

[First Reprint]

SENATE, No. 317

STATE OF NEW JERSEY
214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex)

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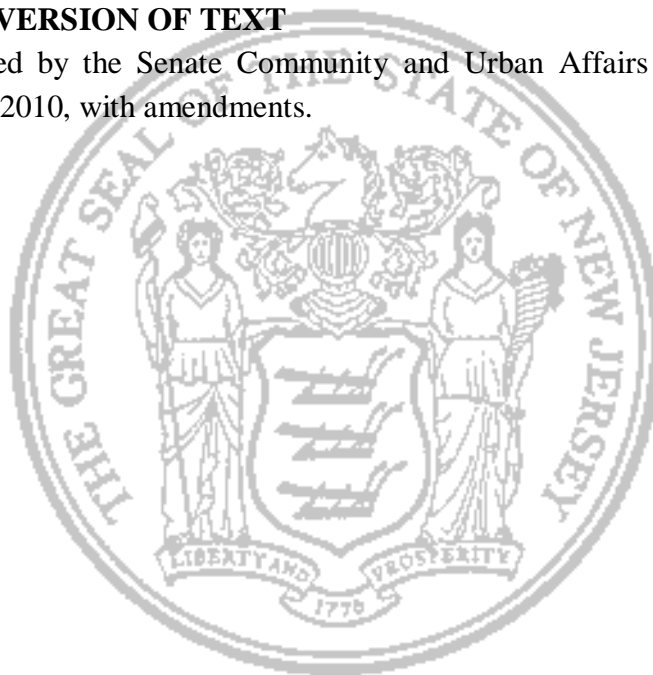
District 17 (Middlesex and Somerset)

SYNOPSIS

Requires contracting units and boards of education to credit contractors with interest earned on certain funds withheld from payment to contractors.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on December 6, 2010, with amendments.



(Sponsorship Updated As Of: 1/10/2012)

1 AN ACT concerning interest earned on certain contractors' funds
2 withheld by contracting units and amending ¹P.L.1987, c.343,¹
3 P.L.1979, c.152 and P.L.1979, c.464.
4

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

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

26 If the contractor agrees to the withholding of payments, the
27 amount withheld shall be deposited, with a banking institution or
28 savings and loan association insured by an agency of the Federal
29 government, in an account bearing interest at the rate currently paid
30 by such institutions or associations on time or savings deposits. The
31 amount withheld, or the bonds or notes deposited, and any interest
32 accruing on such bonds or notes, shall be returned to the contractor
33 upon fulfillment of the terms of the contract relating to such
34 withholding. Any interest accruing on cash payments withheld
35 from the contractor for contracts entered into after the date of
36 enactment of P.L. , c. (C.) (pending before the Legislature as
37 this bill) shall be credited to the **[contracting unit]** contractor.
38 (cf: P.L.1991, c.434, s.1)
39

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

42 2. a. With respect to any contract entered into by a contracting
43 unit pursuant to section 1 of P.L.1979, c.464 (C.40A:11-16.2) for

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:

¹Senate SCU committee amendments adopted December 6, 2010.

1 which the contractor shall agree to the withholding of payments
2 pursuant to P.L.1979, c.152 (C.40A:11-16.1), 2% of the amount due
3 on each partial payment shall be withheld by the contracting unit
4 pending completion of the contract; provided, however, that upon
5 the contractor's application therefor, the contracting unit shall
6 release to the contractor, a subcontractor's proportionate share of
7 the amount withheld, upon acceptance by the project's architect or
8 construction manager of the subcontractor's completed portion of
9 the entire project.

10 b. Upon acceptance of the work performed pursuant to the
11 contract or acceptance of the work performed by a subcontractor for
12 which the contractor has agreed to the withholding of payments
13 pursuant to subsection a. of this section, all amounts being withheld
14 by the contracting unit shall be released and paid in full to the
15 contractor within 45 days of the [final] acceptance date agreed
16 upon by the contractor and the contracting unit, without further
17 withholding of any amounts for any purpose whatsoever, provided
18 that the contract , or subcontractor's portion of the contract when
19 applicable, has been completed as indicated. If the contracting unit
20 requires maintenance security after acceptance of the work
21 performed pursuant to the contract, such security shall be obtained
22 in the form of a maintenance bond. The maintenance bond shall be
23 no longer than two years and shall be no more than 100% of the
24 project costs.

25 (cf: P.L.1999, c.440, s.26)

26

27 ¹3. Section 2 of P.L.1987, c.343 (C.18A:18A-40.2) is amended
28 to read as follows:

29 2. Whenever any contract, the total price of which exceeds
30 \$100,000.00, entered into by a board of education for the
31 construction, reconstruction, alteration or repair of any building,
32 structure, facility or other improvement to real property, requires
33 the withholding of payment of a percentage of the amount of the
34 contract, the contractor may agree to the withholding of payments
35 in the manner prescribed in the contract, or may deposit with the
36 board of education negotiable bearer bonds of the State of New
37 Jersey, or negotiable bearer bonds or notes of any political
38 subdivision of the State, the value of which is equal to the amount
39 necessary to satisfy the amount that otherwise would be withheld
40 pursuant to the terms of the contract. The nature and amount of the
41 bonds or notes to be deposited shall be subject to approval by the
42 board of education. For purposes of this section, "value" shall
43 mean par value or current market value, whichever is lower.

44 If the contractor agrees to the withholding of payments, the
45 amount withheld shall be deposited, with a banking institution or
46 savings and loan association insured by an agency of the federal
47 government, in an account bearing interest at the rate currently paid

1 by such institutions or associations on time or savings deposits.
2 The amount withheld, or the bonds or notes deposited, and any
3 interest accruing on such bonds or notes, shall be returned to the
4 contractor upon fulfillment of the terms of the contract relating to
5 such withholding. Any interest accruing on cash payments withheld
6 from the contractor for contracts entered into after the date of
7 enactment of P.L. _____, c. _____ (pending before the Legislature as this
8 bill) shall be credited to the **【board of education】** contractor.¹
9 (cf: P.L.1987, c.343, s.2)

10

11 ¹4. Section 3 of P.L.1987, c.343 (C.18A:18A-40.3) is amended
12 to read as follows:

13 3. With respect to any contract entered into by a board of
14 education pursuant to section 1 of P.L.1987, c.343 (C.18A:18A-
15 40.1) for which the contractor shall agree to the withholding of
16 payments pursuant to section 2 of P.L.1987, c.343 (C.18A:18A-
17 40.2), 5% of the amount due on each partial payment shall be
18 withheld by the board of education pending completion of the
19 contract if the contractor does not have a performance bond;
20 provided, however, that upon the contractor's application therefore,
21 the board of education shall release to the contractor, a
22 subcontractor's proportionate share of the amount withheld, upon
23 acceptance by the project's architect or construction manager of the
24 subcontractor's completed portion of the entire project. If the
25 contractor does have a performance bond, 2% of the amount due on
26 each partial payment shall be withheld by the board of education
27 when the outstanding balance of the contract exceeds \$500,000, and
28 5% of the amount due on each partial payment shall be withheld by
29 the board of education when the outstanding balance of the contract
30 is \$500,000 or less.¹

31 (cf: P.L.1999, c.440, s.76)

32

33 ¹**【3.】** 5.¹ This act shall take effect immediately.