

2A:44-143

LEGISLATIVE HISTORY CHECKLIST
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(Public construction-surety)

NJSA: 2A:44-143

LAWS OF: 1995 CHAPTER: 384

BILL NO: S305

SPONSOR(S): Bennett

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: State Government

SENATE: Commerce

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

DATE OF PASSAGE: ASSEMBLY: January 9, 1996

SENATE: May 12, 1995

DATE OF APPROVAL: January 10, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes Also attached: Statement
Senate floor amendments

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBP:pp

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P.L.1995, CHAPTER 384, *approved January 10, 1996*

1994 Senate No. 305 (*Fourth Reprint*)

AN ACT concerning surety bonds for certain construction projects and amending N.J.S.2A:44-143, ¹N.J.S.2A:44-144,¹ P.L.1982, c.189 and P.L.1986, c.43.

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:

³[2A:44-143. a. (1) 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 ¹[county, municipality] contracting unit, as defined in section 2 of P.L.1971, c.198 (C.40A:11-2),¹ or school district thereof, the board, officer or agent contracting on behalf of the State, ¹[county, municipality] contracting unit¹ or school district, shall require the ¹[usual] payment and performance¹ 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 and shall require that all ¹[surety] payment and performance¹ bonds in the amount of \$750,000 or more be issued by a surety which meets the following standards:

(a) ²[The surety has twice the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17 7, whichever is appropriate, at the time the invitation to bid is issued;

(b)² The surety holds a ²current² certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305, that is valid ²[at the time the invitation to bid is issued] in the State of New Jersey as listed annually in the United States Treasury Circular 570²; and

²[(c)] (b)² If the surety has been operational for a period in excess of five years, the surety is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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 Senate SCM committee amendments adopted March 10, 1994.

² Senate floor amendments adopted March 31, 1994.

³ Assembly ASG committee amendments adopted June 8, 1995.

⁴ Assembly floor amendments adopted January 4, 1996.

(2) 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, the director or the State departments may: [(1)] (a) establish for that contract the amount of the bond at any percentage, not exceeding 100%, 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)] (b) waive the bond requirement of this section entirely if the contract is for a sum not exceeding \$100,000.

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.

c. ²[No] ²A² board, officer or agent contracting on behalf of the State, ¹[county, municipality] contracting unit¹ or school district shall ²not² accept more than one ¹[surety] payment and performance¹ bond to cover a single construction contract. ²The board, officer or agent may accept a single bond executed by more than one surety to cover a single construction contract only if the combined underwriting limitations of all the named sureties, as set forth in the most current annual revision of United States Treasury Circular 570, meet or exceed the amount of the contract to be performed.²

(cf: P.L.1991, c.454, s.1)]

2A:44-143. a. (1) 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] contracting unit, as defined in section 2 of P.L.1971, c.198 (C.40A:11-2), or school district [thereof], the board, officer or agent contracting on behalf of the State, [county, municipality] contracting unit or school district, shall require the [usual] payment and performance 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 and shall require that all payment and performance bonds ⁴[in the amount of \$850,000 or more]⁴ be issued by a surety which meets the following standards:

(a) The surety ⁴[has] shall have⁴ the minimum surplus and

capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued ⁴[,];⁴ and

(b) ⁴[Either (i)] With respect to all payment and performance bonds in the amount of \$850,000 or more, (i) if the amount of the bond is at least \$850,000 but not more than \$3.5 million,⁴ the surety ⁴[holds] shall hold⁴ a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570, ⁴[or (ii)] except that⁴ if the surety has been operational for a period in excess of five years, the surety ⁴shall be deemed to meet the requirements of this subparagraph if it⁴ is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), ⁴[except that the alternative requirements of this subparagraph shall not be applicable to any surety that is operational on the effective date of P.L. , c. (C.) (now pending before the Legislature as this bill) until the expiration of a period of one year following that effective date, but this exception shall not be construed to prohibit the New Jersey Department of Transportation from continuing to apply, during that one-year period, the requirements of subparagraph (i) of this subparagraph] and (ii) if the amount of the bond is more than \$3.5 million, then the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)⁴. ⁴A surety subject to the provisions of subparagraph (ii) of this subparagraph which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from the requirement to hold such a certificate if the surety meets an equivalent set of standards developed by the Commissioner of Insurance through regulation which at least equal, and may exceed, the general criteria required for issuance of a certificate of authority by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305. A surety company seeking such an exemption shall, not later than the 180th day following the effective date of P.L. , c. (C.) (now pending before the Legislature as this bill), certify to the appropriate contracting unit that it meets that equivalent set of standards set forth by the Commissioner as promulgated.⁴

[b.] (2) 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, the director or the State departments may: [(1)] (a) establish for that contract the amount of the bond at any percentage, not exceeding 100%, 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 and other relevant factors, and [(2)] (b) waive the bond requirement of this section entirely if the contract is for a sum not exceeding \$200,000.

[c.] (3) When such a contract is to be performed at the expense of a [county, municipality] contracting unit or school district, the board, officer or agent contracting on behalf of the [county, municipality] contracting unit or school district may: [(1)] (a) establish for that contract the amount of the bond at any percentage, not exceeding 100%, of the amount bid, based upon the board's, officer's or agent's assessment of the risk presented to the [county, municipality] contracting unit or school district by the type of contract and other relevant factors, and [(2)] (b) waive the bond requirement of this section entirely if the contract is for a sum not exceeding \$100,000.

[d.] 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.

c. A board, officer or agent contracting on behalf of the State, contracting unit or school district shall not accept more than one payment and performance bond to cover a single construction contract. The board, officer or agent may accept a single bond executed by more than one surety to cover a single construction contract only if the combined underwriting limitations of all the named sureties, as set forth in the most current annual revision of United States Treasury Circular 570, or ⁴[as indicated by the most current rating set forth by an independent, nationally recognized United States rating company]⁴ as determined by the Commissioner of Insurance ⁴[under subparagraph (ii) of subparagraph (b) of paragraph (1) of subsection a. of this section] pursuant to R.S.17:18-9⁴, meet or exceed the amount of the contract to be performed.³

⁴d. A board, officer or agent contracting on behalf of the State, contracting unit or school district shall not accept a payment or performance bond unless there is attached thereto a Surety Disclosure Statement and Certification to which each surety executing the bond shall have subscribed. This statement

and certification shall be complete in all respects and duly acknowledged according to law, and shall have substantially the following form:

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

_____, surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, _____ (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus amounts, together with the name and address of the firm of certified public accounts that shall have certified those amounts):

_____.

(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. §9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows (indicating for each such surety that surety's underwriting limitation and the effective date thereof):

_____.

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of (date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

_____.

(4) The amount of the bond to which this statement and certification is attached is \$ _____.

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:

_____ ; and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c.243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

(to be completed by an authorized certifying agent
for each surety on the bond)

I (name of agent) , as (title of agent) for (name of surety) , a corporation/mutual insurance company/other (indicating type of business organization) (circle one) domiciled in (state of domicile) , DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is VOID.

(Signature of certifying agent)

(Printed name of certifying agent)

(Title of certifying agent)⁴

(cf: P.L.1995, c.38, s.2)

¹2. N.J.S.2A:44-144 is amended to read as follows:

2A:44-144. The bond required by this article shall be executed by the contractor with such sureties as shall be approved by the board, officer or agent acting on behalf of the ³[state] State³, [county, municipality] contracting unit or school district, in an amount equal to at least 100 per cent of the contract price, and shall be conditioned for the payment by the contractor, and by all subcontractors, or his or their subcontractor, of all indebtedness which may accrue to any person, firm or corporation, in an amount not exceeding the sum specified in the bond, on account of any labor performed or materials, provisions, provender or other supplies, or teams, fuels, oils, implements or machinery used or consumed in, upon, for or about the construction, erection, alteration or repair of the public building or public work

or improvement.

The bond shall be deposited with and be held by the board, officer or agent acting on behalf of the ³[state] State³, [county, municipality] contracting unit or school district, for the use of any party interested therein.¹

(cf: N.J.S.2A:44-144)

¹[2.] ³¹ Section 17 of P.L.1982, c.189 (C.18A:64A-25.17) is amended to read as follows:

17. Performance, guaranty and certificate. a. In addition to or independent of the guaranty which may be required pursuant to section 16, the county college may require that the successful bidder provide a surety company bond or other security acceptable to the county college:

[a.] (1) For the faithful performance of all provisions of the advertisement for bids, the specifications and any other documents issued to bidders or a repair or maintenance bond; and

[b.] (2) In such form as may be required in the specifications or other documents issued to bidders.

b. In every case in which such performance bond is required, the requirement shall be set forth in the specifications or other documents issued to all bidders, and every bidder shall be required to submit with the bid a certificate from a surety company stating that it will provide that bidder with such a performance bond in the specified amount and form.

c. The county college shall require that all ⁴payment and⁴ performance bonds ⁴[in the amount of ³[\$750,000] \$850,000³ or more]⁴ be issued by a surety which meets the following standards:

(1) ²[The surety has twice the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued;

(2)² The ³surety ⁴[has] shall have⁴ the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued; and

(2) ⁴[Either (a)] With respect to all payment and performance bonds in the amount of \$850,000 or more, (a) if the amount of the bond is at least \$850,000 but not more than \$3.5 million,⁴ the³ surety ⁴[holds] shall hold⁴ a ²current² certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305, that is valid ²[at the time the invitation to bid is issued] in the State of New Jersey as listed annually in the United States Treasury Circular 570² ⁴[,],⁴ ³[and]³ ²[(3)] ³[(2)² If] ⁴[or (b)] except that⁴ if³ the surety has been operational for a period in excess of five years, the surety ⁴shall be deemed to meet the requirements of this subparagraph if it⁴ is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)³, ⁴[except that the alternative requirements of this paragraph shall not be applicable to any surety that is

operational on the effective date of P.L. , c. (C.)(now pending before the Legislature as this bill) until the expiration of a period of one year following that effective date³] and (b) if the amount of the bond is more than \$3.5 million, then the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)⁴. ⁴A surety subject to the provisions of subparagraph (b) of this paragraph which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from the requirement to hold such a certificate if the surety meets an equivalent set of standards developed by the Commissioner of Insurance through regulation which at least equal, and may exceed, the general criteria required for issuance of a certificate of authority by the United States Secretary of the Treasury pursuant to 31 U.S.C.§9305. A surety company seeking such an exemption shall, not later than the 180th day following the effective date of P.L. , c. (C.)(now pending before the Legislature as this bill), certify to the appropriate county college that it meets that equivalent set of standards set forth by the Commissioner as promulgated.⁴

d. ²[No] A² county college shall ²not² accept more than one ⁴payment and⁴ performance bond to cover a single construction contract. ²The county college may accept a single bond executed by more than one surety to cover a single construction contract only if the combined underwriting limitations of all the named sureties, as set forth in the most current annual revision of United States Treasury Circular 570, ³or ⁴[as indicated by the most current rating set forth by an independent, nationally recognized United States rating company]⁴ as determined by the Commissioner of Insurance ⁴[under subparagraph (b) of paragraph (2) of subsection c. of this section,³] pursuant to R.S.17:18-9,⁴ meet or exceed the amount of the contract to be performed.²

⁴e. A board, officer or agent contracting on behalf of a county college shall not accept a payment or performance bond unless there is attached thereto a Surety Disclosure Statement and Certification to which each surety executing the bond shall have subscribed. This statement and certification shall be complete in all respects and duly acknowledged according to law, and shall have substantially the following form:

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

_____, surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus amounts, together with the name and address of the firm of certified public accounts that shall have certified those amounts):

_____.

(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. §9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows (indicating for each such surety that surety's underwriting limitation and the effective date thereof):

_____.

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of (date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

_____.

(4) The amount of the bond to which this statement and certification is attached is \$ _____.

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:

_____ ; and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c.243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

(to be completed by an authorized certifying agent
for each surety on the bond)

I (name of agent) , as (title of agent) for (name of surety) , a corporation/mutual insurance company/other (indicating type of business organization) (circle one) domiciled in (state of domicile) , DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is VOID.

(Signature of certifying agent)

(Printed name of certifying agent)

(Title of certifying agent)⁴

(cf: P.L.1982, c.189, s.17)

¹[3.] 4.¹ Section 17 of P.L.1986, c.43 (C.18A:64-68) is amended to read as follows:

17. a. In addition to or independently of the guaranty which may be required pursuant to this article, the State college may require that the successful bidder provide a surety company bond or other security acceptable to the State college:

[a.] (1) For the faithful performance of all provisions of the advertisement for bids, the specifications and any other documents issued to bidders or a repair or maintenance bond; and

[b.] (2) In a form which may be required in the specifications or other documents issued to bidders.

b. In every case in which a performance bond is required, the requirement shall be set forth in the specifications or other documents issued to all bidders, and every bidder shall be required to submit with the bid a certificate from a surety company stating that it will provide that bidder with a performance bond in the specified amount and form.

c. The State college shall require that all performance bonds ⁴[in the amount of ³[\$750,000] \$850,000³ or more]⁴ be issued by a surety which meets the following standards:

(1) ²[The surety has twice the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued;

(2)]² The ³surety ⁴[has] shall have⁴ the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or

R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued; and

(2) ⁴[Either (a)] With respect to all payment and performance bonds in the amount of \$850,000 or more, (a) if the amount of the bond is at least \$850,000 but not more than \$3.5 million,⁴ ^{the}³ surety ⁴[holds] shall hold⁴ a ²current² certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305, that is valid ²[at the time the invitation to bid is issued] in the State of New Jersey as listed annually in the United States Treasury Circular 570² ⁴[,] ,⁴ ³[and]³ ²[(3)] ³[(2)]² If] ⁴[or (b)] except that⁴ if³ the surety has been operational for a period in excess of five years, the surety ⁴shall be deemed to meet the requirements of this subparagraph if it⁴ is rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)³, ⁴[except that the alternative requirements of this paragraph shall not be applicable to any surety that is operational on the effective date of P.L. , c. (C.)](now pending before the Legislature as this bill) until the expiration of a period of one year following that effective date³] and (b) if the amount of the bond is more than \$3.5 million, then the surety shall hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570 and, if the surety has been operational for a period in excess of five years, shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation adopted pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)⁴. ⁴A surety subject to the provisions of subparagraph (b) of this paragraph which does not hold a certificate of authority issued by the United States Secretary of the Treasury shall be exempt from the requirement to hold such a certificate if the surety meets an equivalent set of standards developed by the Commissioner of Insurance through regulation which at least equal, and may exceed, the general criteria required for issuance of a certificate of authority by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305. A surety company seeking such an exemption shall, not later than the 180th day following the effective date of P.L. , c. (C.) (now pending before the Legislature as this bill), certify to the appropriate State college that it meets that equivalent set of standards set forth by the Commissioner as promulgated.⁴

d. ²[No] A² State college shall ²not² accept more than one ⁴payment and⁴ performance bond to cover a single construction contract. ²The State college may accept a single bond executed

by more than one surety to cover a single construction contract only if the combined underwriting limitations of all the named sureties, as set forth in the most current annual revision of United States Treasury Circular 570, ³or ⁴[as indicated by the most current rating set forth by an independent, nationally recognized United States rating company]⁴ as determined by the Commissioner of Insurance ⁴[under subparagraph (b) of paragraph (2) of subsection c. of this section,³] pursuant to R.S.17:18-9,⁴ meet or exceed the amount of the contract to be performed.²

⁴e. A board, officer or agent contracting on behalf of a State college shall not accept a payment or performance bond unless there is attached thereto a Surety Disclosure Statement and Certification to which each surety executing the bond shall have subscribed. This statement and certification shall be complete in all respects and duly acknowledged according to law, and shall have substantially the following form:

SURETY DISCLOSURE STATEMENT AND CERTIFICATION

_____ , surety(ies) on the attached bond, hereby certifies(y) the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital (where applicable) and surplus, as determined in accordance with the applicable laws of this State, of the surety(ies) participating in the issuance of the attached bond is (are) in the following amount(s) as of the calendar year ended December 31, _____ (most recent calendar year for which capital and surplus amounts are available), which amounts have been certified as indicated by certified public accountants (indicating separately for each surety that surety's capital and surplus amounts, together with the name and address of the firm of certified public accounts that shall have certified those amounts):

_____.

(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. §9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows (indicating for each such surety that surety's underwriting limitation and the effective date thereof):

_____.

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the

underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of (date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

(4) The amount of the bond to which this statement and certification is attached is \$ _____.

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:

_____ ; and

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c.243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

(to be completed by an authorized certifying agent
for each surety on the bond)

I (name of agent) , as (title of agent) for (name of surety) , a corporation/mutual insurance company/other (indicating type of business organization) (circle one) domiciled in (state of domicile) , DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is VOID.

(Signature of certifying agent)

(Printed name of certifying agent)

(Title of certifying agent)⁴

(cf: P.L.1986, c.43, s.17)

¹[4.] ^{5.1} This act shall take effect ¹[immediately] ⁴[on the 90th day following enactment¹] immediately⁴.

SPONSOR'S STATEMENT

STATEMENT

Under current law contractors working on State, county, municipal, school district, county college or State college public works construction projects are required to post surety bonds. This bill requires that a surety issuing a surety bond in the amount of \$750,000 or more for such a project must meet the following standards:

(1) the surety must have twice the minimum surplus and capital or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued;

(2) the surety must hold a certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305, that is valid at the time the invitation to bid is issued; and

(3) if the surety has been in business for more than five years, it must be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation.

Additionally, under the provisions of the bill, no more than one surety bond may be accepted by such a public entity for any single construction contract.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

[SECOND REPRINT]

SENATE, No. 305

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 8, 1995

The Assembly State Government Committee reports favorably and with committee amendments Senate, No. 305 (2R).

This bill, as amended, requires that a surety issuing a performance bond in the amount of \$850,000 or more on a public works construction project funded by the State, a local contracting unit (which includes a county, municipality or board, commission, committee, authority or agency thereof), a school district, or a State or county college must meet the following standards:

(1) The surety must have the minimum surplus and capital stock or net cash assets required by R.S.17:17-6 or R.S.17:17-7, as appropriate, at the time the invitation to bid is issued; and

(2) The surety must either (a) hold a current certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305, that is valid in the State of New Jersey as listed annually in the United States Treasury Circular 570, or (b) if the surety has been in business for more than five years, it must be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by regulation of the Commissioner of Insurance. The alternative requirements under this paragraph would not apply to a surety in business on the date on which the bill takes effect as law until one year after that effective date; a provision is included clarifying that the Department of Transportation would be allowed to continue its application of the "Treasury listing" criterion during the one-year phase-in period.

Additionally, under the provisions of the bill, no more than one performance bond may be accepted by such a public entity for any single construction contract.

The provisions of the bill would take effect on the 90th day following enactment.

COMMITTEE AMENDMENTS

The committee amended this bill to (1) increase the minimum amount of a construction performance bond that would subject the surety issuing the bond to the standards established under the legislation from \$750,000 to \$850,000; (2) include in the standards a statement that the surety must have the minimum surplus and capital stock or net cash assets required presently by law at the time the invitation to bid is issued; and (3) delay for one year the applicability of the standards to sureties doing business on the date that the bill takes effect as law.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE, No. 305

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 10, 1994

The Senate Commerce Committee reports favorably and with committee amendments Senate Bill No. 305.

This bill, as amended, requires that a surety issuing a performance bond in the amount of \$750,000 or more for State, contracting unit (which includes a county, municipality or board, commission, committee, authority or agency thereof), school district, county college or State college public works construction projects must meet the following standards:

(1) the surety must have twice the minimum surplus and capital or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued;

(2) the surety must hold a certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305, that is valid at the time the invitation to bid is issued; and

(3) if the surety has been in business for more than five years, it must be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation.

Additionally, under the provisions of the bill, no more than one performance bond may be accepted by such a public entity for any single construction contract.

The provisions of the bill would take effect on the 90th day following enactment.

This bill was pre-filed for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

STATEMENT TO SENATE FLOOR AMENDMENT

STATEMENT

With these Senate amendments, the bill will require that a surety issuing a performance bond in the amount of \$750,000 or more for State, contracting unit (which includes a county, municipality or board, commission, committee, authority or agency thereof), school district, county college or State college public works construction projects must meet the following standards:

(1) the surety must hold a certificate of authority, issued by the United States Secretary of the Treasury pursuant to 31 U.S.C. §9305, that is valid in this State as listed annually in the United States Treasury Circular 570; and

(2) if the surety has been in business for more than five years, it must be rated in one of the three highest categories by an independent, nationally recognized United States rating company that determines the financial stability of insurance companies, which rating company or companies shall be determined pursuant to standards promulgated by the Commissioner of Insurance by regulation.

These Senate amendments deleted the provision that required that the surety must have twice the minimum surplus and capital or net cash assets required by R.S.17:17-6 or R.S.17:17-7, whichever is appropriate, at the time the invitation to bid is issued.

Although the Senate amendments maintain the prohibition in the bill that no more than one performance bond may be accepted by such a public entity for any single construction contract, the amendments specifically allow the acceptance of a single performance bond executed by more than one surety to cover a single construction contract under certain circumstances.