

40A:11-16.1

LEGISLATIVE HISTORY CHECKLIST

(Municipal public works project - allow full payment for partially completed work -- certain circumstances)

HJSA 40A:11-16.1

LAWS OF 1979

CHAPTER 152

Bill No. S721

Sponsor(s) Perskie

Date Introduced January 26, 1978

Committee: Assembly Municipal Government

Senate County & Municipal Government

Amended during passage according to Governor's recommendations Yes XX Amendments during passage denoted by asterisks.

Date of Passage: Assembly May 18, 1979 Re-enacted 6/11/79

Senate May 2, 1978 Re-enacted 5/21/79

Date of approval July 19, 1979

Following statements are attached if available:

Sponsor statement	Yes	XX
Committee Statement: Assembly	XXX	No
Senate	Yes	XX
Fiscal Note	XXX	No
Veto message	Yes	XX
Message on signing	XXX	No
Following were printed:		
Reports	XXX	No
Hearings	XXX	No

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SENATE, No. 721

STATE OF NEW JERSEY

INTRODUCED JANUARY 26, 1978

By Senator PERSKIE

Referred to Committee on County and Municipal Government

A SUPPLEMENT to the "Local Public Contracts Law," approved  
June 9, 1971 (P. L. 1971, c. 198, C. 40A:11-1 et seq.).

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

1 1. Whenever any contract\*\*, *the total price of which exceeds*  
2 *\$100,000.00,\*\* entered into by a contracting unit, for the construc-*  
3 *tion, reconstruction, alteration or repair of any building, structure,*  
4 *facility or other improvement to real property, requires the with-*  
5 *holding of payment of a percentage of the amount of the contract,*  
6 *the contractor may agree to the withholding of payments in the*  
7 *manner prescribed in the contract, or may \*\*[\*with the approval*  
8 *of the contracting unit\*]\*\* deposit with the contracting unit*  
8A *negotiable bearer bonds of the State of New Jersey, or negotia-*  
9 *ble bearer bonds or notes of any political subdivision of the State,*  
10 *the value of which is equal to the amount necessary to satisfy the*  
11 *amount that otherwise would be withheld pursuant to the terms of*  
12 *the contract. The nature and amount of the bonds or notes to be*  
13 *deposited shall be subject to approval by the contracting unit*  
14 *\*\*[\*and shall be specified in the advertisement for the bids\*]\*\*.*  
14A For purposes of this section, "value" shall mean par value or  
14B current market value, whichever is lower.

15 If the contractor agrees to the withholding of payments, the  
16 amount withheld shall be deposited, with a banking institution or  
17 savings and loan association insured by an agency of the Federal  
18 government, in an account bearing interest at the rate currently  
19 paid by such institutions or associations on time or savings de-  
20 posits. The amount withheld, \*\*[\*and any interest accruing  
21 thereon,]\*\* or the bonds or notes deposited, *\*\*and any interest*  
22 *accruing on such bonds or notes,\*\* shall be returned to the con-*  
23 *tractor upon fulfillment of the terms of the contract relating to*  
24 *such withholding. \*\*Any interest accruing on cash payments with-*  
25 *held shall be credited to the contracting unit.\*\**

1 2. This act shall take effect 30 days after enactment.

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

## STATEMENT

Public jurisdictions often hold back a certain percentage of partial payment made to contractors for work partially completed. This bill would allow local jurisdictions to make full payment for ~~the work done~~, provided that the payee deposit with the jurisdiction negotiable state and local bonds equal to the amount which would otherwise have been retained by the jurisdiction. This would allow the contractor additional immediate cash, and facilitate the purchase of State and local bonds.

5721 (1979)

SENATE COUNTY AND MUNICIPAL GOVERNMENT  
COMMITTEE

STATEMENT TO

**SENATE, No. 721**

with Senate committee amendments

—◆—  
**STATE OF NEW JERSEY**  
—◆—

DATED: FEBRUARY 23, 1978

Senate Bill No. 721 would supplement the "Local Public Contracts Law," (N. J. S. 40A:11-1 et seq.) to provide that whenever a local contracting unit enters into a contract which requires the withholding of payment of some percentage of the amount of the contract, the contractor may comply either by agreeing to such withholding, or by depositing with the contracting unit negotiable bearer bonds or notes of the State or its political subdivisions. The value of such bond or notes would be required to be equal to the amount which otherwise would be withheld from payment pursuant to the contract, with the amount and nature of the bonds or notes subject to the approval of the contracting unit. "Value" in this context is defined to mean the par value or current market value of the bonds or notes whichever is lower.

Other provisions of the bill include the requirement that any payments withheld be deposited in an interest bearing account in a Federally insured bank or savings and loan, and that all payments withheld and all interest accrued thereon, or the bonds or notes deposited in lieu thereof, be returned to the contractor upon fulfillment of the pertinent provisions of the contract.

The bill would take effect 30 days after enactment.

As the sponsor's statement notes, the intent of the bill is to allow contracting units to make the full payments required under the contract prior to completion of the work, in return for the deposit of negotiable bonds. This would furnish the contractor with additional immediate cash to help complete the project, and would tend to encourage the purchase of State and local bonds.

The committee amended the bill to give the contracting unit the discretion as to whether bonds may be submitted in lieu of withholding payments, and to require that the nature and amount of the bonds which will be accepted be specified in the bid advertisement.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

May 3, 1979

SENATE BILL NO. 721 (OCR)

Pursuant to Article V, Section I, Paragraph 14(b) of the Constitution, I herewith return Senate Bill No. 721 (OCR) with my objections for reconsideration.

Senate Bill No. 721 (OCR) would affect local government construction contracts by permitting a contractor and a local contracting unit to agree as a condition of a contract to have the contractor deposit as security negotiable bearer bonds of the State or negotiable bearer bonds or notes of any political subdivision thereof in lieu of the withholding of cash payments. In cases where cash payments were withheld the bill would require the contracting unit to deposit the withheld money in an interest bearing account and to return both the principal and interest to the contractor upon his satisfactory completion of the work.

It was the sponsor's intent that this bill bring the local procedures with regard to the withholding of payments and the deposit of bonds into a consistent position with the laws and procedures which govern this practice at the State level. Under State law and procedure a contractor in certain cases has the discretion concerning the deposit of negotiable bearer bonds as security. Any interest earned on such bonds is returned to the contractor upon his satisfactory completion of the work. If cash is withheld then any interest earned on that cash remains with the State. However, under this bill the local contracting unit would have the discretion to accept or reject the deposit of bonds by a contractor.

The purpose of the deposit of bonds or the withholding of payments is to provide security for the local government unit to assure that the work performed is satisfactorily completed. In my judgment, the deposit of bonds protects the local government unit while allowing a contractor to continue to earn interest on his security. If a contractor should default for not performing the work satisfactorily then the contracting unit has control of the bonds and can use them in the same manner as withheld cash payments. At the same time, a contractor retains the advantage of his investment in the bonds. Therefore, I believe that giving the contractor the discretion to decide whether to deposit negotiable bearer bonds as security would be consistent with State law and procedure and would provide adequate protection to the local contracting unit. Accordingly, I am recommending an amendment which would make the deposit of bearer bonds discretionary with the contractor.

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

SENATE BILL NO. 721 (OCR)

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6. Page 1, Section 1, Line 20: Delete "and any interest accruing thereon,"
7. Page 1, Section 1, Line 21: After "deposited," insert "and any interest accruing on such bonds or notes,"
8. Page 1, Section 1, Line 23: After "holding." add "Any interest accruing on cash payments withheld shall be credited to the contracting unit."

Respectfully,

/s/ Brendan Byrne

GOVERNOR

[seal]

Attest:

/s/ Robert E. Mulcahy, III

CHIEF OF STAFF, SECRETARY