
SENATE BILL NO. 144—COMMITTEE ON GOVERNMENT AFFAIRS

FEBRUARY 8, 1999

Referred to Committee on Government Affairs

SUMMARY—Makes various changes concerning payments to contractors, subcontractors and suppliers for public works projects. (BDR 28-128)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

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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 projects; revising the provisions concerning the progress payments made to contractors, subcontractors and suppliers for public works projects; prescribing the amount that may be withheld from those payments; requiring the person who withholds certain amounts from those payments to provide notice and the reason for withholding those amounts to the recipient of the payments; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 338 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 33, inclusive, of this act.
3 **Sec. 2.** *As used in NRS 338.160, 338.165 and 338.170 and sections 2*
4 *to 33, inclusive, of this act, unless the context otherwise requires, the*
5 *words and terms defined in sections 3 to 12, inclusive, of this act have the*
6 *meanings ascribed to them in those sections.*
7 **Sec. 3.** *“Contract” means a written contract entered into between a*
8 *contractor and a public body for the provision of labor, materials,*
9 *equipment or supplies for a public work.*
10 **Sec. 4.** *“Contractor” means a person who:*
11 1. *Is licensed pursuant to the provisions of chapter 624 of NRS; and*
12 2. *Contracts with a public body to provide labor, materials or services*
13 *for a public work.*
14 *The term does not include a supplier or a person who provides day labor.*

1 **Sec. 5. “Progress bill” means a bill for a portion of the supplies,**
2 **work performed or services provided by a contractor, subcontractor or**
3 **supplier for a public work.**

4 **Sec. 6. “Progress payment” means the payment for a portion of the**
5 **supplies, work performed or services provided by a contractor,**
6 **subcontractor or supplier for a public work.**

7 **Sec. 7. “Retainage” means the amount authorized to be withheld**
8 **from a progress payment pursuant to the provisions of NRS 338.160,**
9 **338.170 or section 24 of this act.**

10 **Sec. 8. “Retainage bill” means a bill for the amount authorized to be**
11 **withheld from a progress payment pursuant to the provisions of NRS**
12 **338.160, 338.170 or section 24 of this act.**

13 **Sec. 9. “Retainage payment” means the payment of the amount**
14 **authorized to be withheld from a progress payment pursuant to the**
15 **provisions of NRS 338.160, 338.170 or section 24 of this act.**

16 **Sec. 10. “Subcontract” means a written contract entered into**
17 **between:**

- 18 **1. A contractor and a subcontractor or supplier; or**
19 **2. A subcontractor and another subcontractor or supplier,**
20 **for the provision of labor, materials, equipment or supplies for a public**
21 **work.**

22 **Sec. 11. “Subcontractor” means a person who:**

- 23 **1. Is licensed pursuant to the provisions of chapter 624 of NRS; and**
24 **2. Contracts with a contractor, another subcontractor or a supplier to**
25 **provide labor, materials or services for a public work.**

26 **The term does not include a supplier or a person who provides day labor.**

27 **Sec. 12. “Supplier” means a person who provides materials,**
28 **equipment or supplies for a public work.**

29 **Sec. 13. Interest that is required to be paid on:**

- 30 **1. The retainage accrues from the date the retainage is withheld until**
31 **the date the retainage is paid to the person from whom the retainage was**
32 **withheld.**

- 33 **2. The amount that is withheld from a progress payment that is not**
34 **retainage accrues from the date the progress payment is required to be**
35 **made pursuant to section 18, 21 or 26 of this act until the date the**
36 **amount withheld is paid to the person from whom it was withheld.**

37 **Sec. 14. 1. A public body shall pay or cause to be paid to a**
38 **contractor the retainage, the amount withheld from a progress payment**
39 **or retainage payment pursuant to section 15 of this act, and any interest**
40 **accrued thereon within 20 days after:**

- 41 **(a) The public body or a person acting with the authority of the public**
42 **body occupies or begins use of the public work or a portion of the public**
43 **work;**

1 **(b) The public work or a portion of the public work is available for its**
2 **intended use;**

3 **(c) A notice of completion for the public work or a portion of the**
4 **public work is recorded as provided in NRS 108.228; or**

5 **(d) One or more buildings of a public work is partially occupied by or**
6 **available to the public body,**
7 **whichever occurs first. The amount paid must be in the proportion that**
8 **the value of the portion of the public work that is used, occupied or**
9 **available for its intended use bears to the total value of the public work.**

10 **2. The contractor shall give notice of the availability of the public**
11 **work to the public body on or before the date he claims the public work**
12 **became available.**

13 **Sec. 15. 1. Except as otherwise provided in section 14 of this act, a**
14 **public body may withhold from a progress payment or retainage payment**
15 **an amount sufficient to pay the expenses the public body reasonably**
16 **expects to incur because:**

17 **(a) The work that must be performed by the contractor is not**
18 **progressing according to the schedule set forth in the contract;**

19 **(b) An uncorrected, material defect exists in the work performed by**
20 **the contractor that has been specified in writing by the public body, an**
21 **architect, an engineer or an inspector of a public body as not conforming**
22 **to the plans and specifications of the public work;**

23 **(c) A civil action concerning the work performed by the contractor on**
24 **the public work has been commenced;**

25 **(d) The work to be performed by the contractor cannot be completed**
26 **for the amount of the unpaid balance of the contract;**

27 **(e) The amount of the unpaid balance of the contract will be exceeded**
28 **if the public body pays for the supplies, materials and equipment as**
29 **provided for in subsection 2 of NRS 338.160; or**

30 **(f) The contractor has failed to provide the public body with a release**
31 **and waiver of the lien rights of the contractor. The release and waiver of**
32 **lien rights is conditional for the purpose of receiving payment and**
33 **becomes unconditional when the contractor receives payment.**

34 **2. A public body shall, within 20 days after it receives a progress bill**
35 **or retainage bill from a contractor, give written notice to the contractor**
36 **of any amount that will be withheld pursuant to this section. The written**
37 **notice must set forth:**

38 **(a) The amount of the progress payment or retainage payment that**
39 **will be withheld from the contractor;**

40 **(b) The reason the public body will withhold that amount; and**

1 (c) *The action that must be taken by the contractor to receive the*
2 *amount withheld.*

3 *The written notice must be accompanied by a notarized affidavit signed*
4 *by the public body and evidence of the reason set forth in the notice for*
5 *withholding the amount.*

6 3. *The public body shall pay to the contractor, within 20 days after*
7 *the contractor corrects the condition set forth pursuant to subsection 2 as*
8 *the reason for the withholding, the amount withheld by the public body*
9 *and any interest accrued pursuant to section 13 of this act.*

10 Sec. 16. 1. *If the labor commissioner believes that an employee of*
11 *a contractor has an enforceable claim for wages against the contractor,*
12 *the labor commissioner may require the public body to withhold from*
13 *any payment owed to the contractor pursuant to the provisions of NRS*
14 *338.160, 338.165 and 338.170 and sections 2 to 33, inclusive, of this act,*
15 *an amount of money equal to the amount claimed by the employee. The*
16 *public body shall pay the money to the labor commissioner.*

17 2. *If, after notice and a hearing conducted by the labor*
18 *commissioner, the claim is resolved in favor of:*

19 (a) *The employee, the labor commissioner shall pay the amount to the*
20 *employee.*

21 (b) *The contractor, the labor commissioner shall pay the amount to*
22 *the contractor.*

23 Sec. 17. *A contractor shall give to the public body written notice of*
24 *the amount that is withheld or will be withheld from a progress payment*
25 *to a subcontractor or supplier, other than retainage, before or at the time*
26 *the contractor submits a progress bill to the public body which would*
27 *otherwise include that amount. The notice must set forth the reason for*
28 *withholding that amount. The progress bill must not include the amount*
29 *that is withheld or will be withheld by the contractor from the*
30 *subcontractor or supplier.*

31 Sec. 18. 1. *If a public body receives:*

32 (a) *A progress bill or retainage bill, fails to give a contractor written*
33 *notice of any withholding in the manner set forth in subsection 2 of*
34 *section 15 of this act and does not pay the contractor within 20 days after*
35 *receiving the progress bill or retainage bill; or*

36 (b) *A contractor's written notice of correction of the condition set*
37 *forth pursuant to subsection 2 of section 15 of this act as the reason for*
38 *the withholding, a notarized affidavit signed by the contractor and*
39 *evidence that the correction has been made, and fails to, within 20 days*
40 *after receiving the notice of correction, affidavit and evidence:*

1 ***(1) Pay the amount of the progress payment or retainage payment***
2 ***that was withheld from the contractor; or***

3 ***(2) Object to the scope and manner of the correction in a written***
4 ***statement that sets forth the reason for the objection and is accompanied***
5 ***by a notarized affidavit signed by the public body,***
6 ***the public body shall pay to the contractor, in addition to the entire***
7 ***amount of the progress bill or retainage bill or any unpaid portion***
8 ***thereof, interest from the 20th day on the amount delayed, at a rate equal***
9 ***to the amount provided for in subsection 3 of NRS 338.160, until***
10 ***payment is made to the contractor.***

11 ***2. If the public body objects pursuant to subparagraph (2) of***
12 ***paragraph (b) of subsection 1, it shall pay to the contractor an amount***
13 ***that is proportionate to the value of the corrections to which the public***
14 ***body does not object.***

15 ***Sec. 19. Within 5 days after a public body receives a written request***
16 ***from a subcontractor or supplier of the contractor, the public body shall***
17 ***notify the subcontractor or supplier in writing of the following:***

18 ***1. The date the public body made a specified progress payment or***
19 ***retainage payment to a contractor;***

20 ***2. Whether the public body has paid the entire amount of a specified***
21 ***progress payment or retainage payment to the contractor; and***

22 ***3. The amount withheld by the public body from a specified progress***
23 ***payment or retainage payment to the contractor, if any.***

24 ***Sec. 20. 1. A contractor may withhold from a progress payment or***
25 ***retainage payment an amount sufficient to pay the expenses the***
26 ***contractor reasonably expects to incur because:***

27 ***(a) The work that must be performed by the subcontractor is not***
28 ***progressing according to the schedule set forth in the subcontract;***

29 ***(b) An uncorrected, material defect exists in the work performed by***
30 ***the subcontractor that has been specified in writing by the public body,***
31 ***contractor, an architect, an engineer or inspector of a public body as not***
32 ***conforming to the plans and specifications of the public work;***

33 ***(c) A civil action has been commenced concerning:***

34 ***(1) The work performed by the subcontractor on the public work; or***

35 ***(2) The supplies, materials and equipment provided by the supplier***
36 ***for the public work;***

37 ***(d) The work to be performed by the subcontractor cannot be***
38 ***completed for the amount of the unpaid balance of the subcontract;***

39 ***(e) The unpaid balance of the subcontract will be exceeded if the***
40 ***contractor pays for the supplies, materials and equipment as provided for***
41 ***in subsection 2 of NRS 338.165; or***

1 (f) *The subcontractor or supplier has failed to provide the contractor*
2 *with a release and waiver of the lien rights of the subcontractor or*
3 *supplier. The release and waiver of lien rights is conditional for the*
4 *purpose of receiving payment and becomes unconditional when the*
5 *subcontractor or supplier receives payment.*

6 2. *A contractor shall, within 10 days after he receives:*

7 (a) *A progress payment or retainage payment from the public body for*
8 *an amount that is less than the amount set forth in the applicable*
9 *progress bill or retainage bill; or*

10 (b) *A progress bill or retainage bill from a subcontractor or*
11 *supplier,*

12 *give written notice to the subcontractor or supplier of any amount that*
13 *will be withheld pursuant to this section.*

14 3. *The written notice must:*

15 (a) *Set forth:*

16 (1) *The amount of the progress payment or retainage payment that*
17 *will be withheld from the subcontractor or supplier;*

18 (2) *The reason the contractor will withhold that amount; and*

19 (3) *The action that must be taken by the subcontractor or supplier*
20 *to receive the amount withheld.*

21 (b) *Be accompanied by a notarized affidavit signed by the contractor*
22 *and evidence of the reason set forth in the notice for withholding the*
23 *amount.*

24 4. *The contractor shall pay to the subcontractor or supplier the*
25 *amount withheld by the public body and the contractor and any interest*
26 *accrued pursuant to section 13 of this act, within 10 days after:*

27 (a) *The subcontractor or supplier corrects the condition set forth*
28 *pursuant to subsection 2 as the reason for the withholding; or*

29 (b) *The public body pays to the contractor the amount withheld,*
30 *whichever occurs later.*

31 **Sec. 21. 1. If a contractor makes payment to a subcontractor or**
32 **supplier more than 10 days after the occurrence of any of the following**
33 **acts or omissions:**

34 (a) *The contractor fails to pay the subcontractor or supplier in*
35 *accordance with the provisions of subsection 1 of NRS 338.165;*

36 (b) *The contractor fails to give the subcontractor or supplier the*
37 *written notice of any withholding as required by subsection 2 of section*
38 *20 of this act; or*

39 (c) *The contractor receives a subcontractor's or supplier's written*
40 *notice of correction of the condition set forth pursuant to subsection 3 of*
41 *section 20 of this act as the reason for the withholding, a notarized*

1 *affidavit signed by the subcontractor or supplier and evidence that the*
2 *correction has been made, and fails to, within 10 days after receiving the*
3 *notice of correction, affidavit and evidence:*

4 *(1) Pay the amount of the progress payment or retainage payment*
5 *that was withheld and any interest accrued pursuant to section 13 of this*
6 *act; or*

7 *(2) Object to the scope and manner of the correction in a written*
8 *statement that sets forth the reason for the objection and is accompanied*
9 *by a notarized affidavit signed by the contractor,*
10 *the contractor shall pay to the subcontractor or supplier, in addition to*
11 *the entire amount of the progress bill or the retainage bill or any unpaid*
12 *portion thereof, interest from the 10th day on the amount delayed, at a*
13 *rate equal to the lowest daily prime rate at the three largest banks or*
14 *other financial institutions of the United States on the date the contract*
15 *was executed plus 2 percent, until payment is made to the subcontractor*
16 *or supplier.*

17 *2. If the contractor objects pursuant to subparagraph (2) of*
18 *paragraph (c) of subsection 1, the contractor shall pay to the*
19 *subcontractor or supplier an amount that is proportionate to the value of*
20 *the corrections to which the contractor does not object.*

21 *Sec. 22. Within 5 days after a contractor receives a written request*
22 *from a subcontractor or supplier of his subcontractor or supplier, he*
23 *shall notify the subcontractor or supplier of his subcontractor or supplier*
24 *in writing of the following:*

25 *1. The date the contractor made a specified progress payment or*
26 *retainage payment to his subcontractor or supplier;*

27 *2. Whether the contractor has paid the entire amount of a specified*
28 *progress payment or retainage payment to his subcontractor or supplier;*
29 *and*

30 *3. The amount withheld by the contractor from a specified progress*
31 *payment or retainage payment to his subcontractor or supplier, if any.*

32 *Sec. 23. Except as otherwise provided in sections 24, 25 and 26 of*
33 *this act:*

34 *1. Each subcontractor shall disburse money paid to him pursuant to*
35 *this chapter, including any interest which he receives, to his*
36 *subcontractors and suppliers within 10 days after he receives the money,*
37 *in direct proportion to the subcontractors' and suppliers' basis in the*
38 *progress bill or retainage bill and any accrued interest thereon.*

39 *2. A subcontractor shall make payments to the subcontractors and*
40 *suppliers equal to the payments paid by the contractor to him for the*
41 *supplies, materials and equipment that:*

1 (a) *Have been delivered and stored at the site of the public work by his*
2 *subcontractor or supplier for use in the construction, repair or*
3 *reconstruction of the public work;*

4 (b) *Have been delivered and stored at a location specified in the*
5 *subcontract by his subcontractor or supplier for use in the construction,*
6 *repair or reconstruction of the public work;*

7 (c) *Are in short supply; or*

8 (d) *Were specially made for the public work,*
9 *within 10 days after the subcontractor has received a progress payment*
10 *from the contractor for those supplies, materials and equipment.*

11 Sec. 24. 1. *If a subcontractor and another subcontractor or*
12 *supplier enter into a subcontract for a public work, the subcontractor*
13 *may withhold as retainage not more than 10 percent from the amount of*
14 *any progress payment due under a subcontract which is made before 50*
15 *percent of the work has been completed under the subcontract. The*
16 *subcontractor shall pay any additional progress payments due under the*
17 *subcontract without withholding any additional retainage if, in the*
18 *opinion of the subcontractor, satisfactory progress is being made in the*
19 *work under the subcontract. The payment must be equal to that paid by*
20 *the contractor to him for the work performed or supplies provided by his*
21 *subcontractor or supplier.*

22 2. *If the subcontractor receives a payment of interest earned on the*
23 *retainage or an amount withheld from a progress payment, he shall,*
24 *within 10 days after receiving the money, pay to each of his*
25 *subcontractors or suppliers that portion of the interest received from the*
26 *contractor which is attributable to the retainage or amount withheld from*
27 *a progress payment by him to his subcontractor or supplier.*

28 Sec. 25. 1. *A subcontractor may withhold from a progress payment*
29 *or retainage payment an amount sufficient to pay the expenses the*
30 *subcontractor reasonably expects to incur because:*

31 (a) *The work that must be performed by his subcontractor is not*
32 *progressing according to the schedule set forth in the subcontract;*

33 (b) *An uncorrected, material defect exists in the work performed by*
34 *his subcontractor that has been specified in writing by him, the public*
35 *body, contractor, an architect, an engineer or inspector of a public body*
36 *as not conforming to the plans and specifications of the public work;*

37 (c) *A civil action has been commenced concerning:*

38 (1) *The work performed by his subcontractor on the public work; or*

39 (2) *The supplies, materials and equipment provided by his supplier*
40 *for the public work;*

41 (d) *The work to be performed by his subcontractor cannot be*
42 *completed for the amount of the unpaid balance of the subcontract;*

1 (e) *The unpaid balance of the subcontract will be exceeded if he pays*
2 *for the supplies, materials and equipment as provided for in subsection 2*
3 *of section 23 of this act; or*

4 (f) *His subcontractor or supplier has failed to provide him with a*
5 *release and waiver of the lien rights of the subcontractor or supplier. The*
6 *release and waiver of lien rights is conditional for the purpose of*
7 *receiving payment and becomes unconditional when the subcontractor or*
8 *supplier receives payment.*

9 2. *A subcontractor shall, within 10 days after he receives:*

10 (a) *A progress payment or retainage payment from a contractor for an*
11 *amount that is less than the amount set forth in the applicable progress*
12 *bill or retainage bill; or*

13 (b) *A progress bill or retainage bill from his subcontractor or*
14 *supplier,*

15 *give written notice to his subcontractor or supplier of any amount that*
16 *will be withheld pursuant to this section.*

17 3. *The written notice must:*

18 (a) *Set forth:*

19 (1) *The amount of the progress payment or retainage payment that*
20 *will be withheld from his subcontractor or supplier;*

21 (2) *The reason the subcontractor will withhold that amount; and*

22 (3) *The action that must be taken by his subcontractor or supplier*
23 *to receive the amount withheld.*

24 (b) *Be accompanied by a notarized affidavit signed by the*
25 *subcontractor and evidence of the reason set forth in the notice for*
26 *withholding the amount.*

27 4. *The subcontractor shall pay to his subcontractor or supplier the*
28 *amount withheld by the contractor and any interest accrued pursuant to*
29 *section 13 of this act, within 10 days after:*

30 (a) *His subcontractor or supplier corrects the condition set forth*
31 *pursuant to subsection 2 as the reason for the withholding; or*

32 (b) *The contractor pays to him the amount withheld,*
33 *whichever occurs later.*

34 Sec. 26. 1. *If a subcontractor makes payment to his subcontractor*
35 *or supplier more than 10 days after the occurrence of any of the*
36 *following acts or omissions:*

37 (a) *The subcontractor fails to pay his subcontractor or supplier in*
38 *accordance with the provisions of subsection 1 of section 23 of this act;*

39 (b) *The subcontractor fails to give his subcontractor or supplier the*
40 *written notice of any withholding as required by subsection 2 of section*
41 *25 of this act; or*

1 (c) *The subcontractor receives a written notice of correction of the*
2 *condition set forth pursuant to subsection 3 of section 25 of this act as*
3 *the reason for the withholding from his subcontractor or supplier, a*
4 *notarized affidavit signed by his subcontractor or supplier, and evidence*
5 *that the correction has been made, and fails to, within 10 days after*
6 *receiving the notice of correction, affidavit and evidence:*

7 (1) *Pay the amount of the progress payment or retainage payment*
8 *that was withheld and any interest accrued pursuant to section 13 of this*
9 *act; or*

10 (2) *Object to the scope and manner of the correction in a written*
11 *statement that sets forth the reason for the objection and is accompanied*
12 *by a notarized affidavit signed by him,*
13 *the subcontractor shall pay to his subcontractor or supplier, in addition*
14 *to the entire amount of the progress bill or the retainage bill or any*
15 *unpaid portion thereof, interest from the 10th day on the amount*
16 *delayed, at a rate equal to the lowest daily prime rate at the three largest*
17 *banks or other financial institutions of the United States on the date the*
18 *contract was executed plus 2 percent, until payment is made to his*
19 *subcontractor or supplier.*

20 2. *If the subcontractor objects pursuant to subparagraph (2) of*
21 *paragraph (c) of subsection 1, the subcontractor shall pay to his*
22 *subcontractor or supplier an amount that is proportionate to the value of*
23 *the corrections to which he does not object.*

24 Sec. 27. *Within 5 days after a subcontractor receives a written*
25 *request from a subcontractor or supplier of his subcontractor or supplier,*
26 *he shall notify the subcontractor or supplier of his subcontractor or*
27 *supplier in writing of the following:*

28 1. *The date the subcontractor made a specified progress payment or*
29 *retainage payment to his subcontractor or supplier;*

30 2. *Whether the subcontractor has paid the entire amount of a*
31 *specified progress payment or retainage payment to his subcontractor or*
32 *supplier; and*

33 3. *The amount withheld by the subcontractor from a specified*
34 *progress payment or retainage payment to his subcontractor or supplier,*
35 *if any.*

36 Sec. 28. 1. *A contractor who believes that the amount withheld by*
37 *the public body is not justified or is excessive may apply to the district*
38 *court of the county where the public work or a part thereof is located for*
39 *an order directing the public body to appear before the court to show*
40 *cause why the relief requested should not be granted.*

41 2. *A subcontractor or supplier who believes that the amount withheld*
42 *by the contractor or subcontractor is not justified or is excessive may*
43 *apply to the district court of the county where the public work or a part*

1 *thereof is located for an order directing the contractor or subcontractor*
2 *to appear before the court to show cause why the relief requested should*
3 *not be granted.*

4 *3. The motion must:*

5 *(a) Set forth the grounds upon which relief is requested; and*

6 *(b) Be accompanied by a notarized affidavit signed by the petitioner or*
7 *his attorney that sets forth the facts upon which the motion is based.*

8 *4. If the court orders a hearing based upon the motion, the petitioner*
9 *shall serve the notice of the motion and the order of the court on the*
10 *respondent within 3 days after the court issues the order. The court shall*
11 *conduct the hearing not less than 10 days and not more than 20 days*
12 *after the court issues the order for a hearing.*

13 *5. The order for a hearing must include a statement that, if the*
14 *respondent fails to appear at the time and place of the hearing, the court*
15 *will order the respondent to pay to the petitioner:*

16 *(a) The entire amount that was withheld by the respondent;*

17 *(b) Interest on the amount that was withheld by the respondent; and*

18 *(c) The costs incurred by the petitioner, including, without limitation,*
19 *his attorney's fees.*

20 *6. If, when the motion is filed, there is a civil action pending between*
21 *the petitioner and the respondent, the motion must be consolidated into*
22 *the civil action.*

23 *7. If the court determines that:*

24 *(a) The amount withheld is not justified, the court shall order the*
25 *respondent to pay to the petitioner the amount that was withheld.*

26 *(b) The amount withheld is excessive, the court shall order the*
27 *respondent to pay to the petitioner an amount determined by the court.*

28 *(c) The amount withheld is justified, the court shall issue an order*
29 *approving the amount that was withheld by the respondent.*

30 *8. The proceedings conducted pursuant to the provisions of this*
31 *section do not affect any other rights or remedies provided by law.*

32 *Sec. 29. Each notice required pursuant to NRS 338.160, 338.165*
33 *and 338.170 and sections 2 to 33, inclusive, of this act must be:*

34 *1. Delivered personally; or*

35 *2. Sent by facsimile machine and delivered by registered or certified*
36 *mail.*

37 *Sec. 30. 1. A person may not waive or modify a right, obligation or*
38 *liability set forth in the provisions of NRS 338.160, 338.165 and 338.170*
39 *and sections 2 to 33, inclusive, of this act.*

40 *2. A condition, stipulation or provision in a contract or other*
41 *agreement that:*

1 ***(a) Requires a person to waive a right set forth in the provisions of***
2 ***NRS 338.160, 338.165 and 338.170 and sections 2 to 33, inclusive, of this***
3 ***act; or***

4 ***(b) Relieves a person of an obligation or liability imposed by the***
5 ***provisions of NRS 338.160, 338.165 and 338.170 and sections 2 to 33,***
6 ***inclusive, of this act,***
7 ***is void.***

8 **Sec. 31. 1. Each payment required pursuant to the provisions of**
9 ***NRS 338.160, 338.165 and 338.170 and sections 2 to 33, inclusive, of this***
10 ***act may be made by personal delivery, electronic transfer, or registered or***
11 ***certified mail.***

12 **2. A payment made by:**

13 ***(a) Electronic transfer shall be deemed made when the money is***
14 ***electronically transferred.***

15 ***(b) A check or draft described in NRS 104.3104 shall be deemed made***
16 ***when the check or draft is paid by the bank or other financial institution***
17 ***upon which it is drawn.***

18 **Sec. 32. The court shall award to a contractor, subcontractor or**
19 ***supplier who is the prevailing party in a civil action to recover an amount***
20 ***that was required to be paid to him pursuant to the provisions of NRS***
21 ***338.160, 338.165 and 338.170 and sections 2 to 33, inclusive, of this act***
22 ***his actual damages, costs and attorney's fees.***

23 **Sec. 33. The provisions of NRS 338.160, 338.165 and 338.170 and**
24 ***sections 2 to 33, inclusive, of this act do not impair or affect the rights of***
25 ***a contractor, subcontractor or supplier to whom any amount may be***
26 ***owed for work performed or materials, equipment or supplies furnished***
27 ***to maintain a civil action to recover that amount.***

28 **Sec. 34. NRS 338.010 is hereby amended to read as follows:**

29 **338.010 As used in this chapter:**

30 **1. “Day labor” means all cases where public bodies, their officers,**
31 ***agents or employees, hire, supervise and pay the wages thereof directly to a***
32 ***workman or workmen employed by them on public works by the day and***
33 ***not under a contract in writing.***

34 **2. “Eligible bidder” means a person who was found to be a responsible**
35 ***contractor by a public body which awarded a contract for a public work.***

36 **3. “Offense” means failing to:**

37 ***(a) Pay the prevailing wage required pursuant to this chapter;***

38 ***(b) Pay the contributions for unemployment compensation required***
39 ***pursuant to chapter 612 of NRS; or***

40 ***(c) Provide and secure compensation for employees required pursuant to***
41 ***chapters 616A to 617, inclusive, of NRS.***

1 4. "Public body" means the state, county, city, town, school district or
2 any public agency of this state or its political subdivisions sponsoring or
3 financing a public work.

4 5. "Public work" means any project for the new construction, repair or
5 reconstruction of:

6 (a) A project financed in whole or in part from public money for:

7 (1) Public buildings;

8 (2) Jails and prisons;

9 (3) Public roads;

10 (4) Public highways;

11 (5) Public streets and alleys;

12 (6) Public utilities which are financed in whole or in part by public
13 money;

14 (7) Publicly owned water mains and sewers;

15 (8) Public parks and playgrounds;

16 (9) Public convention facilities which are financed at least in part with
17 public funds; and

18 (10) All other publicly owned works and property whose cost as a
19 whole exceeds \$20,000. Each separate unit ~~which~~ **that** is a part of a
20 project is included in the cost of the project ~~for the purpose of~~
21 ~~determining~~ **to determine** whether a project meets ~~this~~ **that** threshold.

22 (b) A building for the University and Community College System of
23 Nevada of which 25 percent or more of the costs of the building as a whole
24 are paid from money appropriated by the state or federal money.

25 **(c) Private property that is leased to a public body whose cost as a**
26 **whole exceeds \$20,000. Each separate unit that is a part of a project is**
27 **included in the cost of the project to determine whether a project meets**
28 **that threshold.**

29 **(d) Public property that is leased to a person whose cost as a whole**
30 **exceeds \$20,000. Each separate unit that is part of a project is included**
31 **in the cost of the project to determine whether the project meets that**
32 **threshold.**

33 6. "Wages" means:

34 (a) The basic hourly rate of pay; and

35 (b) The amount of pension, health and welfare, vacation and holiday
36 pay, the cost of apprenticeship training or other similar programs or other
37 bona fide fringe benefits which are a benefit to the workman.

38 7. "Workman" means a skilled mechanic, skilled workman, semiskilled
39 mechanic, semiskilled workman or unskilled workman.

40 **Sec. 35.** NRS 338.160 is hereby amended to read as follows:

41 338.160 1. Except as **otherwise** provided in ~~subsection 5,~~ **sections**
42 **15 and 16 of this act**, a public body and its officers or agents awarding a
43 contract for ~~the construction, alteration or repair of public works shall~~

1 ~~authorize partial payments of the amount~~ **a public work shall pay or cause**
2 **to be paid to a contractor the progress payments** due under the contract ~~{at~~
3 ~~the end of each calendar month, or as soon thereafter as practicable, to the~~
4 ~~contractor if the contractor is satisfactorily performing the contract.}~~ **within**
5 **20 days after the date the public body receives a progress bill.** Not more
6 than 90 percent of the ~~{calculated value}~~ **amount** of any ~~{work}~~ **progress**
7 **payment** may be paid until 50 percent of the work required by the contract
8 has been performed. Thereafter the public body may pay any of the
9 remaining ~~{installments without retaining additional funds}~~ **progress**
10 **payments without withholding additional retainage** if, in the opinion of
11 the public body, satisfactory progress is being made in the work.

12 2. Except as **otherwise** provided in ~~{this section, the}~~ **section 15 of this**
13 **act, a public body shall** ~~{retain the amount withheld under any such~~
14 ~~contract until the contract is satisfactorily completed and finally accepted.~~
15 ~~When a project is sufficiently completed to be placed into service, the~~
16 ~~public body shall reduce the retained percentage and retain only such sum~~
17 ~~as it may determine to be sufficient to complete the contract.~~

18 ~~—3.— Except as otherwise provided in this subsection, the}~~ **pay or cause to**
19 **be paid to a contractor the actual cost of the supplies, materials and**
20 **equipment that:**

21 (a) **Have been delivered and stored at the site of the public work by the**
22 **contractor or a subcontractor or supplier for use in the construction,**
23 **repair or reconstruction of the public work;**

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

27 (c) **Are in short supply; or**

28 (d) **Were specially made for the public work,**
29 **within 20 days after the public body receives a progress bill from the**
30 **contractor for those supplies, materials or equipment.**

31 3. A public body shall **pay or cause to be paid** to the contractor at the
32 end of each quarter interest for the quarter on ~~{the}~~ **any amount withheld by**
33 **the public body pursuant to NRS 338.160, 338.165 and 338.170, and**
34 **sections 2 to 33, inclusive, of this act** at a rate equal to the rate quoted by
35 at least three financial institutions as the highest rate paid on a certificate of
36 deposit whose duration is approximately 90 days on the first day of the
37 quarter. If the amount due to a contractor pursuant to this subsection for
38 any quarter is less than \$500, the public body may hold the interest until:

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

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

(c) The amount withheld under the contract is due pursuant to
~~{subsection 4,}~~ **section 14 of this act,**
whichever occurs first.

~~{4. Except as provided in subsection 5, the amount withheld under any
such contract is due within a reasonable time following the filing of a notice
of completion as provided in NRS 108.228 or upon other proper evidence
of satisfactory completion of the contract.~~

~~—5. If the labor commissioner has reason to believe that an employee has
a valid and enforceable claim for wages against a contractor, he may
require the public body to withhold from any payment due the contractor
under this section and pay the labor commissioner instead, an amount equal
to the amount claimed by the employee. This amount must be paid to the
employee if the claim is resolved in his favor, otherwise it must be returned
to the public body for payment to the contractor.~~

Sec. 36. NRS 338.165 is hereby amended to read as follows:

338.165 ~~{1.}~~ Except as otherwise provided in NRS 338.170 ~~{, each}~~
and sections 20 and 21 of this act:

1. Each contractor shall disburse money paid to him pursuant to this
chapter, including any interest which he receives, to his subcontractors and
suppliers within ~~{15}~~ **10** days after he receives the money, in direct
proportion to the subcontractors' and suppliers' basis in the ~~{total contract
between the contractor and the owner.~~

~~—2. Any money which is payable to a subcontractor pursuant to this
section accrues interest at a rate equal to the lowest daily prime rate at the
three largest United States banking institutions on the date the contract is
executed plus 2 percent, from 15 days after the date on which the money
was received by the contractor until the date of payment.~~ **progress bill or
retainage bill and any accrued interest thereon.**

**2. A contractor shall make payments to the subcontractors and
suppliers equal to the payments paid by the public body to the contractor
for the supplies, materials and equipment that:**

**(a) Have been delivered and stored at the site of the public work by a
subcontractor or supplier for use in the construction, repair or
reconstruction of the public work;**

**(b) Have been delivered and stored at a location specified in the
contract by a subcontractor or supplier for use in the construction, repair
or reconstruction of the public work;**

(c) Are in short supply; or

**(d) Were specially made for the public work,
within 10 days after the contractor has received a progress payment from
the public body for those supplies, materials and equipment.**

1 **Sec. 37.** NRS 338.170 is hereby amended to read as follows:
2 338.170 1. ~~{When}~~ **If** a public body and a contractor enter into a
3 contract for ~~{the construction, alteration or repair of public works,}~~ **a public**
4 **work**, the contractor may withhold **as retainage not more than** 10 percent
5 from the amount of any ~~{partial}~~ **progress** payment **due** under a subcontract
6 which is made before 50 percent of the work has been completed under the
7 subcontract. Thereafter the contractor shall pay any additional
8 ~~{installments}~~ **progress payments** due under the subcontract without
9 ~~{retaining any additional funds}~~ **withholding any additional retainage** if, in
10 the opinion of the contractor, satisfactory progress is being made in the
11 work under the subcontract, and the payment must be equal to that paid by
12 the public body to the contractor for the work performed by the
13 subcontractor.
14 2. ~~{The contractor may retain the amount withheld under the~~
15 ~~subcontract until the subcontract is satisfactorily completed.~~
16 ~~—3.— The amount withheld under the subcontract is due within 15 days~~
17 ~~after the acceptance of the subcontract work by the contractor.~~
18 ~~—4.— Whenever}~~ **If** the contractor receives a payment of interest earned on
19 the **retainage or an** amount withheld from ~~{the contract,}~~ **a progress**
20 **payment**, he shall , within ~~{15}~~ **10** days **after he receives the money**, pay to
21 each subcontractor **or supplier** that portion of the interest received from the
22 ~~{state}~~ **public body** which is attributable to the **retainage or** amount ~~{of~~
23 ~~money}~~ withheld from **a progress payment by the contractor to** the
24 subcontractor ~~{.}~~ **or supplier.**

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