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IS 3/5/08

P.L. 2005, CHAPTER 356, *approved January 12, 2006*  
Senate, No. 2864 (*First Reprint*)

1 AN ACT concerning certain payments and amending R.S.27:7-34.

2

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

5

6 1. R.S. 27:7-34 is amended to read as follows:

7 27:7-34. Contracts shall provide for partial payments at least once  
8 each month or from time to time as the work progresses on work of  
9 construction or maintenance. ~~[Five]~~ Two per centum of the amount  
10 due on partial payments ~~[on the first 50%]~~ of the total contract price  
11 shall be withheld from the contractor pending completion of the  
12 contract~~[. Thereafter, on the remaining 50% of the total contract~~  
13 ~~price, no per centum of the partial payments shall be withheld from the~~  
14 ~~contractor pending such completion]~~, but upon substantial completion  
15 of the contract, as defined by rules or regulations of the department  
16 ~~[2%]~~ 1% shall be withheld. At any time during the performance of  
17 the work, if work is not progressing, as defined by the "New Jersey  
18 Department of Transportation Standard Specifications for Road and  
19 Bridge Construction," the commissioner may at the commissioner's  
20 discretion, <sup>1</sup>[after consultation with the director of construction  
21 services.]<sup>1</sup> increase the withholding to 4% of the payment due. No  
22 retainage shall be withheld on service contracts including, but not  
23 limited to, mowing, sweeping, tree trimming and similar contracts.  
24 Any partial payments made after substantial completion of the contract  
25 shall be made only upon certification by the general contractor to the  
26 department that all subcontractors have been paid in the same  
27 proportion that he has been paid; however, should the amount owed  
28 by a general contractor to a subcontractor be in dispute the department  
29 shall be empowered to advance to the general contractor the amount  
30 in dispute after a determination by the commissioner.

31 Contracts may also provide for partial payments at least once in  
32 each month or from time to time as the work progresses on all  
33 materials placed along or upon the site, or stored at locations  
34 approved by the commissioner, which are suitable for the use and  
35 execution of the contract, provided the contractor furnishes releases  
36 of liens for all materials furnished at the time each estimate of work is  
37 submitted for payment, but such partial payments shall not exceed the  
38 cost of the material.

39 When the contract provides that a portion of the work may be  
40 deferred with the approval of the commissioner, the sum withheld from

**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 SSG committee amendments adopted December 5, 2005.

1 the contractor may not be less than 25% of the value of said work.

2 Any money heretofore or hereafter withheld from contract  
3 payments as provided for herein shall be paid by the State to any  
4 contractor entitled thereto who shall deposit under terms of an escrow  
5 agreement, in a banking institution located in this State and approved  
6 by the commissioner, negotiable bonds, acceptable to the  
7 commissioner, issued by the State or any political subdivision thereof,  
8 said bonds having value equal to the amount of money to be paid to  
9 any such contractor. For purposes of this section, value shall mean  
10 par value or market value, whichever is lower.

11 (cf: P.L. 1977, c. 67, s. 5)

12

13 2. This act shall take effect immediately.

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18 Changes amounts retained by DOT from highway work payments to  
19 contractors.

**SENATE, No. 2864**

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**STATE OF NEW JERSEY**  
**211th LEGISLATURE**

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INTRODUCED DECEMBER 1, 2005

**Sponsored by:**

**Senator JOSEPH CONIGLIO**

**District 38 (Bergen)**

**Senator NICHOLAS ASSELTA**

**District 1 (Cape May, Atlantic and Cumberland)**

**SYNOPSIS**

Changes amounts retained by DOT from highway work payments to contractors.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/6/2005)**

1 AN ACT concerning certain payments and amending R.S.27:7-34.

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12 contract~~].~~ Thereafter, on the remaining 50% of the total contract  
13 price, no per centum of the partial payments shall be withheld from the  
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19 Bridge Construction," the commissioner may at the commissioner's  
20 discretion, after consultation with the director of construction services,  
21 increase the withholding to 4% of the payment due. No retainage shall  
22 be withheld on service contracts including, but not limited to,  
23 mowing, sweeping, tree trimming and similar contracts. Any partial  
24 payments made after substantial completion of the contract shall be  
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28 by a general contractor to a subcontractor be in dispute the  
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36 of liens for all materials furnished at the time each estimate of work  
37 is submitted for payment, but such partial payments shall not exceed  
38 the cost of the material.

39 When the contract provides that a portion of the work may be  
40 deferred with the approval of the commissioner, the sum withheld from  
41 the contractor may not be less than 25% of the value of said work.

42 Any money heretofore or hereafter withheld from contract

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1 payments as provided for herein shall be paid by the State to any  
2 contractor entitled thereto who shall deposit under terms of an escrow  
3 agreement, in a banking institution located in this State and approved  
4 by the commissioner, negotiable bonds, acceptable to the  
5 commissioner, issued by the State or any political subdivision thereof,  
6 said bonds having value equal to the amount of money to be paid to  
7 any such contractor. For purposes of this section, value shall mean  
8 par value or market value, whichever is lower.  
9 (cf: P.L. 1977, c. 67, s. 5)

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11 2. This act shall take effect immediately.

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#### STATEMENT

15

16 This bill changes the amounts that may be withheld from payments  
17 to contractors by the Department of Transportation (DOT) for  
18 highway work. Currently five percent of the amount due on the first  
19 50 percent of the total contract price is to be withheld, but nothing is  
20 to be withheld on the remainder, except that upon substantial  
21 completion of the work two percent shall be withheld. The bill lowers  
22 the five percent to two percent but it is to apply to payments of the  
23 total contract price, except that upon substantial completion of the  
24 work one percent shall be withheld.

25 At any time during the performance of the work, if work is not  
26 progressing, as defined by DOT's "Standard Specifications for Road  
27 and Bridge Construction," the Commissioner of Transportation may,  
28 at the commissioner's discretion, after consultation with the director  
29 of construction services, increase the withholding to four percent of  
30 the payment due.

# SENATE STATE GOVERNMENT COMMITTEE

## STATEMENT TO

### **SENATE, No. 2864**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 5, 2005

The Senate State Government Committee reports favorably and with committee amendments Senate, No. 2864.

This bill changes the amounts that may be withheld from payments to contractors by the Department of Transportation (DOT) for highway work. Currently, five percent of the amount due on the first 50 percent of the total contract price is to be withheld, but nothing is to be withheld on the remainder, except that upon substantial completion of the work two percent would be withheld. The bill lowers the five percent to two percent but it is to apply to payments of the total contract price, except that upon substantial completion of the work one percent would be withheld.

At any time during the performance of the work, if work is not progressing, as defined by DOT's "Standard Specifications for Road and Bridge Construction," the Commissioner of Transportation may, at the commissioner's discretion, increase the withholding to four percent of the payment due.

The committee amended the bill to remove a proposed requirement that the Commissioner of Transportation consult with the director of construction services before increasing the withholding.

This bill is identical to Assembly, No. 4517 of 2005.



# ASSEMBLY, No. 4517

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED DECEMBER 8, 2005

**Sponsored by:**

**Assemblyman ALFRED E. STEELE**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Changes amounts retained by DOT from highway work payments to contractors.

**CURRENT VERSION OF TEXT**

As introduced.



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36 submitted for payment, but such partial payments shall not exceed the  
37 cost of the material.

38 When the contract provides that a portion of the work may be  
39 deferred with the approval of the commissioner, the sum withheld from  
40 the contractor may not be less than 25% of the value of said work.

41 Any money heretofore or hereafter withheld from contract  
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20 completion of the work two percent shall be withheld. The bill lowers  
21 the five percent to two percent but it is to apply to payments of the  
22 total contract price, except that upon substantial completion of the  
23 work one percent shall be withheld.

24 At any time during the performance of the work, if work is not  
25 progressing, as defined by DOT's "Standard Specifications for Road  
26 and Bridge Construction," the Commissioner of Transportation may,  
27 at the commissioner's discretion, increase the withholding to four  
28 percent of the payment due.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 4517**

**STATE OF NEW JERSEY**

DATED: DECEMBER 8, 2005

The Assembly State Government Committee reports favorably Assembly, No. 4517.

This bill changes the amounts that may be withheld by the Department of Transportation (DOT) from payments to contractors for highway work. Currently, five percent of the amount due on the first 50 percent of the total contract price is to be withheld, but nothing is to be withheld on the remainder, except that upon substantial completion of the work two percent would be withheld. The bill lowers the five percent to two percent but applies it to payments of the total contract price, except that upon substantial completion of the work one percent would be withheld.

At any time during the performance of the work, if work is not progressing, as defined by DOT's "Standard Specifications for Road and Bridge Construction," the Commissioner of Transportation may, at the commissioner's discretion, increase the withholding to four percent of the payment due.

Assembly, No. 4517 is the same as Senate, No. 2864(1R) of 2005.