

ASSEMBLY BILL NO. 356—ASSEMBLYMAN OCEGUERA

MARCH 22, 2005

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to contractors.
(BDR 28-1121)

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 contractors; prohibiting certain provisions in a public works contract or an agreement for a work of improvement; providing certain rights to a contractor or subcontractor who performs additional work under a public works contract or an agreement for a work of improvement; revising the provisions relating to the requirements for a release or waiver of a right that is required to receive a progress payment or retainage payment pursuant to a public works contract or an agreement for a work of improvement; limiting the retention amount that may be withheld pursuant to an agreement for a work of improvement; revising the provisions governing the rights and duties of owners, contractors and subcontractors if amounts due are unpaid or the required notice of a withholding is not given; 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 338 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

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

1. Makes the contract or other agreement subject to the laws of a state other than this State;



2. *Requires any litigation, arbitration or other process for resolution of disputes arising out of the contract or other agreement to occur in a state other than this State; or*

3. *Requires a contractor or subcontractor to waive a claim that the contractor or subcontractor may otherwise possess for damages for delays or an extension of time for delays incurred, for any delay which was unreasonable under the circumstances, not within the contemplation of the parties when the parties entered into the contract, and for which the contractor or subcontractor is not responsible,*
↳ is void.

Sec. 3. *A contractor or subcontractor who performs additional work under a contract, whether or not pursuant to a change order, is entitled to:*

1. *Submit a progress bill, and be paid, for such additional work.*

2. *A reasonable extension of time as the contractor or subcontractor may require to complete his duties under the contract.*

Sec. 4. NRS 338.490 is hereby amended to read as follows:

338.490 Any release or waiver required to be provided by a contractor, subcontractor or supplier to receive a progress payment or retainage payment must be ~~[-~~:

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

~~2. Limited to claims related to the invoiced amount of the labor, materials, equipment or supplies that are the subject of the progress bill or retainage bill.] in the appropriate form prescribed in subsection 4 of NRS 108.2457 based on the circumstances.~~

Sec. 5. Chapter 624 of NRS is hereby amended by adding thereto the provisions set forth as sections 6, 7 and 8 of this act.

Sec. 6. *“Owner” has the meaning ascribed to it in NRS 108.22148.*

Sec. 7. *“Prime contractor” means a contractor who enters into an oral or written agreement with an owner of property to provide work, materials or equipment for a work of improvement.*

Sec. 8. *“Work of improvement” has the meaning ascribed to it in NRS 108.22188.*

Sec. 9. NRS 624.606 is hereby amended to read as follows:

624.606 As used in NRS 624.606 to ~~[-624.640,-]~~ **624.630**, inclusive, *and sections 6, 7 and 8 of this act*, the words and terms defined in NRS 624.607, ~~[-and]~~ 624.608 *and sections 6, 7 and 8 of this act* have the meanings ascribed to them in those sections.



1 **Sec. 10.** NRS 624.607 is hereby amended to read as follows:

2 624.607 “Higher-tiered ~~{subcontractor}~~ **contractor**” means a
3 *prime contractor or a* subcontractor ~~{under a contract}~~ who has
4 entered into an oral or written ~~{subcontract with another}~~ **agreement**
5 *with a lower-tiered* subcontractor pursuant to which the ~~{other~~
6 ~~subcontractor}~~ *lower-tiered subcontractor* has agreed to ~~{perform}~~
7 *provide* any of the ~~{duties of the subcontractor under the oral or~~
8 ~~written subcontract.}~~ *work, materials or equipment related to an*
9 *oral or written agreement between an owner and a prime*
10 *contractor for a work of improvement.*

11 **Sec. 11.** NRS 624.608 is hereby amended to read as follows:

12 624.608 “Lower-tiered subcontractor” means a subcontractor
13 who has agreed in an oral or written ~~{contract to perform}~~
14 *agreement with a higher-tiered contractor pursuant to which the*
15 *lower-tiered subcontractor has agreed to provide* any of the ~~{duties~~
16 ~~of another subcontractor under another oral or written subcontract.}~~
17 *work, materials or equipment related to an oral or written*
18 *agreement between an owner and a prime contractor for a work of*
19 *improvement.*

20 **Sec. 12.** NRS 624.609 is hereby amended to read as follows:

21 624.609 1. Except as otherwise provided in subsections 2 and
22 4 and subsection 4 of NRS 624.622, if an owner of real property
23 enters into ~~{a written or oral contract}~~ **an agreement** with a *prime*
24 contractor for the performance of work *or the provision of material*
25 *or equipment* by the *prime* contractor, the owner must:

26 (a) Pay ~~{that}~~ *the prime* contractor on or before the date a
27 payment is due pursuant to a schedule for payments established in a
28 written ~~{contract;}~~ **agreement**; or

29 (b) If no such schedule is established or if the ~~{contract}~~
30 **agreement** is oral, pay the *prime* contractor within 21 days after the
31 date the *prime* contractor submits a request for payment.

32 2. If an owner has complied with subsection 3, the owner may:

33 (a) Withhold from any payment to be made to the *prime*
34 contractor:

35 (1) A retention amount that the owner is authorized to
36 withhold pursuant to the ~~{contract;}~~ **agreement**, *but the retention*
37 *amount may not exceed 10 percent of the payment that is required*
38 *pursuant to subsection 1;*

39 (2) An amount equal to the sum of the value of:

40 (I) Any work or labor that has not been performed or
41 materials or equipment that has not been furnished for which
42 payment is being sought; and

43 (II) Costs and expenses reasonably necessary to correct or
44 repair any work which is the subject of the request for payment and
45 which is not materially in compliance with the ~~{contract}~~ **agreement**



1 to the extent that such costs and expenses exceed 50 percent of the
2 *retention* amount withheld pursuant to subparagraph (1); and

3 (3) The amount the owner has paid or is required to pay
4 pursuant to an official notice from a state agency or employee
5 benefit trust fund, for which the owner is or may reasonably be
6 liable for the *prime* contractor or his *lower-tiered* subcontractors in
7 accordance with chapter 608, 612, 616A to 616D, inclusive, or 617
8 of NRS; and

9 (b) Require as a condition precedent to the payment of any
10 amount due, lien releases furnished by the *prime* contractor and his
11 *lower-tiered* subcontractors ~~{and suppliers. For purposes of this~~
12 ~~paragraph:~~

13 ~~—— (1) If the amount due is paid with a check or is not paid~~
14 ~~concurrently with the owner's receipt of the lien releases, the lien~~
15 ~~releases must be conditioned upon the check clearing the bank upon~~
16 ~~which it is drawn and the receipt of payment and shall be deemed to~~
17 ~~become unconditional upon the receipt of payment; and~~

18 ~~—— (2) The lien releases must be limited to the amount of the~~
19 ~~payment received.] in the appropriate form prescribed in~~
20 ~~subsection 4 of NRS 108.2457 based on the circumstances.~~

21 3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of
22 subsection 2 or paragraph (b) of subsection 2, an owner intends to
23 withhold any amount from a payment to be made to a *prime*
24 contractor, the owner must give, on or before the date the payment
25 is due, a written notice to the *prime* contractor of any amount that
26 will be withheld. The written notice must:

27 (a) Identify the amount of the request for payment that will be
28 withheld from the *prime* contractor;

29 (b) Give a reasonably detailed explanation of the reason the
30 owner will withhold that amount, including, without limitation, a
31 specific reference to the provision or section of the ~~{contract,}~~
32 *agreement* and any documents relating thereto, and the applicable
33 building code, law or regulation with which the *prime* contractor has
34 failed to comply; and

35 (c) Be signed by an authorized agent of the owner.

36 4. A *prime* contractor who receives a notice pursuant to
37 subsection 3 may *correct any condition and* provide written notice
38 to the owner of the correction of ~~{a condition described in the notice~~
39 ~~received pursuant to subsection 3.}~~ *the condition*. The notice of
40 correction must be sufficient to identify the scope and manner of the
41 correction of the condition and be signed by an authorized
42 representative of the *prime* contractor. If an owner receives a written
43 notice from the *prime* contractor of the correction of a condition
44 pursuant to this subsection, the owner must:



(a) Pay the amount withheld by the owner for that condition on or before the date the next payment is due the *prime* contractor; or

(b) Object to the scope and manner of the correction of the condition, on or before the date the next payment is due to the *prime* contractor, in a written statement which sets forth the reason for the objection and which complies with subsection 3. If the owner objects to the scope and manner of the correction of a condition, he shall nevertheless pay to the *prime* contractor, along with payment made pursuant to the *prime* contractor's next payment request, the amount withheld for the correction of conditions to which the owner no longer objects.

5. A prime contractor who performs additional work under an agreement, whether or not pursuant to a change order, is entitled to:

(a) Submit a progress bill, and be paid, for such additional work.

(b) Such a reasonable extension of time as the prime contractor may require to complete his duties under the agreement.

Sec. 13. NRS 624.610 is hereby amended to read as follows:

624.610 1. If ~~[an owner fails to:~~

~~—(a) Pay]:~~

(a) An owner fails to pay the prime contractor in the time and manner required by subsection 1 or 4 of NRS 624.609; ~~for~~

~~—(b) Give]~~

(b) An owner fails to give the prime contractor written notice of any withholding in the time and manner required by subsection 3 or 4 of NRS 624.609 ~~]; or~~

(c) A prime contractor believes in good faith that he unjustly received notice of a withholding pursuant to subsection 3 or 4 of NRS 624.609,

↳ *the prime contractor may stop work after giving written notice to the owner at least 10 days before stopping work. If a prime contractor stops work pursuant to this subsection, the prime contractor may terminate the ~~[contract]~~ agreement by giving written notice of termination to the owner after stopping work but at least 15 days before terminating the ~~[contract.]~~ agreement. If the prime contractor is paid the amount due before the date for termination of the ~~[contract]~~ agreement set forth in the written notice, the prime contractor shall not terminate the ~~[contract]~~ agreement and shall resume his work.*

2. If the owner through his own act or neglect, or through an act or neglect of his agent, excluding acts of God, floods, fires, labor disputes, strikes or reasonable adjustments to work schedules,



1 causes the work to be stopped for a period of 15 days or more, the
2 *prime* contractor may terminate the ~~{contract}~~ *agreement* if:

3 (a) The *prime* contractor gives written notice of his intent to
4 terminate to the owner at least 10 days before terminating the
5 ~~{contract;}~~ *agreement*; and

6 (b) The owner fails to allow work to resume within the time set
7 forth in the written notice given pursuant to paragraph (a).

8 3. If a *prime* contractor stops work pursuant to subsection 1,
9 the owner may terminate the ~~{contract}~~ *agreement* by giving the
10 *prime* contractor written notice of his intent to terminate at least
11 15 days before terminating the ~~{contract;}~~ *agreement*.

12 4. If the ~~{contract}~~ *agreement* is terminated pursuant to
13 subsection 2, or if the *prime* contractor stops work in accordance
14 with this section and the ~~{contract}~~ *agreement* is terminated
15 pursuant to subsection 1 or 3, the *prime* contractor is entitled to
16 recover from the owner payment in an amount found by a trier of
17 fact to be due the *prime* contractor, including, without limitation:

18 (a) The cost of all work, labor, materials, equipment and
19 services furnished by and through the *prime* contractor, including
20 any profit and overhead the *prime* contractor incurred or earned
21 through the date of termination;

22 (b) The profit that the *prime* contractor and his *lower-tiered*
23 subcontractors would have received if the ~~{contract}~~ *agreement* had
24 been performed in full;

25 (c) Interest at a rate equal to the *higher of*:

26 (1) *The* rate agreed upon in the ~~{contract or, if no interest rate~~
27 ~~is so provided, then interest at a}~~ *agreement*; or

28 (2) *The* rate equal to the prime rate at the largest bank in this
29 State, as determined by the Commissioner of Financial Institutions
30 on January 1 or July 1, as the case may be, immediately preceding:

31 ~~{(1)}~~ (I) The time the ~~{contract}~~ *agreement* was signed; or

32 ~~{(2)}~~ (II) If the ~~{contract}~~ *agreement* was oral, the time the
33 terms of the ~~{contract}~~ *agreement* were agreed to by the parties,

34 ➔ plus 2 percent; and

35 (d) The reasonable costs, including court *or arbitration* costs,
36 incurred by the *prime* contractor and his *lower-tiered* subcontractors
37 in collecting the amount due ~~{ }~~ *and any amount expended by the*
38 *prime contractor in defending himself or his lower-tiered*
39 *subcontractors against any claims brought by the owner.*

40 ➔ At any action brought to enforce the rights or obligations set forth
41 in this subsection, the trier of fact may award reasonable attorney's
42 fees to the *prime* contractor or, if the trier of fact determines that the
43 *prime* contractor stopped work or terminated the ~~{contract}~~
44 *agreement* without a reasonable ~~{cause;}~~ *basis in law or fact*, the
45 trier of fact may award reasonable attorney's fees to the owner.



1 5. If a *prime* contractor stops work pursuant to subsection 1,
2 each *lower-tiered* subcontractor with whom the *prime* contractor has
3 ~~contracted~~ entered into an agreement and who has not fully
4 performed under that ~~contract~~ agreement may also stop work
5 on the ~~project~~ work of improvement. If a *prime* contractor
6 terminates ~~a contract~~ an agreement pursuant to this section, all
7 such *lower-tiered* subcontractors may terminate their ~~contracts~~
8 agreements with the *prime* contractor.

9 6. The right of a *prime* contractor to stop work or terminate ~~a~~
10 ~~contract~~ an agreement pursuant to this section is in addition to all
11 other rights that the *prime* contractor may have at law or in equity
12 and does not impair or affect the right of a *prime* contractor to
13 maintain a civil action or to submit any controversy arising under
14 the ~~contract~~ agreement with the owner to arbitration.

15 7. No *prime* contractor or ~~this~~ *lower-tiered* subcontractors, or
16 their respective sureties, may be held liable for any delays or
17 damages that an owner may suffer as a result of the *prime* contractor
18 ~~-, subcontractor~~ or lower-tiered subcontractor stopping his work or
19 terminating ~~a contract~~ an agreement for reasonable cause and in
20 accordance with this section or NRS 624.626.

21 **Sec. 14.** NRS 624.620 is hereby amended to read as follows:

22 624.620 1. Except as otherwise provided in this section, any
23 money remaining unpaid for the construction of a work of
24 improvement is payable to the *prime* contractor within 30 days
25 after:

26 (a) Occupancy or use of the work of improvement by the owner
27 or by a person acting with the authority of the owner; or

28 (b) The availability of a work of improvement for its intended
29 use. The *prime* contractor must have given a written notice of
30 availability to the owner on or before the day on which he claims
31 that the work of improvement became available for use or
32 occupancy.

33 2. If the owner has complied with subsection 3, the owner may:

34 (a) Withhold payment for the amount of:

35 (1) Any work or labor that has not been performed or
36 materials or equipment that has not been furnished for which
37 payment is sought;

38 (2) The costs and expenses reasonably necessary to correct or
39 repair any work that is not materially in compliance with the
40 ~~contract~~ agreement to the extent that such costs and expenses
41 exceed 50 percent of the amount of retention being withheld
42 pursuant to the terms of the ~~contract~~ agreement; and

43 (3) Money the owner has paid or is required to pay pursuant
44 to an official notice from a state agency, or employee benefit trust
45 fund, for which the owner is liable for the *prime* contractor or his



1 *lower-tiered* subcontractors in accordance with chapter 608, 612,
2 616A to 616D, inclusive, or 617 of NRS.

3 (b) Require, as a condition precedent to the payment of any
4 unpaid amount under the ~~[construction contract,]~~ *agreement*, that
5 lien releases be furnished by the *prime* contractor's *lower-tiered*
6 subcontractors ~~[, suppliers or employees. For purposes of this~~
7 ~~paragraph:~~

8 ~~—— (1) If the amount due is paid with a check or is not paid~~
9 ~~concurrently with the owner's receipt of the lien releases, the lien~~
10 ~~releases must be conditioned upon the check clearing the bank upon~~
11 ~~which it is drawn and the receipt of payment and shall be deemed to~~
12 ~~become unconditional upon the receipt of payment; and~~

13 ~~—— (2) The lien releases must be limited to the amount of the~~
14 ~~payment received.] in the appropriate form prescribed in~~
15 *subsection 4 of NRS 108.2457 based on the circumstances.*

16 3. If, pursuant to paragraph (a) of subsection 2, an owner
17 intends to withhold any amount from a payment to be made to a
18 *prime* contractor, the owner must, on or before the date the payment
19 is due, give written notice to the *prime* contractor of any amount
20 that will be withheld. The written notice must:

21 (a) Identify the amount that will be withheld from the *prime*
22 contractor;

23 (b) Give a reasonably detailed explanation of the reason the
24 owner will withhold that amount, including, without limitation, a
25 specific reference to the provision or section of the ~~[contract,]~~
26 *agreement with the prime contractor*, and any documents relating
27 thereto, and the applicable building code, law or regulation with
28 which the *prime* contractor has failed to comply; and

29 (c) Be signed by an authorized agent of the owner.

30 4. A *prime* contractor who receives a notice pursuant to
31 subsection 3 may *correct any condition and* provide written notice
32 to the owner of the correction of ~~[a condition described in the notice~~
33 ~~received pursuant to subsection 3.] the condition.~~ The notice of
34 correction must be sufficient to identify the scope and manner of the
35 correction of the condition and be signed by an authorized
36 representative of the *prime* contractor. If an owner receives a written
37 notice from the *prime* contractor of the correction of a condition
38 described in an owner's notice of withholding pursuant to
39 subsection 3, the owner must, within 10 days after receipt of such
40 notice:

41 (a) Pay the amount withheld by the owner for that condition; or

42 (b) Object to the scope and manner of the correction of the
43 condition in a written statement that sets forth the reason for
44 the objection and complies with subsection 3. If the owner objects to
45 the scope and manner of the correction of a condition, he shall



1 nevertheless pay to the *prime* contractor, along with payment made
2 pursuant to the *prime* contractor's next payment request, the amount
3 withheld for the correction of conditions to which the owner no
4 longer objects.

5 5. The partial occupancy or availability of a building requires
6 payment in direct proportion to the value of the part of the building
7 which is partially occupied or partially available. For ~~{projects}~~
8 *works of improvement* which involve more than one building, each
9 building must be considered separately in determining the amount of
10 money which is payable to the *prime* contractor.

11 ~~{6. Unless otherwise provided in the construction contract, any~~
12 ~~money which is payable to a contractor pursuant to this section~~
13 ~~accrues interest at a rate equal to the lowest daily prime rate at the~~
14 ~~largest bank in this State, as determined by the Commissioner of~~
15 ~~Financial Institutions on January 1 or July 1, as the case may be,~~
16 ~~immediately preceding:~~

17 ~~—(a) The time the contract was signed; or~~
18 ~~—(b) If the contract was oral, the time the terms of the contract~~
19 ~~were agreed to by the parties,~~
20 ~~—plus 2 percent.~~

21 ~~7. This section does not apply to:~~

22 ~~—(a) Any residential building; or~~
23 ~~—(b) Public works.~~

24 ~~8. As used in this section, unless the context otherwise~~
25 ~~requires, "work of improvement" has the meaning ascribed to it in~~
26 ~~NRS 108.22188.]~~

27 **Sec. 15.** NRS 624.622 is hereby amended to read as follows:

28 624.622 1. A *prime* contractor shall provide a copy of any
29 notice given to an owner pursuant to subsection 1 or 2 of NRS
30 624.610 to each *lower-tiered* subcontractor with whom the *prime*
31 contractor has ~~{contracted who has not fully performed under that~~
32 ~~contract.}~~ *entered into an agreement.* Upon receipt of payment
33 pursuant to NRS 624.609, the *prime* contractor shall notify all such
34 *lower-tiered* subcontractors in writing of his receipt of payment.

35 2. A condition, stipulation or provision in ~~{a contract or other}~~
36 *an agreement* which ~~{requires}~~ :

37 (a) *Requires a prime contractor to waive any rights provided in*
38 ~~{this section, NRS 624.609 or 624.610,}~~ *NRS 624.606 to 624.630,*
39 *inclusive, or which limits those rights {;} ;*

40 (b) *Relieves an owner of any obligation or liability imposed*
41 *pursuant to NRS 624.606 to 624.630, inclusive; or*

42 (c) *Requires a prime contractor to waive a claim the prime*
43 *contractor may otherwise possess for damages for delays or an*
44 *extension of time for delays incurred, for any delay which was*
45 *unreasonable under the circumstances, not within the*



1 *contemplation of the parties at the time at which the parties*
2 *entered into the agreement and for which the prime contractor is*
3 *not responsible,*

4 ↪ is void.

5 3. All notices required pursuant to this section, NRS 624.609
6 and 624.610 must be:

7 (a) Delivered personally, in which case the *prime* contractor
8 shall obtain a notarized statement from the person who delivered the
9 notice as proof of delivery;

10 (b) Sent by facsimile and delivered by regular mail, in which
11 case the *prime* contractor shall retain proof of a successful
12 transmission of the facsimile;

13 (c) Delivered by certified mail; or

14 (d) Delivered in the manner provided for in the ~~contract.~~
15 *agreement.*

16 4. This section, NRS 624.609 and 624.610 do not apply to ~~a~~
17 ~~contract~~ *an agreement* between:

18 (a) A ~~residential~~ *prime* contractor and a natural person who
19 owns a single-family residence for the performance of qualified
20 services with respect to the residence; ~~and~~ *or*

21 (b) A public body and a *prime* contractor for the performance of
22 work and labor on a public work.

23 5. Within 5 days after an owner receives a written request
24 for the information set forth in paragraphs (a), (b) and (c) from a
25 *lower-tiered* subcontractor, ~~[with respect to a subcontract that has~~
26 ~~not been fully performed.]~~ the owner shall notify the *lower-tiered*
27 subcontractor in writing of the following:

28 (a) The date the owner made a specified payment to his *prime*
29 contractor;

30 (b) Whether the owner has paid the entire amount of a specified
31 payment to his *prime* contractor; and

32 (c) The amount withheld by the owner from a specified payment
33 to the *prime* contractor and the reason for the withholding.

34 **Sec. 16.** NRS 624.624 is hereby amended to read as follows:

35 624.624 1. Except as otherwise provided in this section, if a
36 *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ enters into:

37 (a) A written ~~[subcontract]~~ *agreement* with a *lower-tiered*
38 subcontractor that includes a schedule for payments, the *higher-*
39 *tiered* contractor ~~[or higher-tiered subcontractor]~~ shall pay the
40 *lower-tiered* subcontractor:

41 (1) On or before the date payment is due; or

42 (2) Within 10 days after the date the *higher-tiered* contractor
43 ~~[or higher-tiered subcontractor]~~ receives payment for all or a portion
44 of the work, ~~[labor, materials, equipment or services]~~ *materials or*



equipment described in a request for payment submitted by the *lower-tiered* subcontractor,

↳ whichever is earlier.

(b) A written ~~[subcontract]~~ *agreement with a lower-tiered subcontractor* that does not contain a schedule for payments, or ~~[a subcontract]~~ *an agreement* that is oral, the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ shall pay the *lower-tiered* subcontractor:

(1) Within 30 days after the date the *lower-tiered* subcontractor submits a request for payment; or

(2) Within 10 days after the date the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ receives payment for all or a portion of the work, ~~[labor, materials, equipment or services]~~ *materials or equipment* described in a request for payment submitted by the *lower-tiered* subcontractor,

↳ whichever is earlier.

2. If a *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ has complied with subsection 3, the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ may:

(a) Withhold from any payment owed to the *lower-tiered* subcontractor:

(1) A retention amount that the ~~[subcontractor]~~ *higher-tiered contractor* is authorized to withhold pursuant to the ~~[contract;]~~ *agreement, but the retention amount may not exceed 10 percent of the payment that is required pursuant to subsection 1;*

(2) An amount equal to the sum of the value of:

(I) Any work or labor that has not been performed or materials or equipment that has not been furnished for which payment is being sought; and

(II) Costs and expenses reasonably necessary to correct or repair any work which is the subject of the request for payment and which is not materially in compliance with the ~~[subcontract]~~ *agreement* to the extent that such costs and expenses exceed 50 percent of the *retention* amount withheld pursuant to subparagraph (1); and

(3) The amount the owner ~~[, contractor or higher-tiered subcontractor]~~ *or higher-tiered contractor* has paid or is required to pay pursuant to an official notice from a state agency or employee benefit trust fund, for which the owner ~~[, contractor or higher-tiered subcontractor]~~ *or higher-tiered contractor* is or may reasonably be liable for the *lower-tiered* subcontractor ~~[or his subcontractors]~~ in accordance with chapter 608, 612, 616A to 616D, inclusive, or 617 of NRS; and

(b) Require as a condition precedent to the payment of any amount due, lien releases furnished by the *lower-tiered*



subcontractor ~~[and his lower-tiered subcontractors and suppliers.~~
For purposes of this paragraph:

~~—— (1) If the amount due is paid with a check or is not paid concurrently with the contractor's or higher-tiered subcontractor's receipt of the lien releases, the lien releases must be conditioned upon the check clearing the bank upon which it is drawn and the receipt of payment and shall be deemed to become unconditional upon the receipt of payment; and~~

~~—— (2) The lien releases must be limited to the amount of the payment received.] in the appropriate form prescribed in subsection 4 of NRS 108.2457 based on the circumstances.~~

3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of subsection 2 or paragraph (b) of subsection 2, a *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ intends to withhold any amount from a payment to be made to a *lower-tiered* subcontractor, the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ must give, on or before the date the payment is due, a written notice to the *lower-tiered* subcontractor of any amount that will be withheld and give a copy of such notice to all ~~[reputed higher-tiered subcontractors,]~~ *higher-tiered* contractors and the owner. The written notice must:

(a) Identify the amount of the request for payment that will be withheld from the *lower-tiered* subcontractor;

(b) Give a reasonably detailed explanation of the reason the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ will withhold that amount, including, without limitation, a specific reference to the provision or section of the ~~[subcontract,]~~ *agreement with the lower-tiered subcontractor*, and any documents relating thereto, and the applicable building code, law or regulation with which the *lower-tiered* subcontractor has failed to comply; and

(c) Be signed by an authorized agent of the *higher-tiered* contractor. ~~[or higher-tiered subcontractor.]~~

4. A *lower-tiered* subcontractor who receives a notice pursuant to subsection 3 may *correct any condition and* provide written notice to the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ of the correction of ~~[a condition described in the notice received pursuant to subsection 3.]~~ *the condition*. The notice of correction must be sufficient to identify the scope and manner of the correction of the condition and be signed by an authorized representative of the *lower-tiered* subcontractor. If a *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ receives a written notice from the *lower-tiered* subcontractor of the correction of a condition pursuant to this subsection, the *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ must:



(a) Pay the amount withheld by the *higher-tiered* contractor ~~for higher-tiered subcontractor~~ for that condition on or before the date the next payment is due the *lower-tiered* subcontractor; or

(b) Object to the scope and manner of the correction of the condition, on or before the date the next payment is due to the *lower-tiered* subcontractor, in a written statement which sets forth the reason for the objection and which complies with subsection 3. If the *higher-tiered* contractor ~~for higher-tiered subcontractor~~ objects to the scope and manner of the correction of a condition, he shall nevertheless pay to the *lower-tiered* subcontractor, along with payment made pursuant to the *lower-tiered* subcontractor's next payment request, the amount withheld for the correction of conditions to which the *higher-tiered* contractor ~~for higher-tiered subcontractor~~ no longer objects.

5. A lower-tiered subcontractor who performs additional work under an agreement, whether or not pursuant to a change order, is entitled to:

(a) Submit a progress bill, and be paid, for such additional work.

(b) Such a reasonable extension of time as the lower-tiered subcontractor may require to complete his duties under the agreement.

Sec. 17. NRS 624.626 is hereby amended to read as follows:

624.626 1. If ~~a contractor or higher-tiered subcontractor fails to:~~

~~—(a) Pay]:~~

(a) A higher-tiered contractor fails to pay the lower-tiered subcontractor within the time provided in subsection 1 or 4 of NRS 624.624;

(b) ~~[Pay]~~ A higher-tiered contractor fails to pay the lower-tiered subcontractor within 45 days after the 25th day of the month in which the lower-tiered subcontractor submits a request for payment, even if the higher-tiered contractor ~~for higher-tiered subcontractor~~ has not been paid and the ~~[subcontract]~~ agreement contains a provision which requires the higher-tiered contractor ~~for higher-tiered subcontractor~~ to pay the lower-tiered subcontractor only if or when the higher-tiered contractor ~~for higher-tiered subcontractor~~ is paid; ~~for~~

~~—(c) Give]~~

(c) The higher-tiered contractor fails to give the lower-tiered subcontractor written notice of any withholding in the time and manner required by subsection 3 or 4 of NRS 624.624 ~~[]~~; or

(d) The lower-tiered subcontractor believes in good faith that he unjustly received notice of a withholding pursuant to



1 *subsection 3 or 4 of NRS 624.624 that is factually inaccurate in*
2 *relation to such condition,*

3 ➔ the *lower-tiered* subcontractor may stop work under the
4 ~~{subcontract}~~ *agreement* until payment is received if the *lower-*
5 *tiered* subcontractor gives written notice to the *higher-tiered*
6 contractor ~~{or higher tiered subcontractor}~~ at least 10 days before
7 stopping work.

8 2. If a *lower-tiered* subcontractor stops work pursuant to
9 paragraph (a) or (c) of subsection 1, the *lower-tiered* subcontractor
10 may terminate the ~~{subcontract}~~ *agreement with the higher-tiered*
11 *contractor* by giving written notice of the termination to the *higher-*
12 *tiered* contractor ~~{or higher tiered subcontractor}~~ after stopping
13 work but at least 15 days before the termination of the ~~{subcontract.}~~
14 *agreement*. If the *lower-tiered* subcontractor is paid the amount due
15 before the date for termination set forth in the written notice, the
16 *lower-tiered* subcontractor shall not terminate the ~~{subcontract}~~
17 *agreement* and shall resume work.

18 3. If an owner ~~{, contractor or higher tiered subcontractor}~~ *or a*
19 *higher-tiered contractor* through his own act or neglect, or through
20 an act or neglect of his agent, excluding acts of God, floods, fires,
21 labor disputes, strikes or reasonable adjustments in work schedules,
22 causes the work to be stopped for a period of 15 days or more, the
23 *lower-tiered* subcontractor may terminate the ~~{subcontract}~~
24 *agreement* if:

25 (a) The *lower-tiered* subcontractor gives written notice of his
26 intent to terminate to the *higher-tiered* contractor ~~{or higher tiered~~
27 ~~subcontractor}~~ at least 10 days before terminating the ~~{subcontract;}~~
28 *agreement*; and

29 (b) The *higher-tiered* contractor ~~{or higher tiered subcontractor}~~
30 fails to allow the *lower-tiered* subcontractor to resume the work
31 within the time set forth in the written notice given pursuant to
32 paragraph (a).

33 4. If a *lower-tiered* subcontractor stops work pursuant to
34 paragraph (a) or (c) of subsection 1, the *higher-tiered* contractor ~~{or~~
35 ~~higher tiered subcontractor}~~ may terminate the ~~{subcontract}~~
36 *agreement* by giving the *lower-tiered* subcontractor written notice
37 of his intent to terminate at least 15 days before terminating the
38 ~~{subcontract.}~~ *agreement*.

39 5. If the ~~{subcontract}~~ *agreement* is terminated pursuant to
40 subsection 3, or if the *lower-tiered* subcontractor stops work in
41 accordance with this section and the ~~{subcontract}~~ *agreement* is
42 terminated pursuant to subsection 2 or 4, the *lower-tiered*
43 subcontractor is entitled to recover from the *higher-tiered* contractor
44 ~~{or higher tiered subcontractor}~~ with whom he has ~~{contracted}~~



1 *entered into an agreement*, the amount found by a trier of fact to be
2 due the *lower-tiered* subcontractor, including, without limitation:

3 (a) The cost of all work, ~~labor, materials, equipment and~~
4 ~~services~~ *materials and equipment* furnished by and through the
5 *lower-tiered* subcontractor, including any profit and overhead the
6 *lower-tiered* subcontractor incurred or earned through the date of
7 termination;

8 (b) The profit that the *lower-tiered* subcontractor and his lower-
9 tiered subcontractors would have received if the ~~subcontract~~
10 *agreement* had been performed in full;

11 (c) Interest at a rate equal to the *higher of*:

12 (1) *The* rate agreed upon in the ~~subcontract or, if no interest~~
13 ~~rate is so provided,~~ *agreement; or*

14 (2) *The* interest at a rate equal to the prime rate at the largest
15 bank in this State, as determined by the Commissioner of Financial
16 Institutions on January 1 or July 1, as the case may be, immediately
17 preceding;

18 ~~{(1)}~~ (I) The time the ~~subcontract~~ *agreement* was signed;
19 or

20 ~~{(2)}~~ (II) If the ~~subcontract~~ *agreement* was oral, the time
21 the terms of the ~~subcontract~~ *agreement* were agreed upon by the
22 parties,

23 ➤ plus 2 percent; and

24 (d) The reasonable costs, including court costs ~~{,}~~ *or arbitration*
25 *costs*, incurred by the *lower-tiered* subcontractor and his lower-
26 tiered subcontractors in collecting the amount due.

27 ➤ At any action brought to enforce the rights or obligations set forth
28 in this subsection, the trier of fact ~~may~~ *shall* award reasonable
29 attorney's fees to the *lower-tiered* subcontractor or, if the trier of
30 fact determines that the *lower-tiered* subcontractor stopped work or
31 terminated the ~~contract~~ *agreement* without a reasonable ~~cause,~~
32 *basis in law or fact*, the trier of fact may award reasonable
33 attorney's fees to the *higher-tiered* contractor . ~~{or higher-tiered~~
34 ~~subcontractor.}~~

35 6. If a *lower-tiered* subcontractor stops work pursuant to this
36 section, each lower-tiered subcontractor with whom the *lower-tiered*
37 subcontractor has ~~contracted~~ *entered into an agreement and* who
38 has not fully performed under the ~~contract~~ *agreement* may also
39 stop work on the ~~project~~ *work of improvement*. If a *lower-tiered*
40 subcontractor terminates ~~a subcontract~~ *an agreement* pursuant to
41 this section, all ~~such~~ *of the* lower-tiered subcontractors *of the*
42 *lower-tiered subcontractor who terminated the agreement* may
43 terminate their ~~contracts~~ *agreements* with the *lower-tiered*
44 subcontractor.



7. The right of a *lower-tiered* subcontractor to stop work or terminate ~~[a subcontract]~~ *an agreement* pursuant to this section is in addition to all other rights that the *lower-tiered* subcontractor may have at law or in equity and does not impair or affect the right of a *lower-tiered* subcontractor to maintain a civil action or to submit any controversy arising under the ~~[contract]~~ *agreement* to arbitration.

8. No *lower-tiered* subcontractor or his lower-tiered subcontractors, or their respective sureties, may be held liable for any delays or damages that an owner ~~[, contractor or higher-tiered subcontractor]~~ *or higher-tiered contractor* may suffer as a result of the *lower-tiered* subcontractor or *his* lower-tiered ~~[subcontractor]~~ *subcontractors* stopping his work or terminating ~~[a subcontract for reasonable cause and]~~ *an agreement* in accordance with this section.

Sec. 18. NRS 624.628 is hereby amended to read as follows:

624.628 1. A *lower-tiered* subcontractor shall provide a copy of any notice given to a *higher-tiered* contractor ~~[or higher-tiered subcontractor]~~ pursuant to this section or NRS 624.624 or 624.626 to each lower-tiered subcontractor with whom the *lower-tiered* subcontractor has ~~[contracted]~~ *entered into an agreement and* who has not fully performed under the ~~[contract.]~~ *agreement*. Upon receipt of payment pursuant to NRS 624.624, the *lower-tiered* subcontractor shall notify all ~~[such]~~ *of his* lower-tiered subcontractors in writing of his receipt of payment.

2. A *lower-tiered* subcontractor shall provide a copy of any notice given to ~~[a contractor or higher-tiered subcontractor]~~ *a higher-tiered contractor* pursuant to this section or NRS 624.624 or 624.626 to ~~[each reputed higher-tiered subcontractor, contractor]~~ *all other higher-tiered contractors* and the owner, if known. The failure of a *lower-tiered* subcontractor to comply with this subsection does not invalidate any notice otherwise properly given.

3. A condition, stipulation or provision in a subcontract or other agreement which ~~[requires]~~ :

(a) *Requires* a *lower-tiered* subcontractor to waive any rights provided in this section or NRS 624.624 or 624.626, or which limits those rights ~~[;]~~ ;

(b) *Relieves a higher-tiered contractor of any obligation or liability imposed pursuant to NRS 624.606 to 624.630, inclusive; or*

(c) *Requires a lower-tiered subcontractor to waive a claim the lower-tiered subcontractor may otherwise possess for damages for delays or an extension of time for delays incurred, for any delay which was unreasonable under the circumstances, not within the contemplation of the parties at the time at which the parties*



1 *entered into the agreement, and for which the lower-tiered*
2 *subcontractor is not responsible,*

3 *↪ is void.*

4 4. All notices required pursuant to this section or NRS 624.624
5 or 624.626 must be:

6 (a) Delivered personally, in which case the *lower-tiered*
7 subcontractor shall obtain a notarized statement from the person
8 who delivered the notice as proof of delivery;

9 (b) Sent by facsimile and delivered by regular mail, in which
10 case the *lower-tiered* subcontractor shall retain proof of a successful
11 transmission of the facsimile;

12 (c) Delivered by certified mail; or

13 (d) Delivered in the manner provided in the ~~[contract-]~~
14 *agreement.*

15 5. Within 5 days after ~~[a]~~ *the owner or any higher-tiered*
16 contractor receives a written request for the information set forth in
17 paragraphs (a), (b) and (c) from a *lower-tiered* subcontractor with
18 respect to ~~[a-subcontract]~~ *an agreement* that has not been fully
19 performed, the *owner or higher-tiered* contractor shall notify the
20 *lower-tiered* subcontractor in writing of the following:

21 (a) The date the *owner or the higher-tiered* contractor made a
22 specified payment to his *prime contractor or lower-tiered*
23 subcontractor ~~[]~~, *as the case may be;*

24 (b) Whether the *owner or higher-tiered* contractor has paid his
25 *prime contractor or lower-tiered* subcontractor , *as the case may*
26 *be*, the entire amount of a specified payment; and

27 (c) The amount withheld by the *owner or higher-tiered*
28 contractor of a specified payment to his *prime contractor or lower-*
29 *tiered* subcontractor , *as the case may be*, and the reason for the
30 withholding.

31 **Sec. 19.** NRS 624.630 is hereby amended to read as follows:

32 624.630 ~~[1.—Each contractor shall disburse money paid to him~~
33 ~~pursuant to NRS 624.620, including any interest which he receives,~~
34 ~~to his subcontractors and suppliers within 15 days after he receives~~
35 ~~the money, in direct proportion to the subcontractors' and suppliers'~~
36 ~~basis in the total contract between the contractor and the owner.~~

37 ~~—2.]~~ Any money which is payable to a *prime contractor, higher-*
38 *tiered contractor or lower-tiered* subcontractor pursuant to ~~[this~~
39 ~~section]~~ *NRS 624.609, 624.620 or 624.624* accrues interest at a rate
40 equal to the ~~[lowest daily prime rate at the three largest United~~
41 ~~States banking institutions on the date the contract is executed]~~
42 *higher of:*

43 1. *The rate agreed upon in the agreement between the*
44 *parties; or*



- 1 2. *The rate equal to the prime rate at the largest bank in this*
2 *State, as determined by the Commissioner of Financial*
3 *Institutions on January 1 or July 1, as the case may be,*
4 *immediately preceding:*
5 (a) *The time at which the agreement was signed; or*
6 (b) *If the agreement was oral, the time at which the terms of*
7 *the agreement were agreed to by the parties,*
8 ➡ plus 2 percent, from 15 days after the date on which the money
9 was ~~received by the contractor~~ *due pursuant to NRS 624.609,*
10 *624.620 or 624.624* until the date of payment.
11 **Sec. 20.** This act becomes effective on July 1, 2005.



