

52:32-33

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(Prompt payment  
act--state  
contracts--revise)

LAWS OF: 1991

CHAPTER: 64

Bill No: S2132

Sponsor(s): Lipman

Date Introduced: Pre-filed

Committee: Assembly: State Operations

Senate: State Government

Amended during passage: No

Date of Passage: Assembly: January 29, 1991

Senate: April 30, 1990

Date of Approval: March 14, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/SLJ

APPROVED  
BY  
[Signature]

P.L.1991, CHAPTER 64, approved March 14, 1991  
1990 Senate No. 2132

1 AN ACT concerning prompt payments on State contracts and  
2 amending and-supplementing P.L.1987, c.184.

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

6 1. Section 2 of P.L.1987, c.184 (C.52:32-33) is amended to  
7 read as follows:

8 2. As used in this act:

9 a. "Business concern" means any person engaged in a trade or  
10 business, including private nonprofit entities operating as  
11 independent contractors, providing goods or services directly to a  
12 using agency or to a designated third party and operating  
13 ~~pursuant to a State contract [requiring] which requires~~ either a  
14 single payment or multiple payments, but shall not include any  
15 "public utility" as that term is defined under section 1 of  
16 P.L.1946, c.219 (C.48:2-13);

17 b. "Using agency" means the appropriate agency of the State,  
18 including the Office of Legislative Services and the legislative  
19 branch of State government, which receives or uses the goods or  
20 services provided under the contract between the State and a  
21 business concern or which contracts on behalf of the State with a  
22 business concern for goods or services to be provided to  
23 designated third parties;

24 c. "Director" means the Director of the Division of Budget  
25 and Accounting in the Department of the Treasury;

26 d. "Division" means the Division of Budget and Accounting in  
27 the Department of the Treasury;

28 e. "Properly executed State invoice" means a State invoice  
29 which contains all the information which the director may require  
30 by regulation;

31 f. "State" means the State of New Jersey and any office,  
32 department, division, bureau, board, commission, or agency of the  
33 State, the Office of Legislative Services, and the legislative  
34 branch of State government, but shall not include any entity  
35 which is statutorily authorized to sue and be sued.

36 (cf: P.L.1987, c.184, s.2)

37 2. Section 3 of P.L.1987, c.184 (C.52:32-34) is amended to  
38 read as follows:

39 3. a. Interest shall be paid on the amount due to a business

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.

1 concern pursuant to a properly executed State invoice, when  
2 required, if the required payment is not made on or before the  
3 required payment date.

4 b. The required payment date shall be 60 calendar days from  
5 the date specified in the contract or if no required payment date  
6 is specified in the contract, then the required payment date shall  
7 be 60 calendar days from the receipt of a properly executed State  
8 invoice, or 60 calendar days from the receipt of goods or  
9 services, whichever is later. Interest shall not be paid unless  
10 goods and services are rendered.

11 c. [The] Unless otherwise provided for in the contract, the  
12 using agency shall have 35 calendar days from the receipt of a  
13 properly executed State invoice or 35 calendar days from the  
14 receipt and acceptance of delivery of goods or services,  
15 whichever is later, to submit the request for payment to the  
16 division. The division shall have 25 calendar days from the date  
17 the request for payment is submitted by the using agency to make  
18 the required payment to a business concern.

19 (cf: P.L.1987, c.184, s.3)

20 3. Section 4 of P.L.1987, c.184 (C.52:32-35) is amended to  
21 read as follows:

22 4. a. Interest on amounts due shall be paid to the business  
23 concern for the period beginning on the day after the required  
24 payment date and ending on the date on which the check for  
25 payment is drawn. The interest shall be paid at a rate which the  
26 State Treasurer shall specify as applicable on the 30th day after  
27 the enactment of this act and by the 30th day after the end of  
28 each fiscal year thereafter.

29 In determining the rate, the Treasurer shall take into  
30 consideration current private commercial rates of interest for  
31 new loans maturing in approximately five years. The Treasurer  
32 shall publish the rate.

33 b. No interest charge as required by this act shall become a  
34 debt of the State until it exceeds \$5.00.

35 c. Interest may be paid by separate payment to a business  
36 concern, but shall be paid within 30 days of the late payment [of  
37 the original invoice].

38 d. No appropriation of funds shall be made for the payment of  
39 interest required by this section. The division or using agency,  
40 whichever is responsible for the late payment, shall pay any  
41 interest charges required by this act out of the funds available  
42 for the administration of division or agency programs.

43 (cf: P.L.1987, c.184, s.4)

44 4. Section 5 of P.L.1987, c.184 (C.52:32-36) is amended to  
45 read as follows:

46 5. a. The director shall adopt rules and regulations to  
47 effectuate the purposes of this act pursuant to the  
48 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
49 seq.), except that any rules and regulations affecting payments

1 under the "New Jersey Medical Assistance and Health Services  
2 Act," P.L.1968, c.413 (C.30:4D-1 et seq.) shall have the approval  
3 and consent of the Commissioner of the Department of Human  
4 Services.

5 b. The director shall by regulation provide that:

6 (1) Separate required payment dates shall exist for property or  
7 services provided in a series of partial executions or deliveries to  
8 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  
13 provided which would prevent the running of the time period  
14 specified in section 3 of this act.

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

19 (cf: P.L.1987, c.184, s.5)

20 5. (New section) The provision of P.L.1987, c.184 (C.52:32-32  
21 et seq.) shall not: a. apply to any program administered by the  
22 Division of Medical Assistance and Health Services in the  
23 Department of Human Services under contract with a fiscal agent  
24 until such time as the State Treasurer determines that the fiscal  
25 agent is fully operational and the Commissioner of the  
26 Department of Human Services receives notification from the  
27 federal Health Care Financing Administration that the Medicaid  
28 Management Information System is in compliance with all  
29 applicable federal certification requirements; or b. affect the  
30 authority of the Commissioner of the Department of Human  
31 Services to issue regulations necessary to secure for the State of  
32 New Jersey maximum federal financial participation or the  
33 commissioner's authority to promulgate regulations to administer  
34 programs pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

35 6. This act shall take effect on the 90th day after enactment.  
36

37  
38 STATE GOVERNMENT

39  
40 Revises the "New Jersey Prompt Payment Act."

1 under the "New Jersey Medical Assistance and Health Services  
2 Act," P.L.1968, c.413 (C.30:4D-1 et seq.) shall have the approval  
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29 applicable federal certification requirements; or b. affect the  
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32 New Jersey maximum federal financial participation or the  
33 commissioner's authority to promulgate regulations to administer  
34 programs pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

35 6. This act shall take effect 90 days after enactment.  
36  
37

#### 38 STATEMENT

39  
40 This bill revises the "New Jersey Prompt Payment Act," which  
41 requires the State to pay interest on its obligations to business  
42 concerns which supply goods or services to State agencies when  
43 those obligations have not been paid by a required payment date  
44 specified under the Act.

45 Under the bill:

46 (1) The definition of "business concern" is expanded to include,  
47 not only firms which provide goods or services directly to a using  
48 agency, but also those providing those goods or services to a  
49 designated third party;

S2132 (1991)

1 (2) The State agency and the supplier may substitute, by mutual  
2 agreement, a required payment date different from that which is  
3 specified under the Act;

4 (3) Interest shall not be paid unless goods and services are  
5 rendered;

6 (4) To qualify as performance of the contract for the purpose  
7 of establishing the deadline by which the using agency must  
8 submit a request for payment to the Division of Budget and  
9 Accounting, the State agency would have to have accepted, as  
10 well as received delivery of, the goods or services provided, but  
11 the agency and the supplier could substitute by mutual agreement  
12 a different deadline for submission of the payment request;

13 (5) Interest on any late payment is to be paid within 30 days of  
14 that late payment, rather than 30 days of payment of the original  
15 invoice;

16 (6) Rules and regulations adopted by the Director of the  
17 Division of Budget and Accounting which affect payments under  
18 the "New Jersey Medical Assistance and Health Services Act,"  
19 P.L.1968, c.413 (C.30:4D-1 et seq.) shall have the approval and  
20 consent of the Commissioner of the Department of Human  
21 Services; and

22 (7) The provisions of the "New Jersey Prompt Payment Act"  
23 are not to apply to any program administered by the Division of  
24 Medical Assistance and Health Services in the Department of  
25 Human Services under contract with a fiscal agent until such  
26 time as the State Treasurer determines that the fiscal agent is  
27 fully operational and the Commissioner of the Department of  
28 Human Services receives notification from the federal Health  
29 Care Financing Administration that the Medicaid Management  
30 Information System is in compliance with all applicable federal  
31 certification requirements, nor are the provisions of the Act to  
32 affect the authority of the Commissioner of Human Services to  
33 issue regulations necessary to secure for the State of New Jersey  
34 maximum federal financial participation or the commissioner's  
35 authority to promulgate regulations to administer programs  
36 pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

37 The bill is to take effect 90 days after enactment.  
38

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#### 41 STATE GOVERNMENT

42

Revises the "New Jersey Prompt Payment Act."

ASSEMBLY STATE OPERATIONS AND PERSONNEL  
COMMITTEE

STATEMENT TO

SENATE, No. 2132

STATE OF NEW JERSEY

DATED: MAY 21, 1990

The Assembly State Operations and Personnel Committee reports favorably Senate Bill No. 2132.

This bill revises the "New Jersey Prompt Payment Act," which requires the State to pay interest on its obligations to business concerns which supply goods or services to State agencies when those obligations have not been paid by a required payment date specified under the Act.

Under the bill:

(1) The definition of "business concern" is expanded to include firms providing goods or services directly to a designated third party as well as firms providing goods or services directly to a using agency;

(2) A State agency and a supplier may specify in a contract a required payment date different from that which is specified under the Act;

(3) Interest shall not be paid unless goods and services are rendered;

(4) A using agency must have accepted, as well as received, delivery of goods or services within the time period specified under the Act, unless otherwise provided for in a contract, for the purpose of establishing the deadline for it to submit a request for payment to the Division of Budget and Accounting;

(5) Interest on any late payment shall be paid within 30 days of that late payment, rather than within 30 days of payment of the original invoice;

(6) Rules and regulations adopted by the Director of the Division of Budget and Accounting which affect payments under the "New Jersey Medical Assistance and Health Services Act," P.L.1968, c.413 (C.30:4D-1 et seq.) shall have the approval and consent of the Commissioner of the Department of Human Services; and

(7) The provisions of the "New Jersey Prompt Payment Act" shall not apply to any program administered by the Division of Medical Assistance and Health Services in the Department of Human Services under contract with a fiscal agent until such time as the State Treasurer determines that the fiscal agent is fully operational and the Commissioner of the Department of Human Services receives notification from the federal Health Care Financing Administration that the Medicaid Management Information System is in compliance with all applicable federal certification requirements. In addition, the provisions of the Act shall not affect the authority of the Commissioner of Human Services to issue regulations necessary

to secure for the State maximum federal financial participation or the commissioner's authority to promulgate regulations to administer programs pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).



SENATE STATE GOVERNMENT AND FEDERAL  
AND INTERSTATE RELATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2132

STATE OF NEW JERSEY

DATED: MARCH 5, 1990

The Senate State Government and Federal and Interstate Relations Committee reports favorably Senate, No. 2132.

This bill revises the "New Jersey Prompt Payment Act," which requires the State to pay interest on its obligations to business concerns which supply goods or services to State agencies when those obligations have not been paid by a required payment date specified under the Act.

Under the bill:

(1) The definition of "business concern" is expanded to include firms providing goods or services directly to a designated third party as well as firms providing goods or services directly to a using agency;

(2) A State agency and a supplier may specify in a contract a required payment date different from that which is specified under the Act;

(3) Interest shall not be paid unless goods and services are rendered;

(4) A using agency must have accepted, as well as received, delivery of goods or services within the time period specified under the Act, unless otherwise provided for in a contract, for the purpose of establishing the deadline for it to submit a request for payment to the Division of Budget and Accounting;

(5) Interest on any late payment shall be paid within 30 days of that late payment, rather than within 30 days of payment of the original invoice;

(6) Rules and regulations adopted by the Director of the Division of Budget and Accounting which affect payments under the "New Jersey Medical Assistance and Health Services Act," P.L.1968, c.413 (C.30:4D-1 et seq.) shall have the approval and consent of the Commissioner of the Department of Human Services; and

(7) The provisions of the "New Jersey Prompt Payment Act" shall not apply to any program administered by the Division of Medical Assistance and Health Services in the Department of Human Services under contract with a fiscal agent until such time as the State Treasurer determines that the fiscal agent is fully operational and the Commissioner of the Department of Human Services receives notification from the federal Health Care Financing Administration that the Medicaid Management Information System is

in compliance with all applicable federal certification requirements. In addition, the provisions of the Act shall not affect the authority of the Commissioner of Human Services to issue regulations necessary to secure for the State maximum federal financial participation or the commissioner's authority to promulgate regulations to administer programs pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.).

This act shall take effect on the 90th day after enactment.

This bill was pre-filed for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.