

40A:11-16.3

LEGISLATIVE HISTORY CHECKLIST
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(Public contracts--
withholding of payments)

NJSA: 40A:11-16.3

LAWS OF: 1991 CHAPTER: 434

BILL NO: S389

SPONSOR(S): Van Wagner

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Municipal Government
SENATE: County & Municipal Government

AMENDED DURING PASSAGE: Yes Amendments during passage
denoted by asterisks

DATE OF PASSAGE: ASSEMBLY: January 13, 1992
SENATE: October 11, 1990

DATE OF APPROVAL: January 18, 1992

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/pp

[SECOND REPRINT]

SENATE, No. 389

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator VAN WAGNER

1 AN ACT concerning the withholding ¹and depositing¹ of
2 payments ¹, and the methods of depositing those payments,¹ on
3 certain local public contracts and amending ¹P.L.1979, c.152
4 and¹ P.L.1979, c.464.

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

8 ¹1. Section 1 of P.L.1979, c.152 (C.40A:11-16.1) is amended to
9 read as follows:

10 1. Whenever any contract, the total price of which exceeds
11 \$100,000.00, entered into by a contracting unit, for the
12 construction, reconstruction, alteration or repair of any building,
13 structure, facility or other improvement to real property,
14 requires the withholding of payment of a percentage of the
15 amount of the contract, the contractor may agree to the
16 withholding of payments in the manner prescribed in the
17 contract, or may deposit with the contracting unit [negotiable
18 bearer] registered book bonds, entry municipal bonds, state bonds
19 or other appropriate bonds of the State of New Jersey, or
20 negotiable bearer bonds or notes of any political subdivision of
21 the State, the value of which is equal to the amount necessary to
22 satisfy the amount that otherwise would be withheld pursuant to
23 the terms of the contract. The nature and amount of the bonds
24 or notes to be deposited shall be subject to approval by the
25 contracting unit. For purposes of this section, "value" shall mean
26 par value or current market value, whichever is lower.

27 If the contractor agrees to the withholding of payments, the
28 amount withheld shall be deposited, with a banking institution or
29 savings and loan association insured by an agency of the Federal
30 government, in an account bearing interest at the rate currently
31 paid by such institutions or associations on time or savings
32 deposits. The amount withheld, or the bonds or notes deposited,
33 and any interest accruing on such bonds or notes, shall be
34 returned to the contractor upon fulfillment of the terms of the
35 contract relating to such withholding. Any interest accruing on
36 cash payments withheld shall be credited to the contracting unit.¹
37 (cf: P.L.1979, c.152, s.1)

38 ¹[1.] 2.¹ Section 2 of P.L.1979, c.464 (C.40A:11-16.3) is

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 May 17, 1990.

² Assembly AMG committee amendments adopted January 6, 1992.

1 amended to read as follows:

2 2. a. With respect to any contract or agreement entered into
3 by a contracting unit pursuant to section 1 of this act for which
4 the contractor shall agree to the withholding of payments
5 pursuant to P.L.1979, c.152 (C.40A:11-16.1), 2% of the amount
6 due on each partial payment shall be withheld by the contracting
7 unit pending completion of the contract or agreement.

8 b. Upon ²[completion] acceptance² of the ²work performed
9 pursuant to the² contract or agreement for which the contractor
10 has agreed to the withholding of payments pursuant to subsection
11 a. of this section, all amounts being withheld by the contracting
12 unit shall be released and paid in full to the contractor ¹within 45
13 days of the final ²[completion] acceptance² date agreed upon by
14 the contractor and the contracting unit¹, without further
15 withholding of any amounts for any purpose whatsoever²,
16 provided that the contract has been completed as indicated². If
17 the contracting unit requires ²maintenance² security ²[for
18 performance of maintenance work]² after ²[completion]
19 acceptance² of the ²work performed pursuant to the² contract or
20 agreement, such security shall be obtained in the form of a
21 maintenance bond. The maintenance bond shall be no longer than
22 ²[one year] two years and shall be no more than 100% of the
23 project costs^{2,1} ²[In no case shall any retainage for a
24 maintenance contract or agreement be withheld by the
25 contracting unit for more than 45 days from the date upon which
26 the contractor has provided the contracting unit with the
27 required maintenance bond.¹]²

28 (cf: P.L.1979, c.464, s.2)

29 ¹[2.] ^{3,1} This act shall take effect immediately.

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LOCAL BUDGET AND FINANCE

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Requires contracting unit to release withheld amounts within 45 days of completion or provision of maintenance bond and clarifies bond types for deposit in lieu of withholding payments.

SENATE, No. 389

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator VAN WAGNER

AN ACT concerning the withholding of payments on certain local public contracts and amending P.L.1979, c.464.

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

1. Section 2 of P.L.1979, c.464 (C.40A:11-16.3) is amended to read as follows:

2. a. With respect to any contract or agreement entered into by a contracting unit pursuant to section 1 of this act for which the contractor shall agree to the withholding of payments pursuant to P.L.1979, c.152 (C.40A:11-16.1), 2% of the amount due on each partial payment shall be withheld by the contracting unit pending completion of the contract or agreement.

b. Upon completion of the contract or agreement for which the contractor has agreed to the withholding of payments pursuant to subsection a. of this section, all amounts being withheld by the contracting unit shall be released and paid in full to the contractor, without further withholding of any amounts for any purpose whatsoever. If the contracting unit requires security for performance of maintenance work after completion of the contract or agreement, such security shall be obtained in the form of a maintenance bond. The maintenance bond shall be no longer than one year.

(cf: P.L.1979, c.464, s.2)

2. This act shall take effect immediately.

STATEMENT

This bill amends the section 2 of P.L.1979, c.464 (C.40A:11-16.3) to provide that upon the completion of a contract or agreement for which a contractor has agreed to the withholding of payments, all amounts withheld by the contracting unit shall be released and paid in full to the contractor, without further withholding of any amounts for any purpose. Additionally, if a local contracting unit requires security for performance of maintenance work after completion of a contract or agreement, it shall require the posting of a maintenance bond

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.

S389

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of up to one year in duration.

Under existing law, a contracting unit may withhold 2% on the amount due on each partial payment regarding any contract or agreement entered into by that contracting unit which exceeds \$100,000 and which involves the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to a public building.

LOCAL BUDGET AND FINANCE

Requires posting of maintenance bond if local contracting unit requires security for performance of maintenance work after completion of contract.

ASSEMBLY MUNICIPAL GOVERNMENT COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 389

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 1991

The Assembly Municipal Government Committee reports favorably Senate Bill No. 389(1R) with committee amendments.

Senate Bill No. 389(1R), as amended, provides that upon completion of a contract or agreement entered into pursuant to "The Local Public Contracts Law" for which a contractor has agreed to the withholding of payments, all amounts withheld by the contracting unit shall be released and paid in full to the contractor within 45 days of the final completion date, without further withholding of any amounts for any purpose. Additionally, if a local contracting unit requires maintenance security after completion of a contract or agreement, it shall require the posting of a maintenance bond.

Under existing law, a contracting unit may withhold 2% on the amount due on each partial payment regarding any contract or agreement entered into by that contracting unit which exceeds \$100,000 and which involves the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to a public building.

The committee amendments allow a maintenance bond to be longer than one year. This amendment was suggested by representatives of the Department of Community Affairs because it is the industry standard for a maintenance bond to be for longer than one year. The committee determined that a local contracting unit should be allowed a maintenance bond for the length of time accorded in the industry. The committee amendment also limits the maintenance bond amount to no more than 100% of the project costs. The committee also substituted the term "acceptance" for the term "completion."

SENATE COUNTY AND MUNICIPAL
GOVERNMENT COMMITTEE

STATEMENT TO

SENATE, No. 389

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 17, 1990

The Senate County and Municipal Government Committee reports favorably Senate Bill No. 389 with committee amendments.

Senate Bill No. 389, as amended, amends the portion of "The Local Public Contracts Law" which specifies the form and content of contracts by providing that upon completion of a contract or agreement for which a contractor has agreed to the withholding of payments, all amounts withheld by the contracting unit shall be released and paid in full to the contractor within 45 days of the final completion date, without further withholding of any amounts for any purpose. Additionally, if a local contracting unit requires security for performance of maintenance work after completion of a contract or agreement, it shall require the posting of a maintenance bond of up to one year in duration.

Under existing law, a contracting unit may withhold 2% on the amount due on each partial payment regarding any contract or agreement entered into by that contracting unit which exceeds \$100,000 and which involves the construction, reconstruction, alteration, repair or maintenance of any building, structure, facility or other improvement to a public building.

COMMITTEE AMENDMENTS

The committee amendments clarify that any amounts withheld by a contracting unit shall be released to the contractor within 45 days of the final agreed upon completion date for capital construction work, and 45 days from the posting of any required maintenance bond. To conform with current legal terminology, the committee also found it desirable to update the language of the "Local Public Contracts Law" concerning the permissible types of bonds that can be deposited on local public contracts.

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.