

Assembly Bill No. 86—Committee on Transportation

CHAPTER.....

AN ACT relating to highways; providing an exception to the requirements relating to the retention of a portion of the contract price or the furnishing of a bond with respect to certain contracts awarded to railroad companies; and providing other matters properly relating thereto.

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

**Section 1.** Chapter 408 of NRS is hereby amended by adding thereto a new section to read as follows:

*If the director awards to a railroad company a contract for a project for the construction, reconstruction, improvement or maintenance of a highway and the project is located on property that is owned by or under the control of the railroad company, the contract may provide that the railroad company is not required to file, furnish or obtain a payment bond, performance bond or any other bond that would otherwise be required pursuant to the provisions of this chapter.*

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

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

2. The performance bonds must:

(a) Guarantee the faithful performance of the contract in accordance with the plans, specifications and terms of the contract.

(b) Be maintained for 1 year after the date of completion of the contract.

3. The labor and material bonds must:

(a) Secure payment of state and local taxes relating to the contract, premiums under the Nevada Industrial Insurance Act, contributions under the Unemployment Compensation Law, and payment of claims for labor, materials, provisions, implements, machinery, means of transportation or supplies furnished upon or used for the performance of the contract; and

(b) Provide that if the contractor or his subcontractors, or assigns, fail to pay for such taxes, premiums, contributions, labor and materials required of, and used or consumed by, the contractor or his subcontractors, the surety shall make the required payment in an amount not exceeding the total sum specified in the bond together with interest at a rate of 8 percent per annum.

All such bonds must be otherwise conditioned as required by law or the department.

4. No person bidding for work or submitting proposals under the provisions of this chapter may be accepted as surety on any bond.

5. Whenever the department has cause to believe that the sureties or any of them have become insufficient, it may demand in writing of the contractor such further bonds or additional sureties, in a total sum not exceeding that originally required, as are necessary, considering the extent of the work remaining to be done. Thereafter no payment may be made

upon the contract to the contractor or any assignee of the contractor until the further bonds or additional sureties have been furnished.

6. The department in every contract may require the furnishing of proof by the successful bidder of public liability and insurance coverage for damage to property.

**Sec. 3.** NRS 408.367 is hereby amended to read as follows:

408.367 1. With the approval of the board, the director may receive informal bids and award contracts for highway construction, reconstruction, improvements, and maintenance on projects estimated to cost not in excess of \$250,000.

2. Such informal bids must be submitted in accordance with due advertisement thereof being published for at least one publication in any newspaper or publication.

3. The department shall mail a copy of the bid invitation to all bidders who are on record with the department as desiring to receive bid invitations on projects estimated to cost not in excess of \$250,000.

4. ~~{Contracts}~~ *Except as otherwise provided in section 1 of this act, contracts* awarded pursuant to the provisions of this section must be accompanied by bonds and conditioned and executed in the name of the State of Nevada, and must be signed by the director under the seal of the department, and by the contracting party or parties. The form and legality of those contracts must be approved by the attorney general or chief counsel of the department.

**Sec. 4.** NRS 408.383 is hereby amended to read as follows:

408.383 1. Except as otherwise provided in subsections 2 ~~{and 11,}~~, *11 and 12*, the director may pay at the end of each calendar month, or as soon thereafter as practicable, to any contractor satisfactorily performing any highway improvement or construction as the work progresses in full for the work as completed but not more than 95 percent of the entire contract price. The progress estimates must be based upon materials in place, or on the job site, or at a location approved by the director, and invoiced, and labor expended thereon. The remaining 5 percent, but not more than \$50,000, must be retained until the entire contract is completed satisfactorily and accepted by the director.

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

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

4. Such retained percentage as may be due any contractor is due and payable at the expiration of the 30-day period as provided in NRS 408.363 for filing of creditors' claims, and this retained percentage is due and

payable to the contractor at that time without regard to creditors' claims filed with the department.

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

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

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

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

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

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

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

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

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

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

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

*12. If the director awards to a railroad company a contract for a project for the construction, reconstruction, improvement or maintenance of a highway and the project is located on property that is owned by or under the control of the railroad company, the director may agree in the contract not to retain any portion of the contract price.*

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

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

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

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

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

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

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

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

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

(a) NRS 338.1375 to 338.1389, inclusive; or

(b) NRS 338.143, 338.145 and 338.147.

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

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