3) correct references.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1644

[THIRD OFFICIAL COPY REPRINT]

[ASSEMBLY REPRINT]

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 18, 1987

The Assembly Appropriations Committee favorably reports Senate Bill No. 1644 3rd OCR AR with amendments.

Senate Bill No. 1644 (3rd OCR) (AR) as amended requires State agencies, including the Office of Legislative Services and the legislative branch of State Government, to pay interest on the amount due to a business concern pursuant to a properly executed State invoice if the required payment is not made on or before the required payment date. Interest will not be paid under the bill for late payment on construction contracts, or for goods or services which are found to be defective. The required payment date will be 60 calendar days from the receipt of a properly executed State invoice or 60 calendar days from the receipt of goods and services, whichever is later. The State Treasurer shall establish the interest rate to be paid, based on private commercial rates for new five year loans. No appropriation of funds shall be made for the payment of interest required by this act. Interest charges are to be paid out of funds available for the administration of division or agency programs.

Each agency is required to file with the Director of the Division of Budget and Accounting a report on interest payments made during the preceding 12-month period, within 90 calendar days after the end of each 12-month period. The director shall submit to the Senate Revenue, Finance and Appropriations Committee and the Assembly Appropriations Committee a report on State compliance with this act within 150 days after the end of each 12-month period.

FISCAL IMPACT:

The bill appropriates \$250,000.00 from the General Fund to the Department of the Treasury for use by the Division of Budget and Accounting to effectuate for purposes of the act.

COMMITTEE AMENDMENTS:

The committee amended the bill to increase the appropriation, which had been reduced to \$150,000.00, back to \$250,000.00, as introduced.

This bill is identical to Assembly Bill No. 3316 (OCR).

SENATE REVENUE, FINANCE AND APPROPRIATIONS
COMMITTEE

STATEMENT TO

SENATE, No. 1644

[OFFICIAL COPY REPRINT]

with Senate committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 8, 1986

The Senate Revenue, Finance and Appropriations Committee favorably reports Senate Bill No. 1644 (OCR), with amendments.

This bill, as amended, requires State agencies, including the Office of Legislative Services and the legislative branch of State Government, to pay interest on the amount due to a business concern pursuant to a properly executed State invoice if the required payment is not made on or before the required payment date. Interest will not be paid under the bill for late payment on construction contracts, or for goods or services which are found to be defective. The required payment date will be 60 calendar days from the receipt of a properly executed State invoice or 60 calendar days from the receipt of goods and services, whichever is later. The State Treasurer shall establish the interest rate to be paid, based on private commercial rates for new five year loans.

The bill provides that no appropriation of funds shall be made for the payment of interest required by this act. Interest charges are to be paid out of funds available for the administration of division or agency programs.

Each using agency and the Division of Budget and Accounting is required to file with the Director of the Division of Budget and Accounting a report on interest payments made during the preceding 12-month period, within 90 calendar days after the end of each 12-month period. The director shall submit to the Senate Revenue, Finance and Appropriations Committee, and the Assembly Appropriations Committee, a report on State compliance with this act within 150 days after the end of each 12-month period.

COMMITTEE AMENDMENTS:

The committee amended this bill to provide that interest will not be paid for late payment on construction contracts, or for goods or services which are found to be defective. In addition, the appropriation to

the Division of Budget and Accounting was reduced to \$150,000.00 from \$250,000.00, and it was clarified that the appropriation is made to the Department of the Treasury for the use of the Division of Budget and Accounting.

FISCAL IMPACT:

The bill, as amended, appropriates \$150,000.00, from the General Fund to the Department of the Treasury for the use of the Division of Budget and Accounting to effectuate the purposes of the act.

SENATE STATE GOVERNMENT AND FEDERAL AND
INTERSTATE RELATIONS AND VETERANS AFFAIRS
COMMITTEE

STATEMENT TO

SENATE, No. 1644

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 1986

The Senate State Government Committee reports favorably and with committee amendments Senate Bill No. 1644.

As amended, this bill, entitled the "New Jersey Prompt Payment Act," mandates that State agencies, including the Office of Legislative Services and the legislative branch of State Government, pay interest on the amount due to a business concern pursuant to a properly executed State invoice if the required payment is not made on or before the required payment date. The required payment date shall be 60 calendar days from the receipt of a properly executed State invoice or 60 calendar days from the receipt of goods and services, whichever is later. The State Treasurer shall establish the interest rate to be paid.

The bill provides that no appropriation of funds shall be made for the payment of interest required by this act. Interest charges shall be paid out of funds available for the administration of division or agency programs.

Each using agency and the Division of Budget and Accounting shall file with the Director of the Division of Budget and Accounting a report on interest payments made during the preceding 12-month period within 90 calendar days after the end of each 12-month period. The director shall submit to the Senate Revenue, Finance and Appropriations Committee and the Assembly Appropriations Committee a report on State compliance with this act within 150 days after the end of each 12-month period.

The bill appropriates from the General Fund to the Division of Budget and Accounting the sum of \$250,000.00 to effectuate the purposes of this act.

The committee amended the bill to incorporate changes suggested by the Department of the Treasury which: change the effective date of the act; replace the Office of Management and Budget with the Division of Budget and Accounting; specify that certain time periods shall be calendar days; and provide that the Senate Revenue, Finance and Appropriations Committee and the Assembly Appropriations Committee shall reassess certain time provisions in the bill.

Senate TR-RF0062 Amendments
(by Senator Lipman)
to
(CR)
Senate Bill No. 1644 (Sca)
Sponsored by Senator Lipman

ADOPTED

SEP 15 1986

Amend:

Page	Sec.	Line
1	2	3

After "contract with the State"
Omit "for the construction of improvements
to real property"

(As reflected on
typed copy of
Sca adopted on
September 8, 1986)

STATEMENT

This amendment excludes from the ^{"New Jersey} Prompt
Payment Act" all multiple payment schedule
contracts, rather than just those multiple
payment schedule contracts which are for the
construction of improvements to real property.