

ASSEMBLY BILL NO. 86—COMMITTEE ON TRANSPORTATION

(ON BEHALF OF UNION PACIFIC RAILROAD)

FEBRUARY 12, 2001

Referred to Committee on Transportation

SUMMARY—Prohibits director of department of transportation, in certain circumstances, from retaining portion of contract price of, or requiring bonds in connection with, certain contracts awarded to railroad companies. (BDR 35-762)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: 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; prohibiting the director of the department of transportation from retaining a portion of the contract price of, or requiring the furnishing of any bond in connection with, certain contracts awarded to railroad companies; providing an exception; 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 408 of NRS is hereby amended by adding thereto a  
2 new section to read as follows:

3 *If the director awards to a railroad company a contract for a project*  
4 *for the construction, reconstruction, improvement or maintenance of a*  
5 *highway and the project is located on property that is owned by or under*  
6 *the control of the railroad company, the director shall not, unless*  
7 *otherwise specified in the contract:*

8 1. *Require the railroad company to file or furnish a bond in*  
9 *connection with that contract; or*

10 2. *Retain any portion of the contract price in such a manner that the*  
11 *portion retained is paid to the railroad company only upon satisfactory*  
12 *completion and acceptance of the contract by the director.*

13 **Sec. 2.** NRS 408.357 is hereby amended to read as follows:

14 408.357 1. ~~Every~~ *Except as otherwise provided in section 1 of this*  
15 *act, every* contract must provide for the filing and furnishing of one or  
16 more bonds by the successful bidder, with corporate sureties approved by  
17 the department and authorized to do business in the state, in a sum equal to  
18 the full or total amount of the contract awarded. The bond or bonds must  
19 be performance bonds or labor and material bonds, or both.



- 1     2. The performance bonds must:
- 2       (a) Guarantee the faithful performance of the contract in accordance
- 3       with the plans, specifications and terms of the contract.
- 4       (b) Be maintained for 1 year after the date of completion of the contract.
- 5     3. The labor and material bonds must:
- 6       (a) Secure payment of state and local taxes relating to the contract,
- 7       premiums under the Nevada Industrial Insurance Act, contributions under
- 8       the Unemployment Compensation Law, and payment of claims for labor,
- 9       materials, provisions, implements, machinery, means of transportation or
- 10      supplies furnished upon or used for the performance of the contract; and
- 11      (b) Provide that if the contractor or his subcontractors, or assigns, fail to
- 12      pay for such taxes, premiums, contributions, labor and materials required
- 13      of, and used or consumed by, the contractor or his subcontractors, the
- 14      surety shall make the required payment in an amount not exceeding the
- 15      total sum specified in the bond together with interest at a rate of 8 percent
- 16      per annum.
- 17    All such bonds must be otherwise conditioned as required by law or the
- 18    department.
- 19    4. No person bidding for work or submitting proposals under the
- 20    provisions of this chapter may be accepted as surety on any bond.
- 21    5. Whenever the department has cause to believe that the sureties or
- 22    any of them have become insufficient, it may demand in writing of the
- 23    contractor such further bonds or additional sureties, in a total sum not
- 24    exceeding that originally required, as are necessary, considering the extent
- 25    of the work remaining to be done. Thereafter no payment may be made
- 26    upon the contract to the contractor or any assignee of the contractor until
- 27    the further bonds or additional sureties have been furnished.
- 28    6. The department in every contract may require the furnishing of
- 29    proof by the successful bidder of public liability and insurance coverage
- 30    for damage to property.
- 31    **Sec. 3.** NRS 408.367 is hereby amended to read as follows:
- 32      408.367 1. With the approval of the board, the director may receive
- 33      informal bids and award contracts for highway construction,
- 34      reconstruction, improvements, and maintenance on projects estimated to
- 35      cost not in excess of \$250,000.
- 36      2. Such informal bids must be submitted in accordance with due
- 37      advertisement thereof being published for at least one publication in any
- 38      newspaper or publication.
- 39      3. The department shall mail a copy of the bid invitation to all bidders
- 40      who are on record with the department as desiring to receive bid invitations
- 41      on projects estimated to cost not in excess of \$250,000.
- 42      4. ~~Contracts~~ *Except as otherwise provided in section 1 of this act,*
- 43      *contracts* awarded pursuant to the provisions of this section must be
- 44      accompanied by bonds and conditioned and executed in the name of the
- 45      State of Nevada, and must be signed by the director under the seal of the
- 46      department, and by the contracting party or parties. The form and legality
- 47      of those contracts must be approved by the attorney general or chief
- 48      counsel of the department.
- 49    **Sec. 4.** NRS 408.383 is hereby amended to read as follows:



1       408.383 1. Except as otherwise provided in subsections 2 and 11,  
2       *and section 1 of this act*, the director may pay at the end of each calendar  
3       month, or as soon thereafter as practicable, to any contractor satisfactorily  
4       performing any highway improvement or construction as the work  
5       progresses in full for the work as completed but not more than 95 percent  
6       of the entire contract price. The progress estimates must be based upon  
7       materials in place, or on the job site, or at a location approved by the  
8       director, and invoiced, and labor expended thereon. The remaining 5  
9       percent, but not more than \$50,000, must be retained until the entire  
10      contract is completed satisfactorily and accepted by the director.

11      2. If the work in progress is being performed on a satisfactory basis,  
12      the director may reduce the percentage retained if he finds that sufficient  
13      reasons exist for additional payment and has obtained written approval  
14      from every surety furnishing bonds for the work. Any remaining money  
15      must be retained until the entire contract is completed satisfactorily and  
16      accepted by the director.

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

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

28      5. The contractor under any contract made or awarded by the  
29      department, including any contract for the construction, improvement,  
30      maintenance or repair of any road or highway or the appurtenances thereto,  
31      may, from time to time, withdraw the whole or any portion of the sums  
32      otherwise due to the contractor under the contract which are retained by the  
33      department, pursuant to the terms of the contract, if the contractor deposits  
34      with the director:

35      (a) United States treasury bonds, United States treasury notes, United  
36      States treasury certificates of indebtedness or United States treasury bills;

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

38      (c) General obligation bonds of any political subdivision of the State of  
39      Nevada.

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

43      6. The director has the power to enter into a contract or agreement with  
44      any national bank, state bank, credit union, trust company or safe deposit  
45      company located in the State of Nevada, designated by the contractor after  
46      notice to the owner and surety, to provide for the custodial care and  
47      servicing of any obligations deposited with him pursuant to this section.  
48      Such services include the safekeeping of the obligations and the rendering  
49      of all services required to effectuate the purposes of this section.



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1 7. The director or any national bank, state bank, credit union, trust  
2 company or safe deposit company located in the State of Nevada,  
3 designated by the contractor to serve as custodian for the obligations  
4 pursuant to subsection 6, shall collect all interest or income when due on  
5 the obligations so deposited and shall pay them, when and as collected, to  
6 the contractor who deposited the obligation. If the deposit is in the form of  
7 coupon bonds, the director shall deliver each coupon as it matures to the  
8 contractor.

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

16 9. A contractor shall disburse money paid to him pursuant to this  
17 section, including any interest that the contractor receives, to his  
18 subcontractors and suppliers within 15 days after he receives the money in  
19 the proportion that the value of the work performed by each subcontractor  
20 or the materials furnished by each supplier bears to the total amount of the  
21 contract between the principal contractor and the department.

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

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

39 **Sec. 5.** NRS 408.3884 is hereby amended to read as follows:

40 408.3884 To qualify to participate in the design and construction of a  
41 project for the department, a design-build team must:

42 1. ~~Obtain~~ *Except as otherwise provided in section 1 of this act,*  
43 *obtain* a performance bond and payment bond as the department may  
44 require;

45 2. Obtain insurance covering general liability and liability for errors  
46 and omissions;

47 3. Not have been found liable for breach of contract with respect to a  
48 previous project, other than a breach for legitimate cause;



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1 4. Not have been disqualified from being awarded a contract pursuant  
2 to NRS 338.017, 338.1387, 338.145 or 408.333; and

3 5. Ensure that the members of the design-build team possess the  
4 licenses and certificates required to carry out the functions of their  
5 respective professions within this state.

6 **Sec. 6.** NRS 338.1373 is hereby amended to read as follows:

7 338.1373 1. A local government shall award a contract for the  
8 construction, alteration or repair of a public work pursuant to the  
9 provisions of:

10 (a) NRS 338.1375 to 338.1389, inclusive; or

11 (b) NRS 338.143, 338.145 and 338.147.

12 2. The provisions of NRS 338.1375 to 338.1383, inclusive, do not  
13 apply with respect to contracts for the construction, reconstruction,  
14 improvement and maintenance of highways that are awarded by the  
15 department of transportation pursuant to NRS 408.313 to 408.433,  
16 inclusive ~~H~~, *and section 1 of this act.*

17 **Sec. 7.** This act becomes effective upon passage and approval.

