

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.

~

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 or*
12 *performs such work that he is not required to be licensed pursuant to*
13 *chapter 624 of NRS; and*
- 14 2. *Contracts with a public body to provide labor, materials or services*
15 *for* *a* *public* *work.*

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 or**
24 **performs such work that he is not required to be licensed pursuant to**
25 **chapter 624 of NRS; and**
26 2. **Contracts with a contractor, another subcontractor or a supplier to**
27 **provide labor, materials or services for a public work.**

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

30 **Sec. 12.3. A contractor shall submit a progress bill to the public**
31 **body monthly or more frequently if the provisions of the contract so**
32 **provide.**

33 **Sec. 12.5. The provisions of NRS 338.160, 338.165 and 338.170 and**
34 **sections 2 to 33, inclusive, of this act do not apply to a contract entered**
35 **into by the department of transportation pursuant to chapter 408 of NRS.**

36 **Sec. 13. Interest that is required to be paid on the retainage accrues**
37 **from the date the retainage is withheld until the date the retainage is paid**
38 **to the person from whom the retainage was withheld.**

39 **Sec. 14. Except with respect to any payment withheld pursuant to**
40 **section 15 of this act, if:**

- 41 1. **A public body or a person acting with the authority of the public**
42 **body occupies or begins use of a public work or a portion of a public**
43 **work;**

1 2. A notice of completion for a public work or a portion of a public
2 work is recorded as provided in NRS 108.228; or

3 3. A public body partially occupies one or more buildings of a public
4 work,
5 the public body shall pay or cause to be paid to the contractor any
6 outstanding payment due, including, without limitation, retainage, and
7 any interest accrued thereon within 30 days after whichever event
8 described in subsection 1, 2 or 3 occurs first. The amount paid must be in
9 the proportion that the value of the portion of the public work which is
10 used or occupied bears to the total value of the public work.

11 **Sec. 15. 1.** A public body may, but is not required to, withhold
12 from a progress payment or retainage payment an amount sufficient to
13 pay the expenses the public body reasonably expects to incur as a result
14 of the failure of the contractor to comply with the contract or applicable
15 building code, law or regulation.

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

20 (a) The amount of the progress payment or retainage payment that
21 will be withheld from the contractor; and

22 (b) A detailed explanation of the reason the public body will withhold
23 that amount, including, without limitation, a specific reference to the
24 provision or section of the contract, or any documents related thereto, or
25 the applicable building code, law or regulation with which the contractor
26 has failed to comply.

27 The written notice must be signed by an authorized agent of the public
28 body.

29 3. If the public body receives a written notice of the correction of the
30 condition that is the reason for the withholding, signed by an authorized
31 agent of the contractor, the public body shall pay the amount withheld by
32 the public body within 30 days after the public body receives the next
33 progress bill or retainage bill.

34 **Secs. 16 and 17.** (Deleted by amendment.)

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

36 (a) A progress bill or retainage bill, fails to give a contractor a written
37 notice of any withholding in the manner set forth in subsection 2 of
38 section 15 of this act and does not pay the contractor within 30 days after
39 receiving the progress bill or retainage bill; or

40 (b) A contractor's written notice of the correction of a condition set
41 forth pursuant to subsection 2 of section 15 of this act as the reason for
42 the withholding, signed by an authorized agent of the contractor, and
43 fails

to:

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

4 (2) Object to the scope and manner of the correction, within 30 days
5 after the public body receives the notice of correction, in a written
6 statement that sets forth the reason for the objection and is signed by an
7 authorized agent of the public body,
8 the public body shall pay to the contractor, in addition to the entire
9 amount of the progress bill or retainage bill or any unpaid portion
10 thereof, interest from the 30th day on the amount delayed, at a rate equal
11 to the amount provided for in subsection 3 of NRS 338.160, until
12 payment is made to the contractor.

13 2. If the public body objects pursuant to subparagraph (2) of
14 paragraph (b) of subsection 1, it shall pay to the contractor an amount
15 equal to the value of the corrections to which the public body does not
16 object.

17 **Sec. 19.** Within 5 working days after a public body receives a written
18 request from a subcontractor or supplier of the contractor with respect to
19 a contract which has not been fully performed, the public body shall
20 notify the subcontractor or supplier in writing of the following:

21 1. The date the public body made a specified progress payment or
22 retainage payment to a contractor;

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

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

27 **Sec. 20.** 1. A contractor may withhold from a progress payment or
28 retainage payment an amount sufficient to pay the expenses the
29 contractor reasonably expects to incur as a result of the failure of his
30 subcontractor or supplier to comply with the subcontract or applicable
31 building code, law or regulation.

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

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

36 (b) A progress bill or retainage bill from his subcontractor or
37 supplier,
38 give a written notice to his subcontractor or supplier of any amount that
39 will be withheld pursuant to this section.

40 3. The written notice must:

41 (a) Set forth:

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

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

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

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

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

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

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

18 (a) The contractor fails to pay his subcontractor or supplier in
19 accordance with the provisions of subsection 1 of NRS 338.165;

20 (b) The contractor fails to give his subcontractor or supplier the
21 written notice of any withholding as required by subsections 2 and 3 of
22 section 20 of this act; or

23 (c) The contractor receives a subcontractor's or supplier's written
24 notice of correction of the condition set forth pursuant to subsection 4 of
25 section 20 of this act as the reason for the withholding, signed by an
26 authorized agent of the subcontractor or supplier, and fails to:

27 (1) Pay the amount of the progress payment or retainage payment
28 that was withheld from his subcontractor or supplier within 10 days after
29 the contractor receives the next progress bill or retainage bill; or

30 (2) Object to the scope and manner of the correction, within 10 days
31 after receiving the written notice of correction, in a written statement that
32 sets forth the reason for the objection and is signed by an authorized
33 agent of the subcontractor, statement that sets forth the reason for the
34 objection and is accompanied by a notarized affidavit signed by the
35 contractor,

36 the contractor shall pay to the subcontractor or supplier, in addition to
37 the entire amount of the progress bill or the retainage bill or any unpaid
38 portion thereof, interest from the 10th day on the amount delayed, at a
39 rate equal to the lowest daily prime rate at the three largest banks or
40 other financial institutions of the United States on the date the contract
41 was executed plus 2 percent, until payment is made to the subcontractor
42 or

supplier.

1 2. If the contractor objects pursuant to subparagraph (2) of
2 paragraph (c) of subsection 1, the contractor shall pay to the
3 subcontractor or supplier an amount that is equal to the value of the
4 corrections to which the contractor does not object.

5 **Sec. 22.** Within 5 working days after a contractor receives a written
6 request from a subcontractor or supplier of his subcontractor or supplier
7 with respect to a subcontract which has not been fully performed, he
8 shall notify the subcontractor or supplier of his subcontractor or supplier
9 in writing of the following:

10 1. The date the contractor made a specified progress payment or
11 retainage payment to his subcontractor or supplier;

12 2. Whether the contractor has paid the entire amount of a specified
13 progress payment or retainage payment to his subcontractor or supplier;
14 and

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

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

19 1. Each subcontractor shall disburse money paid to him pursuant to
20 this chapter, including any interest which he receives, to his
21 subcontractors and suppliers within 10 days after he receives the money,
22 in direct proportion to the subcontractors' and suppliers' basis in the
23 progress bill or retainage bill and any accrued interest thereon.

24 2. A subcontractor shall make payments to his subcontractor or
25 supplier in an amount equal to that subcontractor's or supplier's basis in
26 the payments paid by the contractor to him for the supplies, materials
27 and equipment identified in the contract between the contractor and the
28 public body, or in the subcontract between the subcontractor or supplier
29 and the contractor, within 10 days after the subcontractor has received a
30 progress payment or retainage payment from the contractor for those
31 supplies, materials and equipment.

32 **Sec. 24.** 1. If a subcontractor and another subcontractor or
33 supplier enter into a subcontract for a public work, the subcontractor
34 may withhold as retainage not more than 10 percent from the amount of
35 any progress payment due under a subcontract which is made before 50
36 percent of the work has been completed under the subcontract. The
37 subcontractor shall pay any additional progress payments due under the
38 subcontract without withholding any additional retainage if, in the
39 opinion of the subcontractor, satisfactory progress is being made in the
40 work under the subcontract. The payment must be equal to that paid by
41 the contractor to him for the work performed or supplies provided by his
42 subcontractor or supplier.

1 2. If the subcontractor receives a payment of interest earned on the
2 retainage or an amount withheld from a progress payment, he shall,
3 within 10 days after receiving the money, pay to each of his
4 subcontractors or suppliers that portion of the interest received from the
5 contractor which is attributable to the retainage or amount withheld from
6 a progress payment by him to his subcontractor or supplier.

7 Sec. 25. 1. A subcontractor may withhold from a progress payment
8 or retainage payment an amount sufficient to pay the expenses the
9 subcontractor reasonably expects to incur as a result of the failure of his
10 subcontractor or supplier to comply with the subcontract or applicable
11 building code, law or regulation.

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

13 (a) A progress payment or retainage payment from a contractor for an
14 amount that is less than the amount set forth in the applicable progress
15 bill or retainage bill; or

16 (b) A progress bill or retainage bill from his subcontractor
17 or supplier,

18 give a written notice to his subcontractor or supplier of any amount that
19 will be withheld pursuant to this section.

20 3. The written notice must:

21 (a) Set forth:

22 (1) The amount of the progress payment or retainage payment that
23 will be withheld from his subcontractor or supplier; and

24 (2) A detailed explanation of the reason the subcontractor will
25 withhold that amount, including, without limitation, a specific reference
26 to the provision or section of the subcontract, or documents related
27 thereto, or applicable building code, law or regulation with which the
28 subcontractor or supplier has failed to comply; and

29 (b) Be signed by an authorized agent of the subcontractor.

30 4. The subcontractor shall pay to his subcontractor or supplier the
31 amount withheld by the public body, contractor or subcontractor within
32 10 days after:

33 (a) The subcontractor receives a written notice of the correction of the
34 condition that is the reason for the withholding, signed by an authorized
35 agent of his subcontractor or supplier; or

36 (b) The contractor pays to him the amount withheld,
37 whichever occurs later.

38 Sec. 26. 1. If a subcontractor makes payment to his subcontractor
39 or supplier more than 10 days after the occurrence of any of the
40 following acts or omissions:

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

3 (b) The subcontractor fails to give his subcontractor or supplier the
4 written notice of any withholding as required by subsections 2 and 3 of
5 section 25 of this act; or

6 (c) The subcontractor receives a written notice of the correction of a
7 condition set forth pursuant to subsection 4 of section 25 of this act as
8 the reason for the withholding from his subcontractor or supplier, signed
9 by an authorized agent of his subcontractor or supplier, and fails to:

10 (1) Pay the amount of the progress payment or retainage payment
11 that was withheld from his subcontractor or supplier within 10 days after
12 the subcontractor receives the subcontractor's or supplier's next progress
13 bill or retainage bill; or

14 (2) Object to the scope and manner of the correction, within 10 days
15 after receiving the written notice of correction, in a written statement that
16 sets forth the reason for the objection, signed by an authorized agent of
17 the subcontractor,

18 the subcontractor shall pay to his subcontractor or supplier, in addition
19 to the entire amount of the progress bill or the retainage bill or any
20 unpaid portion thereof, interest from the 10th day on the amount
21 delayed, at a rate equal to the lowest daily prime rate at the three largest
22 banks or other financial institutions of the United States on the date the
23 contract was executed plus 2 percent, until payment is made to his
24 subcontractor or supplier.

25 2. If the subcontractor objects pursuant to subparagraph (2) of
26 paragraph (c) of subsection 1, the subcontractor shall pay to his
27 subcontractor or supplier an amount that is equal to the value of the
28 corrections to which he does not object.

29 **Sec. 27.** Within 5 working days after a subcontractor receives a
30 written request from a subcontractor or supplier of his subcontractor or
31 supplier with respect to a subcontract which has not been fully
32 performed, he shall notify the subcontractor or supplier of his
33 subcontractor or supplier in writing of the following:

34 1. The date the subcontractor made a specified progress payment or
35 retainage payment to his subcontractor or supplier;

36 2. Whether the subcontractor has paid the entire amount of a
37 specified progress payment or retainage payment to his subcontractor or
38 supplier; and

39 3. The amount withheld by the subcontractor from a specified
40 progress payment or retainage payment to his subcontractor or supplier,
41 if any.

1 **Sec. 27.3.** *Any release or waiver required to be provided by a*
2 *contractor, subcontractor or supplier to receive a progress payment or*
3 *retainage payment must be:*

4 1. *Conditional for the purpose of receiving payment and shall be*
5 *deemed to become unconditional upon the receipt of the money due to*
6 *the contractor, subcontractor or supplier; and*

7 2. *Limited to claims related to the invoiced amount of the labor,*
8 *materials, equipment or supplies that are the subject of the progress bill*
9 *or retainage bill.*

10 **Sec. 27.5.** 1. *A contractor who believes that the public body has*
11 *failed to perform a duty to:*

12 (a) *Make a payment;*

13 (b) *Provide written notice of any withholding; or*

14 (c) *Provide information upon request relating to any payment with*
15 *respect to a contract which has not been fully performed,*
16 *pursuant to one or more of the provisions of NRS 338.160 or sections 14*
17 *to 19, inclusive, of this act in a timely manner may apply to the district*
18 *court of the county in which the public work or a part thereof is located*
19 *for an alternate writ of mandamus pursuant to NRS 34.150 to 34.310,*
20 *inclusive, to require the public body to perform the duty required*
21 *pursuant to such a provision.*

22 2. *The provisions of this section do not prevent a public body from*
23 *including a provision governing the payment of attorney's fees in a*
24 *contract into which it enters with a contractor for a public work.*

25 **Sec. 28.** 1. *A subcontractor or supplier who believes that the*
26 *amount withheld by the contractor or subcontractor is not justified or is*
27 *excessive may apply to the district court of the county where the public*
28 *work or a part thereof is located for an order directing the contractor or*
29 *subcontractor to appear before the court to show cause why the relief*
30 *requested should not be granted.*

31 2. *The motion must:*

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

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

35 3. *If the court orders a hearing based upon the motion, the petitioner*
36 *shall serve the notice of the motion and the order of the court on the*
37 *respondent within 3 days after the court issues the order. The court shall*
38 *conduct the hearing not less than 10 days and not more than 20 days*
39 *after the court issues the order for a hearing.*

40 4. *The order for a hearing must include a statement that, if the*
41 *respondent fails to appear at the time and place of the hearing, the court*
42 *will order the respondent to pay to the petitioner:*

1 (a) *The entire amount that was withheld by the respondent, or a*
2 *portion thereof;*

3 (b) *Interest on the amount that was withheld by the respondent, or a*
4 *portion thereof;*

5 (c) *The costs incurred by the petitioner, including, without limitation,*
6 *his attorney's fees; or*

7 (d) *Any combination of paragraphs (a), (b) and (c).*

8 5. *If, when the motion is filed, there is a civil action pending between*
9 *the petitioner and the respondent, the motion must be consolidated into*
10 *the civil action.*

11 6. *If the court determines that:*

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

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

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

18 7. *The proceedings conducted pursuant to the provisions of this*
19 *section do not affect any other rights or remedies provided by law or*
20 *contract.*

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

23 1. *Delivered personally; or*

24 2. *Sent by facsimile machine and delivered by regular or certified*
25 *mail.*

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

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

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

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

38 **Sec. 31.** *(Deleted by amendment.)*

39 **Sec. 32.** 1. *The court or arbitrator shall award to a contractor,*
40 *subcontractor or supplier who is the prevailing party in a civil action or*
41 *an arbitration proceeding to recover an amount that was required to be*

1 *paid to him pursuant to the provisions of NRS 338.160, 338.165 and*
2 *338.170 and sections 2 to 33, inclusive, of this act his reasonable costs*
3 *and attorney's fees.*

4 *2. The provisions of NRS 338.160, 338.165 and 338.170 and sections*
5 *2 to 33, inclusive, of this act do not prevent a public body from including*
6 *a provision governing attorney's fees in a contract for a public work.*

7 **Sec. 33.** *The provisions of NRS 338.160, 338.165 and 338.170 and*
8 *sections 2 to 33, inclusive, of this act do not impair or affect the rights of*
9 *a contractor, subcontractor or supplier to whom any amount may be*
10 *owed for work performed or materials, equipment or supplies furnished*
11 *to maintain a civil action or to submit any controversy arising under the*
12 *contract to arbitration to recover that amount.*

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

14 338.010 As used in this chapter:

15 1. "Day labor" means all cases where public bodies, their officers,
16 agents or employees, hire, supervise and pay the wages thereof directly to a
17 workman or workmen employed by them on public works by the day and
18 not under a contract in writing.

19 2. "Eligible bidder" means a person who was found to be a responsible
20 contractor by a public body which awarded a contract for a public work.

21 3. "Offense" means failing to:

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

23 (b) Pay the contributions for unemployment compensation required
24 pursuant to chapter 612 of NRS; or

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

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

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

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

33 (1) Public buildings;

34 (2) Jails and prisons;

35 (3) Public roads;

36 (4) Public highways;

37 (5) Public streets and alleys;

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

40 (7) Publicly owned water mains and sewers;

41 (8) Public parks and playgrounds;

42 (9) Public convention facilities which are financed at least in part with
43 public funds;

and

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

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

6. “Wages” means:

(a) The basic hourly rate of pay; and

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

7. “Workman” means a skilled mechanic, skilled workman, semiskilled mechanic, semiskilled workman or unskilled workman.

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

338.160 1. Except as *otherwise* provided in ~~{subsection 5,}~~ *section 15 of this act*, a public body and its officers or agents awarding a contract for ~~{the construction, alteration or repair of public works shall authorize partial payments of the amount}~~ *a public work shall pay or cause to be paid to a contractor the progress payments* due under the contract ~~{at the end of each calendar month, or as soon thereafter as practicable, to the contractor if the contractor is satisfactorily performing the contract.}~~ *within 30 days after the date the public body receives the progress bill or within a shorter period if the provisions of the contract so provide.* Not more than 90 percent of the ~~{calculated value}~~ *amount* of any ~~{work}~~ *progress payment* may be paid until 50 percent of the work required by the contract has been performed. Thereafter the public body may pay any of the remaining ~~{installments without retaining additional funds}~~ *progress payments without withholding additional retainage* if, in the opinion of the public body, satisfactory progress is being made in the work.

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

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

(a) *Are identified in the contract;*

(b) *Have been delivered and stored at a location, and in the time and manner, specified in a contract by the contractor or a subcontractor or*

1 *supplier for use in the construction, repair or reconstruction of the public*
2 *work; and*

3 *(c) Are in short supply or were specially made for the public work,*
4 *within 30 days after the public body receives a progress bill from the*
5 *contractor for those supplies, materials or equipment.*

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

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

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

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

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

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

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

33 338.165 ~~1.]~~ Except as otherwise provided in NRS 338.170 ~~[, each]~~
34 *and sections 20 and 21 of this act:*

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

40 ~~2.—Any money which is payable to a subcontractor pursuant to this~~
41 ~~section accrues interest at a rate equal to the lowest daily prime rate at the~~
42 ~~three largest United States banking institutions on the date the contract is~~
43 ~~executed plus 2 percent, from 15 days after the date on which the money~~

1 ~~was received by the contractor until the date of payment.]~~ *progress bill or*
2 *retainage bill and any accrued interest thereon.*

3 2. *A contractor shall make payments to his subcontractor or supplier*
4 *in an amount equal to that subcontractor's or supplier's basis in the*
5 *payments paid by the public body to the contractor for the supplies,*
6 *material and equipment identified in the contract between the contractor*
7 *and the public body, or between the subcontractor or supplier and the*
8 *contractor, within 10 days after the contractor has received a progress*
9 *payment or retainage payment from the public body for those supplies,*
10 *materials and equipment.*

11 **Sec. 37.** NRS 338.170 is hereby amended to read as follows:

12 338.170 1. ~~[When]~~ *If* a public body and a contractor enter into a
13 contract for ~~[the construction, alteration or repair of public works,]~~ *a public*
14 *work*, the contractor may withhold *as retainage not more than* 10 percent
15 from the amount of any ~~[partial]~~ *progress* payment *due* under a subcontract
16 which is made before 50 percent of the work has been completed under the
17 subcontract. Thereafter the contractor shall pay any additional
18 ~~[installments]~~ *progress payments* due under the subcontract without
19 ~~[retaining any additional funds]~~ *withholding any additional retainage* if, in
20 the opinion of the contractor, satisfactory progress is being made in the
21 work under the subcontract, and the payment must be equal to that paid by
22 the public body to the contractor for the work performed by the
23 subcontractor.

24 2. ~~[The contractor may retain the amount withheld under the~~
25 ~~subcontract until the subcontract is satisfactorily completed.~~

26 ~~—3.—The amount withheld under the subcontract is due within 15 days~~
27 ~~after the acceptance of the subcontract work by the contractor.~~

28 ~~—4.—Whenever]~~ *If* the contractor receives a payment of interest earned on
29 the *retainage or an* amount withheld from ~~[the contract,]~~ *a progress*
30 *payment*, he shall, within ~~[15]~~ *10* days *after he receives the money*, pay to
31 each subcontractor *or supplier* that portion of the interest received from the
32 ~~[state]~~ *public body* which is attributable to the *retainage or* amount ~~[of~~
33 ~~money]~~ withheld from *a progress payment by the contractor to* the
34 subcontractor ~~[.]~~ *or supplier.*

35 **Sec. 38.** The provisions of NRS 338.160, 338.165 and 338.170 and
36 sections 2 to 33, inclusive, of this act do not:

37 1. Create any right of action in a dispute between the public body and a
38 subcontractor or supplier; and

39 2. Effect the right of the parties to agree to submit any controversy
40 arising under the contract to arbitration.