

ASSEMBLY LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

ASSEMBLY, No. 311

STATE OF NEW JERSEY

DATED: MARCH 3, 1997

The Assembly Local Government Committee reports favorably and with committee amendments Assembly Bill No. 311.

Assembly Bill No. 311 governs the calculation of the retainage allowed on the part of the municipality in releasing performance guarantees under the "Municipal Land Use Law."

Section 41 of P.L.1975, c.291 (C.40:55D-53), allows for the release of performance guarantees as required improvements are completed; the municipality, however, is allowed to retain 30 percent of the amount of the performance guarantee to ensure the completion and acceptability of all improvements.

This bill provides that as each improvement covered by the performance guarantee is fully completed and accepted by both the municipal engineer and the governing body, the bond amount relative to the individual item shall be reduced by the total amount for each such improvement, in accordance with the itemized cost estimate prepared by the municipal engineer and appended to the performance guarantee, including any contingency factor applied to the cost of installation.

The 30 percent retainage must be based on the total bond amount rather than each separate improvement. If an improvement is accepted, it must be reduced in full. In making this calculation, however, the municipality must include the 20 percent contingency factor applied to the cost of installation in order to determine the amount of the performance guarantee. If the calculation performed in this way would otherwise allow the municipality to withhold less than 30 percent of the total performance guarantee, the bill allows the municipality to withhold up to 30 percent of the total.

This bill also reconciles and harmonizes the conflicting amendments made to subsection h. of section 41 of P.L.1975, c.291 (C.40:55D-53) by P.L.1991, c.256 and P.L.1991, c.311. This bill replaces the term "reasonably anticipated fees," which was used in the language of P.L.1991, c.311, with the term "inspection fees," which was used in P.L.1991, c.256. In this way, the conflict between the two chapters is eliminated.

Assembly Bill No. 311 was pre-filed for introduction in the 1996-1997 legislative session pending technical review. As reported by the committee, the bill contains the changes required by technical review, which has been performed.