

2A:58B-3

**LEGISLATIVE HISTORY CHECKLIST**  
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(Public contracts for construction--  
clause for "no damages for delay"--  
void and unenforceable)

NJSA: 2A:58B-3

LAWS OF: 1994 CHAPTER: 80

BILL NO: S977

SPONSOR(S): Ciesla

DATE INTRODUCED: May 5, 1994

COMMITTEE: ASSEMBLY: ---

SENATE: Judiciary

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

DATE OF PASSAGE: ASSEMBLY: June 16, 1994

SENATE: May 23, 1994

DATE OF APPROVAL: July 28, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

~~See newspaper clippings attached~~  
KBG:pp

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[FIRST REPRINT]

SENATE, No. 977

STATE OF NEW JERSEY

INTRODUCED MAY 5, 1994

By Senator CIESLA

1 AN ACT making void and unenforceable certain provisions in  
2 contracts with public entities and supplementing Title 2A of  
3 the New Jersey Statutes.

4

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

7 1. a. As used in this act:

8 "Public entity" means this State or any department, public  
9 authority, public agency, public commission or any  
10 instrumentality of this State authorized by law to make contracts  
11 for the making of any public <sup>1</sup>[improvement] work<sup>1</sup>, but shall not  
12 include any county, municipality or instrumentality thereof.

13 "Contractor" means a person, his assignees or legal  
14 representatives, with whom a contract with a public entity is  
15 made.

16 b. A covenant, promise, agreement or understanding in, or in  
17 connection with or collateral to a contract, agreement or  
18 purchase order, to which a public entity is a party, relative to the  
19 construction, alteration, repair, maintenance, servicing or  
20 security of a building, structure, highway, roadway, railroad,  
21 appurtenance and appliance, including moving, demolition,  
22 excavating, grading, clearing, site preparation or development of  
23 real property connected therewith, purporting to limit a  
24 contractor's remedy for delayed performance caused by the  
25 public entity's negligence, bad faith, active interference, or  
26 other <sup>1</sup>[tortious] tortious<sup>1</sup> conduct to an extension of time for  
27 performance under the contract, is against public policy and is  
28 void and unenforceable.

29 c. Nothing in this section shall be deemed to void any  
30 provisions in a contract, agreement or purchase order which  
31 limits a contractor's remedy for delayed performance caused by  
32 <sup>1</sup>[third] reasons contemplated by the<sup>1</sup> parties<sup>1</sup>[, without a  
33 contractual relationship with the owner, or other events  
34 contemplated by the parties,]<sup>1</sup> nor shall the negligence of others  
35 be imputed to the State.

36 d. Nothing in this section shall be deemed to void any provision  
37 in a contract, agreement or purchase order which requires notice  
38 of delays, provides for arbitration or other procedures for  
39 settlement or provides for liquidated damages.

40 2. This act shall take effect immediately.

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:

<sup>1</sup> Senate SJU committee amendments adopted May 16, 1994.

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3 Makes clauses in construction contracts entered into by public  
4 entities that allow "no damages for delay" void and  
5 unenforceable.

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

7 1. a. As used in this act:

8 "Public entity" means this State or any department, public  
9 authority, public agency, public commission or any  
10 instrumentality of this State authorized by law to make contracts  
11 for the making of any public improvement, but shall not include  
12 any county, municipality or instrumentality thereof.

13 "Contractor" means a person, his assignees or legal  
14 representatives, with whom a contract with a public entity is  
15 made.

16 b. A covenant, promise, agreement or understanding in, or in  
17 connection with or collateral to a contract, agreement or  
18 purchase order, to which a public entity is a party, relative to the  
19 construction, alteration, repair, maintenance, servicing or  
20 security of a building, structure, highway, roadway, railroad,  
21 appurtenance and appliance, including moving, demolition,  
22 excavating, grading, clearing, site preparation or development of  
23 real property connected therewith, purporting to limit a  
24 contractor's remedy for delayed performance caused by the  
25 public entity's negligence, bad faith, active interference, or  
26 other tortuous conduct to an extension of time for performance  
27 under the contract, is against public policy and is void and  
28 unenforceable.

29 c. Nothing in this section shall be deemed to void any  
30 provisions in a contract, agreement or purchase order which  
31 limits a contractor's remedy for delayed performance caused by  
32 third parties, without a contractual relationship with the owner,  
33 or other events contemplated by the parties, nor shall the  
34 negligence of others be imputed to the State.

35 d. Nothing in this section shall be deemed to void any provision  
36 in a contract, agreement or purchase order which requires notice  
37 of delays, provides for arbitration or other procedures for  
38 settlement or provides for liquidated damages.

39 2. This act shall take effect immediately.

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STATEMENT

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44 Presently, many construction contracts entered into by a public  
45 entity contain a clause which limits a contractor's remedy for

1 delayed performance caused by the public entity to an extension  
2 of time to complete the job and bar the contractor from seeking  
3 money damages for any losses resulting from the delay. The bill  
4 would make "no damages for delay" clauses in construction  
5 contracts entered into by public entities void and unenforceable  
6 if the delays were caused by the negligence, bad faith, active  
7 interference or other tortuous conduct of the public entity or if  
8 the delay was not contemplated by the parties. The bill applies  
9 solely to the public entity's use of these clauses to exculpate its  
10 own negligence or intentional tortuous acts but does not allow a  
11 contractor to impute the sole negligence of third parties to the  
12 public entity. Under the bill "public entity" means this State or  
13 any department, public authority, public agency, public  
14 commission or any instrumentality of this State authorized by law  
15 to make contracts for the making of any public improvement, but  
16 shall not include any county, municipality or instrumentality  
17 thereof.

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22 Makes clauses in construction contracts entered into by public  
23 entities that allow "no damages for delay" void and  
24 unenforceable.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 977**

with committee amendments

**STATE OF NEW JERSEY**

DATED: MAY 16, 1994

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 977.

Presently, many construction contracts entered into by a public entity contain a clause which limits a contractor's remedy for delayed performance caused by the public entity to an extension of time to complete the job and bar the contractor from seeking money damages for any losses resulting from the delay. This bill would make "no damages for delay" clauses in construction contracts entered into by public entities void and unenforceable if the delays were caused by the negligence, bad faith, active interference or other tortious conduct of the public entity or if the delay was not contemplated by the parties. Under the bill, "public entity" means the State or any department, public authority, public agency, public commission or any instrumentality of this State authorized by law to make contracts for the making of any public improvement, but shall not include any county, municipality or instrumentality thereof.

The committee adopted amendments to the bill clarifying that the provisions of the bill apply to any public work. The amendments also clarify that the bill's provisions do not void contract clauses which limit a contractor's remedy for delayed performance caused by reasons contemplated by the parties and that the negligence of others shall not be imputed to the State.