

Amendment No. 375

Senate Amendment to Senate Bill No. 300

(BDR 54-1061)

Proposed by: Committee on Commerce and Labor**Amendment Box:** Replaces Amendment No. 177.**Resolves Conflicts with:** N/A**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION	Initial and Date	SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/> Lost <input type="checkbox"/>	_____
Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/> Not <input type="checkbox"/>	_____
Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/> Not <input type="checkbox"/>	_____

Amend the bill as a whole by renumbering sections 1 through 5 as sections 6 through 10 and adding new sections designated sections 1 through 5, following the enacting clause, to read as follows:

“Section 1. Chapter 624 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *“Owner” means an owner or lessee of real property who enters into an oral or written agreement with a prime contractor pursuant to which the prime contractor agrees to provide work, materials or equipment for a work of improvement.*

Sec. 3. *“Prime contractor” means a contractor who enters into an oral or written agreement with an owner pursuant to which the prime contractor agrees to provide work, materials or equipment for a work of improvement.*

TMC

Date: 4/18/2005

S.B. No. 300—Revises provisions governing regulation of contractors.



Sec. 4. “Work of improvement” has the meaning ascribed to it in NRS 108.22188.

Sec. 5. 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 2, 3 and 4 of this act*, the words and terms defined in NRS 624.607 and 624.608 *and sections 2, 3 and 4 of this act* have the meanings ascribed to them in those sections.”.

Amend section 1, page 1, by deleting lines 2 through 7 and inserting:

“624.607 “Higher-tiered ~~[subcontractor]~~ **contractor**” means a *prime contractor or subcontractor* ~~[under a contract]~~ who has entered into an oral or written ~~[subcontract with another]~~ *agreement with a lower-tiered* subcontractor pursuant to which the ~~[other]~~ *lower-tiered* subcontractor has agreed to ~~[perform any of the duties of the subcontractor under the oral or written subcontract.]~~ *provide work, materials or equipment for a work of improvement.*”.

Amend sec. 2, page 1, by deleting lines 9 through 12 and inserting:

“624.608 “Lower-tiered subcontractor” means a subcontractor who has agreed in an oral or written ~~[contract to perform any of the duties of another subcontractor under another oral or written subcontract.]~~ *agreement with a higher-tiered contractor to provide work, materials or equipment for a work of improvement.*”.

Amend sec. 3, page 2, by deleting lines 1 through 3 and inserting:

“enters into a written or oral ~~[contract]~~ *agreement* with a *prime* contractor for the performance of work *or the provision of materials or equipment* by the *prime* contractor, the owner must:

(a) Pay ~~[that]~~ *the prime* contractor on or before the date a payment is due”.

Amend sec. 3, page 2, by deleting line 5 and inserting:

“~~[contract;]~~ *agreement;* or”.

Amend sec. 3, page 2, line 6, by deleting “contract” and inserting “~~{contract,}~~ **agreement**”.

Amend sec. 3, page 2, by deleting line 7 and inserting:

“pay the **prime** contractor within 21 days after the date the **prime** contractor”.

Amend sec. 3, page 2, line 10, after “to the” by inserting “**prime**”.

Amend sec. 3, page 2, line 12, by deleting:

“contract ~~{;}~~,” and inserting “~~{contract;}~~ **agreement**,”.

Amend sec. 3, page 2, line 20, by deleting “contract” and inserting “~~{contract,}~~ **agreement**”.

Amend sec. 3, page 2, line 26, by deleting:

“the contractor or his subcontractors” and inserting:

“the **prime** contractor or his **lower-tiered** subcontractors”.

Amend sec. 3, page 2, line 29, after “by the” by inserting “**prime**”.

Amend sec. 3, page 2, line 30, before “subcontractors” by inserting “**lower-tiered**”.

Amend sec. 3, page 2, by deleting lines 41 and 42 and inserting:

“withhold any amount from a payment to be made to a **prime** contractor, the owner must”.

Amend sec. 3, page 2, line 44, by deleting:

“contractor of ~~{any}~~ **the additional**” and inserting:

“**prime** contractor of any”.

Amend sec. 3, page 3, line 2, after “the” by inserting “**prime**”.

Amend sec. 3, page 3, line 5, by deleting “contract,” and inserting “~~{contract,}~~ **agreement**,”.

Amend sec. 3, page 3, line 7, before “contractor” by inserting “**prime**”.

Amend sec. 3, page 3, by deleting line 9 and inserting:

“4. A **prime** contractor who receives a notice **of withholding** pursuant to subsection 3”.

Amend sec. 3, page 3, line 10, after “*condition*” by inserting:

“*or reason for the withholding*”.

Amend sec. 3, page 3, line 11, after “*correction*” by inserting:

“*of the condition or reason for the withholding*”.

Amend sec. 3, page 3, line 14, after “condition” by inserting:

“*or reason for the withholding*”.

Amend sec. 3, page 3, line 15, before “contractor.” by inserting “*prime*”.

Amend sec. 3, page 3, by deleting line 16 and inserting:

“written notice from the *prime* contractor of the correction of a condition *or reason for the withholding*”.

Amend sec. 3, page 3, line 19, before “contractor;” by inserting “*prime*”.

Amend sec. 3, page 3, line 21, by deleting “condition,” and inserting:

“condition ~~[;]~~ *or reason for the withholding*,”.

Amend sec. 3, page 3, line 22, before “contractor,” by inserting “*prime*”.

Amend sec. 3, page 3, line 24, by deleting “condition,” and inserting:

“condition ~~[;]~~ *or reason for the withholding*,”.

Amend sec. 3, page 3, line 25, before “contractor,” by inserting “*prime*”.

Amend sec. 3, page 3, line 26, before “contractor’s” by inserting “*prime*”.

Amend sec. 3, page 3, line 27, after “conditions” by inserting:

“*or reasons for the withholding*”.

Amend sec. 4, page 3, lines 35 and 38, before “contractor” by inserting “*prime*”.

Amend sec. 4, page 3, line 40, by deleting “*or*”.

Amend sec. 4, page 3, line 41, by deleting “**contractor**” and inserting:

“prime contractor in good faith and for reasonable cause”.

Amend sec. 4, page 3, by deleting line 43 and inserting:

“NRS 624.609; or

(d) Within 30 days after the date that a request for a change order is submitted by the prime contractor to the owner, the owner fails to:

(1) Issue the change order; or

(2) If the request for a change order is unreasonable, give written notice to the prime contractor of the reasons why the change order is unreasonable.”.

Amend sec. 4, page 3, line 44, before “contractor” by inserting “**prime**”.

Amend sec. 4, pages 3 and 4, by deleting line 45 on page 3 and lines 1 through 7 on page 4, and inserting:

“owner at least 10 days before stopping work.

2. If a **prime** contractor stops work pursuant to ~~[this subsection,]~~ **paragraph (a), (b) or (c) of subsection 1**, 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.]~~ 3. ***If an owner fails to issue a change order or give written notice to the prime contractor pursuant to the provisions of paragraph (d) of subsection 1:***

(a) The agreement price must be increased by the amount sought in the request for a change order;

(b) The time for performance must be extended by the amount sought in the request for a change order;

(c) The prime contractor may submit to the owner a bill or invoice for the labor, materials, equipment or services that are the subject of the request for a change order; and

(d) The owner shall pay the prime contractor for such labor, materials, equipment or services with the next payment made to the prime contractor.

4. If the owner through his own act or neglect, or through an”.

Amend sec. 4, page 4, by deleting line 11 and inserting:

“*prime* contractor may terminate the ~~{contract}~~ *agreement* if:”.

Amend sec. 4, page 4, line 12, before “contractor” by inserting “*prime*”.

Amend sec. 4, page 4, line 13, by deleting “contract;” and inserting “~~{contract;}~~ *agreement;*”.

Amend sec. 4, page 4, line 16, by deleting:

“3. If a” and inserting:

“~~{3.}~~ 5. If a *prime*”.

Amend sec. 4, page 4, line 17, by deleting:

“contract by giving the” and inserting:

“~~{contract}~~ *agreement* by giving the *prime*”.

Amend sec. 4, page 4, by deleting lines 19 through 22 and inserting:

“the ~~{contract.~~

—4.] *agreement.*

6. If the ~~[contract]~~ **agreement** is terminated pursuant to subsection ~~[2,]~~ **4**, or if the **prime** contractor stops work in accordance with this section and the ~~[contract]~~ **agreement** is terminated pursuant to subsection 1 or ~~[3,]~~ **5**, the **prime** contractor is”.

Amend sec. 4, page 4, lines 24 and 26, before “contractor,” by inserting “**prime**”.

Amend sec. 4, page 4, line 27, by deleting:

“contractor incurred or earned” and inserting:

“**prime** contractor ~~[incurred or]~~ **and his lower-tiered subcontractors and suppliers earned or incurred**”.

Amend sec. 4, pages 4 and 5, by deleting lines 29 through 45 on page 4 and lines 1 through 11 on page 5, and inserting:

“(b) The **balance of the** profit that the **prime** contractor and his **lower-tiered** subcontractors **and suppliers** would have received if the ~~[contract]~~ **agreement** had been performed in full;

(c) Interest ~~[at a rate equal to the rate agreed upon in the contract or, if no interest rate is so provided, then interest at a rate equal to the prime rate at the largest bank in this State, as determined by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be,~~
immediately preceding:

——— (1) ~~The time the contract was signed; or~~

——— (2) ~~If the contract was oral, the time the terms of the contract were agreed to by the parties,~~
➔ ~~plus 2 percent;]~~ **determined pursuant to NRS 624.630; and**

(d) The reasonable costs, including court **and arbitration** costs, incurred by the **prime** contractor and his **lower-tiered** subcontractors in collecting the amount due.

↪ ~~[At]~~ **In** any action brought to enforce the rights or obligations set forth in this subsection, the trier of fact may award reasonable attorney's fees to the **prime** contractor or, if the trier of fact determines that the **prime** contractor stopped work or terminated the ~~[contract]~~ **agreement** without reasonable cause, the trier of fact may award reasonable attorney's fees **and costs, including court and arbitration costs**, to the owner.

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

~~[6.]~~ 8. The right of a **prime** contractor to stop work or terminate ~~[a contract]~~ **an agreement**".

Amend sec. 4, page 5, lines 13 and 14, before "contractor" by inserting "**prime**".

Amend sec. 4, page 5, line 15, by deleting "contract" and inserting:

~~"[contract]~~ **agreement with the owner**".

Amend sec. 4, page 5, by deleting line 16 and inserting:

~~"[7.]~~ 9. No **prime** contractor or ~~[his]~~ **lower-tiered** subcontractors, or their respective".

Amend sec. 4, page 5, by deleting line 18 and inserting:

"may suffer as a result of the **prime** contractor ~~[, subcontractor]~~ or lower-".

Amend sec. 4, page 5, line 19, by deleting "a contract" and inserting:

~~"[a contract]~~ **an agreement**".

Amend sec. 5, page 5, lines 25 and 29, before "contractor" by inserting "**prime**".

Amend sec. 5, page 5, line 42, by deleting “contract” and inserting “[~~contract~~] **agreement**”.

Amend sec. 5, page 5, line 44, by deleting “contract;” and inserting “[~~contract~~] **agreement;**”.

Amend sec. 5, page 6, line 3, by deleting:

“contractor or his” and inserting:

“**prime** contractor or his **lower-tiered**”.

Amend sec. 5, page 6, line 7, by deleting “construction contract,” and inserting:

“[~~construction contract~~] **agreement,**”.

Amend sec. 5, page 6, by deleting lines 8 and 9 and inserting:

“furnished by the [~~contractor’s subcontractors, suppliers or employees. For the purposes of this paragraph:~~”.

Amend sec. 5, page 6, line 16, after “[~~received~~]” by inserting:

“**prime contractor or his lower-tiered subcontractors**”.

Amend sec. 5, page 6, line 20, before “contractor,” by inserting “**prime**”.

Amend sec. 5, page 6, line 21, before “contractor” by inserting “**prime**”.

Amend sec. 5, page 6, line 24, before “contractor;” by inserting “**prime**”.

Amend sec. 5, page 6, line 27, by deleting “contract,” and inserting:

“[~~contract~~] **agreement with the prime contractor,**”.

Amend sec. 5, page 6, lines 29 and 31, before “contractor” by inserting “**prime**”.

Amend sec. 5, page 6, by deleting lines 32 and 33 and inserting:

“may **correct any condition described in the notice and thereafter** provide written notice to the owner of the correction of [~~a condition described in the notice received pursuant to subsection 3.] **the condition.**~~”.

Amend sec. 5, page 6, lines 36 and 37, before “contractor” by inserting “*prime*”.

Amend sec. 5, page 7, line 1, before “contractor,” by inserting “*prime*”.

Amend sec. 5, page 7, line 2, before “contractor’s” by inserting “*prime*”.

Amend sec. 5, page 7, line 7, by deleting “projects” and inserting:

“~~[projects]~~ *works of improvement*”.

Amend sec. 5, page 7, by deleting lines 10 through 26 and inserting:

“the *prime* contractor.

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

~~—(a) The time the contract was signed; or~~

~~—(b) If the contract was oral, the time the terms of the contract were agreed to by the parties,~~

~~↪ plus 2 percent.~~

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

~~—(a) Any residential building; or~~

~~—(b) Public works.~~

~~—8.— As used in this section, unless the context otherwise requires, “work of improvement” has the meaning ascribed to it in NRS 108.22188.]”.~~

Amend the bill as a whole by renumbering sections 6 and 7 as sections 12 and 13 and adding a new section designated sec. 11, following sec. 5, to read as follows:

“**Sec. 11.** NRS 624.622 is hereby amended to read as follows:

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

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

(a) **Requires** a **prime** contractor to waive any rights provided in this section, NRS 624.609, ~~or~~ 624.610, **624.620 or 624.630**, or which limits those rights ~~;~~ ;

(b) **Relieves an owner of any obligation or liability imposed pursuant to NRS 624.606 to 624.630, inclusive, and sections 2, 3 and 4 of this act; or**

(c) **Requires a prime contractor to waive, release or extinguish a claim or right for damages or an extension of time that the prime contractor may otherwise possess or acquire as a result of delay, acceleration, disruption or an impact event that is unreasonable under the circumstances, that was not within the contemplation of the parties at the time the agreement was entered into, or for which the prime contractor is not responsible,**

↪ is against public policy and is void ~~and~~ and unenforceable.

3. All notices required pursuant to this section, NRS 624.609, ~~and~~ 624.610 **and 624.620** must be:

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

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

(c) Delivered by certified mail; or

(d) Delivered in the manner provided for in the ~~[contract.]~~ **agreement**.

4. This section, NRS 624.609, ~~[and]~~ 624.610, **624.620 and 624.622** do not apply to ~~a~~ **contract]** **an agreement** between:

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

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

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

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

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

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

Amend sec. 6, page 7, by deleting lines 29 through 45 and inserting:

“**higher-tiered** contractor ~~[or higher-tiered subcontractor]~~ enters into:

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

- (1) On or before the date payment is due; or
- (2) Within 10 days after the date the **higher-tiered** contractor ~~for 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.

(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 ~~for 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 ~~for higher-tiered subcontractor~~ receives payment for all or a portion of the”.

Amend sec. 6, page 8, line 2, before “subcontractor,” by inserting “**lower-tiered**”.

Amend sec. 6, page 8, by deleting lines 4 through 10 and inserting:

“2. If a **higher-tiered** contractor ~~for higher-tiered subcontractor~~ has complied with subsection 3, the **higher-tiered** contractor ~~for 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 withheld must not exceed 10 percent of the payment that is required pursuant to subsection 1;**”.

Amend sec. 6, page 8, line 17, by deleting “subcontract” and inserting “~~[subcontract]~~ **agreement**”.

Amend sec. 6, page 8, by deleting lines 20 through 24 and inserting:

“(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 **lower-tiered** subcontractors in”.

Amend sec. 6, page 8, by deleting lines 28 and 29 and inserting:

“amount due, lien releases furnished by the **lower-tiered** subcontractor ~~[and his lower-tiered subcontractors and suppliers. For purposes of this]~~”.

Amend sec. 6, pages 8 and 9, by deleting lines 40 through 45 on page 8 and line 1 on page 9, and inserting:

“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”.

Amend sec. 6, page 9, line 3, by deleting “subcontractors,” and inserting “[subcontractors,]”.

Amend sec. 6, page 9, line 6, before “subcontractor;” by inserting “**lower-tiered**”.

Amend sec. 6, page 9, by deleting line 8 and inserting:

“**higher-tiered** contractor ~~[or higher-tiered subcontractor]~~ will withhold that amount,”.

Amend sec. 6, page 9, line 10, by deleting “subcontract,” and inserting:

“~~[subcontract,]~~ **agreement with the lower-tiered subcontractor,**”.

Amend sec. 6, page 9, line 12, before “subcontractor” by inserting “**lower-tiered**”.

Amend sec. 6, page 9, by deleting lines 13 through 18 and inserting:

“(c) Be signed by an authorized agent of the **higher-tiered** contractor . ~~for higher-tiered subcontractor.~~”

4. A **lower-tiered** subcontractor who receives a notice *of withholding* pursuant to subsection 3 may *dispute in good faith and for reasonable cause the amount withheld or reasons for the withholding by providing written notice to the higher-tiered contractor, or may correct any condition or reason for the withholding described in the notice and thereafter* provide written notice to the **higher-tiered** contractor ~~for higher-tiered subcontractor~~ of the correction of ~~a condition described in the notice received pursuant to subsection 3.~~ *the condition or reason for the withholding.* The notice of correction”.

Amend sec. 6, page 9, by deleting lines 20 through 27 and inserting:

“of the condition *or reason for the withholding* and be signed by an authorized representative of the **lower-tiered** subcontractor. If a **higher-tiered** contractor ~~for higher-tiered subcontractor~~ receives a written notice from the **lower-tiered** subcontractor of the correction of a condition *or reason for the withholding* pursuant to this subsection, the **higher-tiered** contractor ~~for higher-tiered subcontractor must:~~ *shall:*

(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”.

Amend sec. 6, page 9, line 29, by deleting “condition,” and inserting:

“condition ~~and~~ *or reason for the withholding,*”.

Amend sec. 6, pages 9 and 10, by deleting lines 30 through 45 on page 9 and lines 1 through 11 on page 10, and inserting:

“**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 ~~[,]~~ **or reason for the withholding**, 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 **or reasons for the withholding** to which the **higher-tiered** contractor ~~for higher-tiered subcontractor~~ no longer objects.”.

Amend sec. 7, page 10, by deleting lines 13 through 26 and inserting:

“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) **A higher-tiered contractor fails to give** the **lower-tiered**”.

Amend sec. 7, page 10, line 28, by deleting “or”.

Amend sec. 7, pages 10 and 11, by deleting lines 29 through 45 on page 10 and line 1 on page 11, and inserting:

“(d) After receipt of a notice of withholding pursuant to subsection 3 or 4 of NRS 624.624, the lower-tiered subcontractor gives the higher-tiered contractor written notice pursuant to subsection 4 of NRS 624.624 and thereby disputes in good faith and for reasonable cause the amount withheld or the condition or reason for the withholding; or

(e) Within 30 days after the date that a request for a change order is submitted by the lower-tiered subcontractor to the higher-tiered contractor, the higher-tiered contractor fails to:

(1) Issue the change order; or

(2) If the request for a change order is unreasonable, give written notice to the lower-tiered subcontractor of the reasons why the change order is unreasonable,

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

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

3. *If a higher-tiered contractor fails to issue a change order or fails to give written notice pursuant to paragraph (e) of subsection 1:*

(a) *The agreement price must be increased by the amount sought in the request for a change order;*

(b) *The time for performance must be extended by the amount sought in the request for a change order;*

(c) *The lower-tiered subcontractor may submit to the higher-tiered contractor a bill or invoice for the labor, materials, equipment or services that are the subject of the request for a change order; and*

(d) *The higher-tiered contractor shall pay the lower-tiered subcontractor for such labor, materials, equipment or services with the next payment made to the lower-tiered subcontractor.*

4. If an owner ~~[, contractor or higher-tiered subcontractor]~~ *or higher-tiered contractor*".

Amend sec. 7, page 11, line 5, before "subcontractor" by inserting "**lower-tiered**".

Amend sec. 7, page 11, line 6, by deleting "subcontract" and inserting "~~[subcontract]~~ **agreement**".

Amend sec. 7, pages 11 and 12, by deleting lines 7 through 45 on page 11 and lines 1 through 22 on page 12, and inserting:

"(a) The **lower-tiered** subcontractor gives written notice of his intent to terminate to the **higher-tiered** contractor ~~[or higher-tiered subcontractor]~~ at least 10 days before terminating the ~~[subcontract;]~~ **agreement**; and

(b) The **higher-tiered** contractor ~~[or higher-tiered subcontractor]~~ fails to allow the **lower-tiered** subcontractor to resume the work within the time set forth in the written notice given pursuant to paragraph (a).

~~[4.]~~ 5. If a **lower-tiered** subcontractor stops work pursuant to paragraph (a) , ~~[or] (c) or (d)~~ of subsection 1, the **higher-tiered** contractor ~~[or higher-tiered subcontractor]~~ may terminate the ~~[subcontract]~~ **agreement** by giving the **lower-tiered** subcontractor written notice of his intent to terminate at least 15 days before terminating the ~~[subcontract]~~.

~~—5.] agreement.~~

6. If the ~~[subcontract]~~ **agreement** is terminated pursuant to subsection ~~[3.]~~ 4, or if the **lower-tiered** subcontractor stops work in accordance with this section and the ~~[subcontract]~~ **agreement** is terminated pursuant to subsection 2 or ~~[4.]~~ 5, the **lower-tiered** subcontractor is entitled to recover from the **higher-tiered** contractor ~~[or higher-tiered subcontractor]~~ with whom he has ~~[contracted]~~ **entered into an agreement** the amount found by a trier of fact to be due the **lower-tiered** subcontractor, including, without limitation:

(a) The cost of all work, labor, materials, equipment and services furnished by and through the **lower-tiered** subcontractor, including any ~~[profit and]~~ overhead the **lower-tiered** subcontractor **and his lower-tiered subcontractors and suppliers** incurred ~~[or]~~ **and any profit the lower-tiered subcontractor and his lower-tiered subcontractors and suppliers** earned through the date of termination;

(b) The **balance of the** profit that the **lower-tiered** subcontractor and his lower-tiered subcontractors **and suppliers** would have received if the ~~[subcontract]~~ **agreement** had been performed in full;

(c) Interest ~~[at a rate equal to the rate agreed upon in the subcontract or, if no interest rate is so provided, interest at a rate equal to the prime rate at the largest bank in this State, as determined by~~

the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding:

—— (1) The time the subcontract was signed; or

—— (2) If the subcontract was oral, the time the terms of the subcontract were agreed upon by the parties;

↪ plus 2 percent;] *determined pursuant to NRS 624.630*; and

(d) The reasonable costs, including court costs [;] *and arbitration costs*, incurred by the *lower-tiered* subcontractor and his lower-tiered subcontractors in collecting the amount due.

↪ [At] *In* any action brought to enforce the rights or obligations set forth in this subsection, the trier of fact [may] *shall* award reasonable attorney's fees to the *lower-tiered* subcontractor or, if the trier of fact determines that the *lower-tiered* subcontractor stopped work or terminated the [contract] *agreement* without reasonable cause, the trier of fact may award reasonable attorney's fees *and costs, including court costs and arbitration costs*, to the *higher-tiered* contractor . [or higher-tiered subcontractor.

——6.] 7. If a *lower-tiered* subcontractor stops work pursuant to this section, 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* may also stop work on the [project.] *work of improvement*. If a *lower-tiered* subcontractor terminates [a subcontract] *an agreement* pursuant to this section, all [such] *of his* lower-tiered subcontractors may terminate their [contracts] *agreements* with the *lower-tiered* subcontractor.

[7.] 8. 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.]~~ **9.** 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]~~ **contractor** may suffer as a result of the ~~[subcontractor or]~~ lower-tiered subcontractor stopping his work or terminating ~~[a subcontract]~~ **an agreement** for reasonable cause and in accordance with this section.”.

Amend the bill as a whole by adding new sections designated sections 14 through 17, following sec. 7, to read as follows:

“**Sec. 14.** 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 **higher-tiered** contractor ~~[or higher-tiered subcontractor]~~ 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]~~ **an** agreement which ~~[requires]~~ :

(a) **Requires** a **lower-tiered** subcontractor to waive any rights provided in this section or NRS 624.624 ~~[or 624.626,]~~, **624.626 or 624.630** or which limits those rights ~~[,]~~ ;

(b) **Relieves a higher-tiered contractor of any obligation or liability imposed pursuant to this section, NRS 624.624, 624.626 or 624.630; or**

(c) **Requires a lower-tiered subcontractor to waive, release or extinguish a claim or right for damages or an extension of time that the lower-tiered subcontractor may otherwise possess or acquire as a result of delay, acceleration, disruption or an impact event that is unreasonable under the circumstances, that was not within the contemplation of the parties at the time the agreement was entered into, or for which the lower-tiered subcontractor is not responsible, ↪ is against public policy and is void ~~[,]~~ and unenforceable.**

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

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

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

(c) Delivered by certified mail; or

(d) Delivered in the manner provided in the ~~[contract,]~~ **agreement between the higher-tiered contractor and the lower-tiered subcontractor.**

5. Within 5 days after ~~[a]~~ **the owner or any higher-tiered** contractor receives a written request for the information set forth in paragraphs (a), (b) and (c) from a **lower-tiered** subcontractor with

respect to ~~[a subcontract]~~ ***an agreement*** that has not been fully performed, the ***owner or higher-tiered*** contractor shall notify the ***lower-tiered*** subcontractor in writing of the following:

- (a) The date the ***owner or higher-tiered*** contractor made a specified payment to ~~[his]~~ ***the prime contractor or lower-tiered*** subcontractor;
- (b) Whether the ***owner or higher-tiered*** contractor has paid ~~[his]~~ ***the prime contractor or lower-tiered*** subcontractor the entire amount of a specified payment; and
- (c) The amount withheld by the ***owner or higher-tiered*** contractor of a specified payment to his ***prime contractor or lower-tiered*** subcontractor and the reason for the withholding.

Sec. 15. NRS 624.630 is hereby amended to read as follows:

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

~~—2.]~~ Any money which is payable to a ***prime contractor, higher-tiered contractor or lower-tiered*** subcontractor pursuant to ~~[this section]~~ ***NRS 624.609, 624.610, 624.620, 624.624, 624.626 or 624.628*** accrues interest ***from the time it becomes due*** at a rate equal to the ~~[lowest daily prime rate at the three largest United States banking institutions on the date the contract is executed plus 2 percent, from 15 days after the date on which the money was received by the contractor]~~ ***rate agreed upon in the agreement between the parties or, if no interest rate is so provided, then interest at a rate equal to the prime rate at the largest bank in this State, as determined by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding:***

1. ***The time at which the agreement was signed; or***

2. If the agreement was oral, the time at which the terms of the agreement were agreed to by the parties,

↪ *plus 4 percent* until the date of payment.

Sec. 16. NRS 99.040 is hereby amended to read as follows:

99.040 1. When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, in the following cases:

(a) Upon contracts, express or implied, other than book accounts.

(b) Upon the settlement of book or store accounts from the day on which the balance is ascertained.

(c) Upon money received to the use and benefit of another and detained without his consent.

(d) Upon wages or salary, if it is unpaid when due, after demand therefor has been made.

↪ The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

2. The provisions of this section do not apply to money owed to:

~~—(a) For the construction of a work of improvement pursuant to NRS 624.620; or~~

~~—(b) By a contractor to his subcontractor]~~ pursuant to *chapter 624 of NRS which is governed by the provisions of* NRS 624.630.

Sec. 17. This act becomes effective on July 1, 2005.”.