

ASSEMBLY BILL NO. 413—ASSEMBLYMEN DALY, CONKLIN, HICKEY; ATKINSON, BOBZIEN, BUSTAMANTE ADAMS, CARLTON, ELLISON, HORNE, KIRKPATRICK, PIERCE AND SMITH

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works. (BDR 28-718)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to public works; making various changes relating to the withholding of retainage on progress payments for public works contracts; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires a public body to withhold as retainage at least 10 percent
2 of the progress payments owed to a contractor on a public works project during the
3 first half of the project. (NRS 338.515) Similarly, contractors and subcontractors
4 may withhold as retainage not more than 10 percent of progress payments to their
5 subcontractors and suppliers during the first half of the public works project. (NRS
6 338.555, 338.595) Sections 1, 3 and 5 of this bill revise the maximum amount of
7 retainage that may be withheld during the first half of the project to 5 percent of the
8 progress payment. Sections 1, 3 and 5 also provide that, except under limited
9 circumstances, the amount of retainage may not exceed 2.5 percent of progress
10 payments during the second half of a public works project.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. NRS 338.515 is hereby amended to read as follows:
2 338.515 1. Except as otherwise provided in NRS 338.525, a
3 public body and its officers or agents awarding a contract for a
4 public work shall pay or cause to be paid to a contractor the progress
5 payments due under the contract within 30 days after the date the



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1 public body receives the progress bill or within a shorter period if  
2 the provisions of the contract so provide. Not more than ~~90~~ 95  
3 percent of the amount of any progress payment may be paid until 50  
4 percent of the work required by the contract has been performed.

5 ~~[Thereafter,]~~

6 **2. After 50 percent of the work required by the contract has**  
7 **been performed,** the public body may pay any of the remaining  
8 progress payments without withholding additional retainage if, in  
9 the opinion of the public body, satisfactory progress is being made  
10 in the work.

11 ~~[2.]~~ **If the public body continues to withhold retainage from**  
12 **remaining progress payments:**

13 **(a) The public body may not withhold more than 2.5 percent of**  
14 **the amount of any progress payment; and**

15 **(b) Except as otherwise provided in NRS 338.525, before**  
16 **withholding any amount pursuant to paragraph (a), the public**  
17 **body must pay to the contractor the amount of any retainage that**  
18 **was withheld from progress payments pursuant to subsection 1.**

19 **3.** Except as otherwise provided in NRS 338.525, a public  
20 body shall identify in the contract and pay or cause to be paid to a  
21 contractor the actual cost of the supplies, materials and equipment  
22 that:

23 (a) Are identified in the contract;

24 (b) Have been delivered and stored at a location, and in the time  
25 and manner, specified in a contract by the contractor or a  
26 subcontractor or supplier for use in a public work; and

27 (c) Are in short supply or were specially made for the public  
28 work,

29 ↪ within 30 days after the public body receives a progress bill from  
30 the contractor for those supplies, materials or equipment.

31 ~~[3.]~~ **4.** A public body shall pay or cause to be paid to the  
32 contractor at the end of each quarter interest for the quarter on any  
33 amount withheld by the public body pursuant to NRS 338.400 to  
34 338.645, inclusive, at a rate equal to the rate quoted by at least three  
35 insured banks, credit unions or savings and loan associations in this  
36 State as the highest rate paid on a certificate of deposit whose  
37 duration is approximately 90 days on the first day of the quarter. If  
38 the amount due to a contractor pursuant to this subsection for any  
39 quarter is less than \$500, the public body may hold the interest until:

40 (a) The end of a subsequent quarter after which the amount of  
41 interest due is \$500 or more;

42 (b) The end of the fourth consecutive quarter for which no  
43 interest has been paid to the contractor; or



1 (c) The amount withheld under the contract is due pursuant to  
2 NRS 338.520,

3 ↪ whichever occurs first.

4 ~~[4.]~~ 5. If the Labor Commissioner has reason to believe that a  
5 worker is owed wages by a contractor or subcontractor, the Labor  
6 Commissioner may require the public body to withhold from any  
7 payment due the contractor under this section and pay the Labor  
8 Commissioner instead, an amount equal to the amount the Labor  
9 Commissioner believes the contractor owes to the worker. This  
10 amount must be paid by the Labor Commissioner to the worker if  
11 the matter is resolved in the worker's favor, otherwise it must be  
12 returned to the public body for payment to the contractor.

13 **Sec. 2.** NRS 338.530 is hereby amended to read as follows:

14 338.530 1. If a public body receives:

15 (a) A progress bill or retainage bill, fails to give a contractor a  
16 written notice of any withholding in the manner set forth in  
17 subsection 2 of NRS 338.525, and does not pay the contractor  
18 within 30 days after receiving the progress bill or retainage bill; or

19 (b) A contractor's written notice of the correction of a condition  
20 set forth pursuant to subsection 2 of NRS 338.525 as the reason for  
21 the withholding, signed by an authorized agent of the contractor,  
22 and fails to:

23 (1) Pay the amount of the progress payment or retainage  
24 payment that was withheld from the contractor within 30 days after  
25 the public body receives the next progress bill or retainage bill; or

26 (2) Object to the scope and manner of the correction, within  
27 30 days after the public body receives the notice of correction, in a  
28 written statement that sets forth the reason for the objection and is  
29 signed by an authorized agent of the public body,

30 ↪ the public body shall pay to the contractor, in addition to the  
31 entire amount of the progress bill or retainage bill or any unpaid  
32 portion thereof, interest from the 30th day on the amount delayed, at  
33 a rate equal to the amount provided for in subsection ~~[3.]~~ 4 of NRS  
34 338.515, until payment is made to the contractor.

35 2. If the public body objects pursuant to subparagraph (2) of  
36 paragraph (b) of subsection 1, it shall pay to the contractor an  
37 amount equal to the value of the corrections to which the public  
38 body does not object.

39 **Sec. 3.** NRS 338.555 is hereby amended to read as follows:

40 338.555 1. If a public body and a contractor enter into a  
41 contract for a public work, the contractor may withhold as retainage  
42 not more than ~~[10.]~~ 5 percent from the amount of any progress  
43 payment due under a subcontract which is made before 50 percent  
44 of the work has been completed under the subcontract. ~~[Thereafter]~~



1       **2. After 50 percent of the work required by the contract has**  
2 **been performed,** the contractor shall pay any additional progress  
3 payments due under the subcontract without withholding any  
4 additional retainage if, in the opinion of the contractor, satisfactory  
5 progress is being made in the work under the subcontract, and the  
6 payment must be equal to that paid by the public body to the  
7 contractor for the work performed by the subcontractor.

8       ~~2.1~~ **If the contractor continues to withhold retainage from**  
9 **remaining progress payments:**

10       **(a) The contractor may not withhold more than 2.5 percent of**  
11 **the amount of any progress payment; and**

12       **(b) Except as otherwise provided in NRS 338.560, before**  
13 **withholding any amount pursuant to paragraph (a), the contractor**  
14 **must pay to the subcontractor the amount of any retainage that**  
15 **was withheld from progress payments pursuant to subsection 1.**

16       **3.** If the contractor receives a payment of interest earned on the  
17 retainage or an amount withheld from a progress payment, the  
18 contractor shall, within 10 days after he or she receives the money,  
19 pay to each subcontractor or supplier that portion of the interest  
20 received from the public body which is attributable to the retainage  
21 or amount withheld from a progress payment by the contractor to  
22 the subcontractor or supplier.

23       **Sec. 4.** NRS 338.560 is hereby amended to read as follows:

24       338.560 1. A contractor may withhold from a progress  
25 payment or retainage payment an amount sufficient to pay:

26       (a) The expenses the contractor reasonably expects to incur as a  
27 result of the failure of his or her subcontractor or supplier to comply  
28 with the subcontract or applicable building code, law or regulation.

29       (b) An amount withheld from payment to the contractor by a  
30 public body pursuant to subsection ~~4~~ 5 of NRS 338.515 for a claim  
31 for wages against the subcontractor.

32       2. A contractor shall, within 10 days after the contractor  
33 receives:

34       (a) A progress payment or retainage payment from the public  
35 body for an amount that is less than the amount set forth in the  
36 applicable progress bill or retainage bill; or

37       (b) A progress bill or retainage bill from his or her subcontractor  
38 or supplier,

39       ↳ give a written notice to his or her subcontractor or supplier of any  
40 amount that will be withheld pursuant to this section.

41       3. The written notice must:

42       (a) Set forth:

43       (1) The amount of the progress payment or retainage  
44 payment that will be withheld from his or her subcontractor or  
45 supplier; and



1 (2) A detailed explanation of the reason the contractor will  
2 withhold that amount, including, without limitation, a specific  
3 reference to the provision or section of the subcontract, or  
4 documents related thereto, or applicable building code, law or  
5 regulation with which his or her subcontractor or supplier has failed  
6 to comply; and

7 (b) Be signed by an authorized agent of the contractor.

8 4. The contractor shall pay to his or her subcontractor or  
9 supplier the amount withheld by the public body or the contractor  
10 within 10 days after:

11 (a) The contractor receives a written notice of the correction of  
12 the condition that is the reason for the withholding, signed by an  
13 authorized agent of the subcontractor or supplier; or

14 (b) The public body pays to the contractor the amount withheld,  
15 ↪ whichever occurs later.

16 **Sec. 5.** NRS 338.595 is hereby amended to read as follows:

17 338.595 1. If a subcontractor and another subcontractor or  
18 supplier enter into a subcontract for a public work, the subcontractor  
19 may withhold as retainage not more than ~~10~~ 5 percent from the  
20 amount of any progress payment due under a subcontract which is  
21 made before 50 percent of the work has been completed under the  
22 subcontract. ~~The~~

23 *2. After 50 percent of the work required by the subcontractor*  
24 *or supplier has been performed, the* subcontractor shall pay any  
25 additional progress payments due under the subcontract without  
26 withholding any additional retainage if, in the opinion of the  
27 subcontractor, satisfactory progress is being made in the work under  
28 the subcontract. The payment must be equal to that paid by the  
29 contractor to the subcontractor for the work performed or supplies  
30 provided by his or her subcontractor or supplier.

31 ~~2.1~~ *If the subcontractor continues to withhold retainage from*  
32 *remaining progress payments:*

33 (a) *The subcontractor may not withhold more than 2.5 percent*  
34 *of the amount of any progress payment; and*

35 (b) *Except as otherwise provided in NRS 338.600, before*  
36 *withholding any amount pursuant to paragraph (a), the*  
37 *subcontractor must pay to the subcontractor or supplier the*  
38 *amount of any retainage that was withheld from progress*  
39 *payments pursuant to subsection 1.*

40 3. If the subcontractor receives a payment of interest earned on  
41 the retainage or an amount withheld from a progress payment, the  
42 subcontractor shall, within 10 days after receiving the money, pay to  
43 each of his or her subcontractors or suppliers that portion of  
44 the interest received from the contractor which is attributable to the



- 1 retainage or amount withheld from a progress payment by the
- 2 subcontractor to his or her subcontractor or supplier.

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