

SENATE BILL NO. 301—COMMITTEE ON TRANSPORTATION

MARCH 3, 1999

Referred to Committee on Government Affairs

SUMMARY—Provides for prompt payment of subcontractors for construction and improvement of highways. (BDR 35-1522)

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 highways; providing for the prompt payment of subcontractors for the construction and improvement of highways; 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.** NRS 408.383 is hereby amended to read as follows:
2 408.383 1. Except as *otherwise* provided in ~~subsection 2,~~
3 *subsections 2 and 11*, the director may pay at the end of each calendar
4 month, or as soon thereafter as practicable, to any contractor satisfactorily
5 performing any highway improvement or construction as the work
6 progresses in full for the work as completed but not more than 95 percent
7 of the entire contract price. The progress estimates must be based upon
8 materials in place, or on the job site, or at a location approved by the
9 director, and invoiced, and labor expended thereon. The remaining 5
10 percent, but not more than \$50,000, must be retained until the entire
11 contract is completed satisfactorily and accepted by the director.
12 2. If the work in progress is being performed on a satisfactory basis,
13 the director may reduce the percentage retained if he finds that sufficient
14 reasons exist for additional payment and has obtained written approval
15 from every surety furnishing bonds for the work. Any remaining money
16 must be retained until the entire contract is completed satisfactorily and
17 accepted by the director.

1 3. If it becomes necessary for the department to take over the
2 completion of any highway contract or contracts, all of the amounts owing
3 the contractor, including the withheld percentage, must first be applied
4 toward the cost of completion of the contract or contracts. Any balance
5 remaining in the retained percentage after completion by the department is
6 payable to the contractor or the contractor's creditors.

7 4. Such retained percentage as may be due any contractor is due and
8 payable at the expiration of the 30-day period as provided in NRS 408.363
9 for filing of creditors' claims, and this retained percentage is due and
10 payable to the contractor at that time without regard to creditors' claims
11 filed with the department.

12 5. The contractor under any contract made or awarded by the
13 department, including any contract for the construction, improvement,
14 maintenance or repair of any road or highway or the appurtenances thereto,
15 may, from time to time, withdraw the whole or any portion of the sums
16 otherwise due to the contractor under the contract which are retained by the
17 department, pursuant to the terms of the contract, if the contractor deposits
18 with the director:

19 (a) United States treasury bonds, United States treasury notes, United
20 States treasury certificates of indebtedness or United States treasury bills;

21 (b) Bonds or notes of the State of Nevada; or

22 (c) General obligation bonds of any political subdivision of the State of
23 Nevada.

24 Certificates of deposit must be of a market value not exceeding par, at the
25 time of deposit, but at least equal in value to the amount so withdrawn from
26 payments retained under the contract.

27 6. The director has the power to enter into a contract or agreement with
28 any national bank, state bank, trust company or safe deposit company
29 located in the State of Nevada, designated by the contractor after notice to
30 the owner and surety, to provide for the custodial care and servicing of any
31 obligations deposited with him pursuant to this section. Such services
32 include the safekeeping of the obligations and the rendering of all services
33 required to effectuate the purposes of this section.

34 7. The director or any national bank, state bank, trust company or safe
35 deposit company located in the State of Nevada, designated by the
36 contractor to serve as custodian for the obligations pursuant to subsection
37 6, shall collect all interest or income when due on the obligations so
38 deposited and shall pay them, when and as collected, to the contractor who
39 deposited the obligation. If the deposit is in the form of coupon bonds, the
40 director shall deliver each coupon as it matures to the contractor.

1 8. Any amount deducted by the State of Nevada, or pursuant to the
2 terms of a contract, from the retained payments otherwise due to the
3 contractor thereunder, must be deducted first from that portion of the
4 retained payments for which no obligation has been substituted, then from
5 the proceeds of any deposited obligation. In the latter case, the contractor is
6 entitled to receive the interest, coupons or income only from those
7 obligations which remain on deposit after that amount has been deducted.

8 *9. A contractor shall disburse money paid to him pursuant to this*
9 *section, including any interest that the contractor receives, to his*
10 *subcontractors and suppliers within 15 days after he receives the money*
11 *in the proportion that the value of the work performed by each*
12 *subcontractor or the materials furnished by each supplier bears to the*
13 *total amount of the contract between the principal contractor and the*
14 *department.*

15 *10. Money payable to a subcontractor or supplier accrues interest at*
16 *a rate equal to the lowest daily prime rate at the three largest banks in the*
17 *United States on the date the subcontract or order for supplies was*
18 *executed plus 2 percent, from 15 days after the money was received by*
19 *the principal contractor until the date of payment.*

20 *11. If a contractor withholds more than 10 percent of a payment*
21 *required by subsection 9, the subcontractor or supplier may inform the*
22 *director in writing of the amount due. The director shall attempt to*
23 *resolve the dispute between the contractor and the subcontractor or*
24 *supplier within 20 working days after the date that the director receives*
25 *notice of the amount due. If the dispute is not resolved within 20 working*
26 *days after the date that the director receives notice of the amount due, the*
27 *contractor shall deposit the disputed amount in an escrow account that*
28 *bears interest. The contractor, subcontractor or supplier may pursue any*
29 *legal or equitable remedy to resolve the dispute over the amount due. The*
30 *director may not be made a party to any legal or equitable action brought*
31 *by the contractor, subcontractor or supplier.*