

40A:11-50

LEGISLATIVE HISTORY CHECKLIST
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(Construction--arbitration)

NJSA: 40A:11-50

LAWS OF: 1997 CHAPTER: 371

BILL NO: S913

SPONSOR(S): Kyrillos

DATE INTRODUCED: March 17, 1996

COMMITTEE: ASSEMBLY: ---

SENATE: Community Affairs

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
Second reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: January 12, 1998

SENATE: January 8, 1998

DATE OF APPROVAL: January 19, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: statement,
adopted 12-15-97 & 12-1-97

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
REPORTS: No

HEARINGS: No

~~Attached:~~ missing

Construction Industry Arbitration Rules of the American
Arbitration Commission.

KBP:pp

P.L. 1997, CHAPTER 371, *approved January 19, 1998*
Senate, No. 913 (*Second Reprint*)

1 AN ACT concerning certain construction contracts and supplementing
2 P.L.1971, c.198 (C.40A:11-1 et seq.).

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

6
7 1. ²[Every] All² construction contract ²documents² entered into in
8 accordance with the provisions of P.L.1971, c.198 (C.40A:11-1 et
9 seq.) after the effective date of P.L. , c. (C.)
10 (pending before the Legislature as this bill) shall provide that disputes
11 arising under ²[or related to]² the contract shall ²[¹first be submitted
12 to mediation pursuant to the American Arbitration Association, or to
13 another mediation procedure as agreed to by the contracting parties.
14 If the dispute is not resolved by mediation, then the dispute shall
15 either¹ be submitted to binding arbitration pursuant to the
16 Construction Industry Arbitration Rules of the American Arbitration
17 Association ¹; or to another binding alternate dispute resolution
18 procedure as agreed to by the contracting parties.]be submitted to a
19 process of resolution pursuant to alternative dispute resolution
20 practices, such as mediation, binding arbitration or non-binding
21 arbitration pursuant to industry standards, prior to being submitted to
22 a court for adjudication. Nothing in this section shall prevent the
23 contracting unit from seeking injunctive or declaratory relief in court
24 at any time. The alternative dispute resolution practices required by
25 this section shall not apply to disputes concerning the bid solicitation
26 or award process, or to the formation of contracts or subcontracts to
27 be entered into pursuant to P.L.1971, c.198 (C.40A:11-1 et seq.). ²

28 Notwithstanding industry rules or any provision of law to the
29 contrary, whenever a dispute concerns more than one contract, such
30 as when a dispute in a contract involving construction relates to a
31 contract involving design, architecture, engineering or management,
32 upon the demand of a contracting party, other interested parties to the

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted December 1, 1997.

² Senate floor amendments adopted December 15, 1997.

1 dispute shall be joined unless the arbitrator or person appointed to
2 resolve the dispute determines that such joinder is inappropriate.
3 Notwithstanding industry rules or any provision of law to the contrary,
4 whenever more than one dispute of a similar nature arises under a
5 construction contract, or related construction contracts, upon the
6 demand of a contracting party, the disputes shall be joined unless the
7 arbitrator or person appointed to resolve the dispute determines that
8 the disputes are inappropriate for joinder.

9 ²[Once a binding decision is rendered in connection to a dispute,
10 either party may move to have the award vacated or modified by the
11 court in accordance with N.J.S.2A:24-1 et seq.]²

12 For the purposes of this section, the term "construction contract"
13 means a contract involving construction, or a contract related thereto
14 concerning architecture, engineering or construction management¹.

15

16 2. This act shall take effect immediately.

17

18

19

20

21 _____
22 Requires that construction disputes under the "Local Public Contracts
23 Law" be submitted to alternate dispute resolution procedure prior to
court adjudication.

SENATE, No. 913

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1996

By Senator KYRILLOS

1 AN ACT concerning certain construction contracts and supplementing
2 P.L.1971, c.198 (C.40A:11-1 et seq.).

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

6
7 1. Every construction contract entered into in accordance with the
8 provisions of P.L.1971, c.198 (C.40A:11-1 et seq.) after the effective
9 date of P.L. , c. (C.) (pending before the
10 Legislature as this bill) shall provide that disputes arising under or
11 related to the contract shall be submitted to arbitration pursuant to the
12 Construction Industry Arbitration Rules of the American Arbitration
13 Association.

14
15 2. This act shall take effect immediately.

16
17
18 STATEMENT

19
20 This bill provides that every contract for construction work entered
21 into in accordance with the "Local Public Contracts Law," P.L.1971,
22 c.198 (C.40A:11-1 et seq.) shall provide that disputes arising under
23 the contract shall be submitted to arbitration pursuant to the
24 Construction Industry Arbitration Rules of the American Arbitration
25 Association. At present, when a dispute arises between public owners
26 and a contractor concerning a construction contract, the parties' only
27 recourse is the courts. This recourse can be expensive,
28 time-consuming and impractical during the executory period of a
29 construction contract. Arbitration represents a reasonable and
30 expeditious method of resolving contract disputes and is commonly
31 used throughout the construction industry.

32
33
34
35 Requires that disputes regarding construction contracts under the
36 "Local Public Contracts Law" be submitted to arbitration.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 913

STATE OF NEW JERSEY

DATED: MARCH 20, 1997

The Senate Community Affairs Committee reports Senate Bill No. 913 without recommendation.

This bill would require every construction contract entered into pursuant to the "Local Public Contracts Law," P.L.1971, c.198 (C.40A:11-1 et seq.) to provide that disputes arising under the contract must be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules. Under current law the determination of whether to resolve disputes by arbitration is a matter of contract between the parties.

STATEMENT TO

SENATE, No. 913

with Senate Floor Amendments
(Proposed By Senator KYRILLOS)

ADOPTED: DECEMBER 1, 1997

This amendment would require the parties to a construction contract being entered into pursuant to the "Local Public Contracts Law," P.L.1971, c.198, (C.40A:11-1 et seq.), to include a provision in the contract requiring that any disputes arising under or related to the contract be submitted to mediation pursuant to the American Arbitration Association, or to another mediation procedure as agreed to by the contracting parties. If the dispute is not resolved by mediation, then the dispute shall either be submitted to arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association or be submitted to another binding alternate dispute resolution procedure as agreed to by the contracting parties. Under current law, no such provision is mandatory. Without these amendments, the bill would require parties to submit disputes to arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association.

The amendment would expand the types of contracts that would be required to contain a dispute resolution clause by expanding upon the commonly understood meaning of construction contract to include contracts concerning architecture, engineering and construction management.

The amendment would also allow a contracting party to compel the joinder of other interested parties into a dispute resolution procedure, subject to the approval of the person appointed to resolve the dispute. Similarly, the amendment would allow a contracting party to compel the joinder of similar disputes into a single dispute resolution procedure, subject to the approval of the person appointed to resolve the dispute.

The amendment would provide that once a binding decision is rendered in connection to a dispute, either party may move to have the award vacated or modified by the court in accordance with N.J.S.2A:24-1 et seq.

STATEMENT TO

[First Reprint]

SENATE, No. 913

with Senate Floor Amendments
(Proposed By Senator KYRILLOS)

ADOPTED: DECEMBER 15, 1997

This amendment would require all construction contract documents subject to the requirements of the "Local Public Contracts Law," P.L.1971, c.198, (C.40A:11-1 et seq.), to provide for the resolution of disputes pursuant to an alternative dispute resolution practice prior to submitting such disputes to a court for adjudication. Examples of alternative dispute resolution practices are mediation, binding arbitration and non-binding arbitration. These alternative dispute resolution provisions would not prevent the contracting unit from seeking injunctive or declaratory relief in court at any time.

The alternative dispute resolution procedures would not be applicable to the bid, award and formation of contracts; they would be applicable only to disputes arising after a contract has been executed. The reason for this limitation is that disputes that arise in the bidding, award or subcontractor naming process, are generally questions of law that can be better handled by the courts in an expedited manner through the application of a well-settled body of case law.