

2A:44-143

LEGISLATIVE HISTORY CHECKLIST
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(Public work contractors)

NJSA: 2A:44-143

LAWS OF: 1989 **CHAPTER:** 316

BILL NO: S3805

SPONSOR(S): Cowan

DATE INTRODUCED: October 19, 1989

COMMITTEE: **ASSEMBLY:** ---
SENATE: Labor, Industry

AMENDED DURING PASSAGE: Yes Amendments denoted by asterisks

DATE OF PASSAGE: **ASSEMBLY:** December 18, 1989 Re-enacted 1-8-90
SENATE: December 18, 1989 Re-enacted 1-8-90

DATE OF APPROVAL: January 12, 1990

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

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[FIRST REPRINT]

SENATE, No. 3805

STATE OF NEW JERSEY

INTRODUCED OCTOBER 19, 1989

By Senator COWAN

1 AN ACT concerning the bonds of contractors on public works and
2 improvements and amending Title 2A of the New Jersey
3 Statutes.

4

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

7 1. N.J.S.2A:44-143 is amended to read as follows:

8 2A:44-143. a. When public buildings or other public works or
9 improvements are about to be constructed, erected, altered or
10 repaired under contract, at the expense of the State or any
11 county, municipality or school district thereof, the board, officer
12 or agent contracting on behalf of the State, county, municipality
13 or school district, shall require the usual bond, as provided for by
14 law, with good and sufficient sureties, with an additional
15 obligation for the payment by the contractor, and by all
16 subcontractors, for all labor performed or materials, provisions,
17 provender or other supplies, teams, fuels, oils, implements or
18 machinery used or consumed in, upon, for or about the
19 construction, erection, alteration or repair of such buildings,
20 works or improvements.

21 When such contract is to be performed at the expense of the
22 State and is entered into by the Director of the Division of
23 Building and Construction or State departments designated by the
24 Director of the Division of Building and Construction, and such
25 contract is for a sum not exceeding \$20,000.00, the director or
26 the State departments may at their discretion waive the bond
27 requirement of this section.

28 b. A surety's obligation shall not extend to any claim for
29 damages based upon alleged negligence that resulted in personal
30 injury, wrongful death, or damage to real or personal property,
31 and no bond shall in any way be construed as a liability insurance
32 policy. Nothing herein shall relieve the surety's obligation to
33 guarantee the contractor's performance of all conditions of the

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 amendments adopted in accordance with Governor's
recommendations January 8, 1990.

1 contract¹, including the maintenance of liability insurance if and
2 as required by the contract¹ . Only the obligee named on the
3 bond, and any subcontractor performing labor or any
4 subcontractor or materialman providing materials for the
5 construction, erection, alteration or repair of the public building,
6 work or improvement for which the bond is required pursuant to
7 this section, shall have any claim against the surety under the
8 bond.

9 (cf: P.L.1979, c.408, s.1)

10 2. This act shall take effect immediately.

11

12

13

INSURANCE

14

Building and Construction

15

16

Clarifies obligation of surety under public works contracts.

SENATE, No. 3805

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12 or agent contracting on behalf of the State, county, municipality
13 or school district, shall require the usual bond, as provided for by
14 law, with good and sufficient sureties, with an additional
15 obligation for the payment by the contractor, and by all
16 subcontractors, for all labor performed or materials, provisions,
17 provender or other supplies, teams, fuels, oils, implements or
18 machinery used or consumed in, upon, for or about the
19 construction, erection, alteration or repair of such buildings,
20 works or improvements.

21 When such contract is to be performed at the expense of the
22 State and is entered into by the Director of the Division of
23 Building and Construction or State departments designated by the
24 Director of the Division of Building and Construction, and such
25 contract is for a sum not exceeding \$20,000.00, the director or
26 the State departments may at their discretion waive the bond
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 3 subcontractor performing labor or any subcontractor or
 5 materialman providing materials for the construction, erection,
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for which the bond is required pursuant to this section, shall have
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7 (cf: P.L.1979, c.408, s.1)

2. This act shall take effect immediately.

9

11 STATEMENT

13 Contractors working on public buildings or other public works
 15 must post surety bonds to ensure completion of the work, and to
 17 ensure the payment of claims by subcontractors for labor,
 19 material and supplies. This bill would clarify that the bonds are
 only to be used for those purposes, and could not be used to pay
 claims for damages in negligence lawsuits, or be construed as
 liability insurance policies.

21

INSURANCE
 Building and Construction

23

25 Clarifies that the surety bonds posted by public works contractors
 27 are not to be used to pay damage claims, or be construed as
 liability insurance policies.

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 3805

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STATE OF NEW JERSEY

DATED: NOVEMBER 30, 1989

The Senate Labor, Industry and Professions Committee reports favorably Senate, No. 3805.

This bill clarifies that surety bonds posted by contractors working on public buildings or other public works are to be used only for the purpose of guaranteeing performance of the obligations under the contract. Present law requires that contractors working on public buildings and public works post surety bonds to ensure completion of their work, and to ensure the payment of claims by subcontractors for labor, materials and supplies. The bill specifically limits the obligation of a surety to such performance guarantees and provides that such bonds are not to be construed as liability insurance policies and precludes their use to satisfy liability claims for personal injury, wrongful death or damage to real or personal property arising out of alleged negligence which would normally be covered by a general liability insurance policy. However, nothing in the bill is to be deemed to relieve the surety's obligation to guarantee the contractor's performance of all contractual conditions.

It is not the intent of this bill to interfere with the project owner's ability to contractually require that the contractor provide insurance of any kind, nor to prevent the project owner from enforcing the contractual insurance requirements.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

SENATE BILL NO. 3805

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Senate Bill No. 3805 with my objections for reconsideration.

This bill seeks to ensure that surety bonds posted by public works contractors are not to be used to pay damage claims in negligence lawsuits nor are they to be construed to be a liability insurance policy. While the avowed purpose of the bill is laudable, I have been previously advised by the Attorney General that the language of the bill has been written overbroadly. Because I share this concern, I am unable to endorse this bill in its current form.

For the efficient construction of public works projects, it is necessary that companies providing surety bonds be required to guarantee all aspects of the agreement that the contractor enters into with the public entity sponsoring the project. Specifically, if the contractor agrees to maintain liability insurance on the project, the risk of loss occasioned by any lapse of liability insurance must be on the surety company and not on the governmental unit undertaking the project.

This bill promises to subtly, but significantly, erode these protections that governmental entities receive from the posting of a surety bond. To understand this concern, one must compare this bill to Assembly Bill No. 1613, which I conditionally vetoed on June 27, 1988. When reviewing Assembly Bill No. 1613, which is virtually identical to this bill, I determined that it was necessary that surety companies continue to be required to guarantee all aspects of the agreement between the contractor and the public owner of the project, including any agreement to maintain liability insurance on the project. To that end, I recommended the insertion in Assembly Bill No. 1613 of the following language:

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 as the contract.

On July 14, 1988, the conditional veto was adopted by the Assembly by a vote of 67-0. Since that time, it has been pending in the Senate, but has not been posted for a vote.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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The only difference between my conditional veto of Assembly Bill No. 1613 and this bill is the last phrase of my recommendation, i.e., "including the maintenance of liability insurance if and as required by the contract," which has been omitted from this bill. Because this omission may well be interpreted to significantly reduce the protection that government receives from the surety bond requirement, I am constrained to return this bill to the Legislature.

I am concerned that a judge, construing this legislation, will compare the conditional veto of Assembly Bill No. 1613 and this bill. Noting the sole difference in language between the two bills, I fear that the court will conclude that sureties are not required under this bill to remedy the failure of public works contractors to maintain liability insurance. To avoid this outcome, I am recommending an amendment to this bill so that it parallels my conditional veto of Assembly Bill No. 1613.

Therefore, I herewith return Senate Bill No. 3805 and recommend that it be amended as follows:

Page 2, Section 1, Line 1: After "contract" insert ", including the maintenance of liability insurance if and as required by the contract"

Respectfully,

GOVERNOR

Attest:

Chief Counsel