

## CHAPTER 356

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

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

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

Partial and deferred payments for highway work; amount; deposit.

27:7-34. Contracts shall provide for partial payments at least once each month or from time to time as the work progresses on work of construction or maintenance. Two per centum of the amount due on partial payments of the total contract price shall be withheld from the contractor pending completion of the contract, but upon substantial completion of the contract, as defined by rules or regulations of the department 1% shall be withheld. At any time during the performance of the work, if work is not progressing, as defined by the "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction," the commissioner may at the commissioner's discretion, increase the withholding to 4% of the payment due. No retainage shall be withheld on service contracts including, but not limited to, mowing, sweeping, tree trimming and similar contracts. Any partial payments made after substantial completion of the contract shall be made only upon certification by the general contractor to the department that all subcontractors have been paid in the same proportion that he has been paid; however, should the amount owed by a general contractor to a subcontractor be in dispute the department shall be empowered to advance to the general contractor the amount in dispute after a determination by the commissioner.

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

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

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

2. This act shall take effect immediately.

Approved January 12, 2006.