

SENATE BILL NO. 300—COMMITTEE ON GOVERNMENT AFFAIRS

MARCH 24, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing regulation of contractors. (BDR 54-1061)

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; limiting the amount of money that may be withheld as a retention amount under certain contracts and subcontracts; revising provisions governing when contractors and subcontractors may stop work; revising provisions governing payments to contractors and subcontractors; and providing other matters properly relating thereto.

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

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

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

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

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



1 **Sec. 5.** NRS 624.606 is hereby amended to read as follows:
2 624.606 As used in NRS 624.606 to ~~[624.640,]~~ **624.630,**
3 inclusive, *and sections 2, 3 and 4 of this act*, the words and terms
4 defined in NRS 624.607 and 624.608 *and sections 2, 3 and 4 of this*
5 *act* have the meanings ascribed to them in those sections.

6 **Sec. 6.** NRS 624.607 is hereby amended to read as follows:
7 624.607 “Higher-tiered ~~[subcontractor”]~~ **contractor”** means a
8 **prime contractor or** subcontractor ~~[under a contract]~~ who has
9 entered into an oral or written ~~[subcontract with another]~~ **agreement**
10 **with a lower-tiered** subcontractor pursuant to which the ~~[other]~~
11 **lower-tiered** subcontractor has agreed to ~~[perform any of the duties~~
12 ~~of the subcontractor under the oral or written subcontract.]~~ **provide**
13 **work, materials or equipment for a work of improvement.**

14 **Sec. 7.** NRS 624.608 is hereby amended to read as follows:
15 624.608 “Lower-tiered subcontractor” means a subcontractor
16 who has agreed in an oral or written ~~[contract to perform any of the~~
17 ~~duties of another subcontractor under another oral or written~~
18 ~~subcontract.]~~ **agreement with a higher-tiered contractor to provide**
19 **work, materials or equipment for a work of improvement.**

20 **Sec. 8.** 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]~~ **agreement** with a **prime**
24 contractor for the performance of work *or the provision of*
25 **materials 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 , *if* the owner is authorized to
36 withhold **a retention amount** pursuant to the ~~[contract;]~~ **agreement,**
37 **must not exceed 10 percent of the amount of the payment to be**
38 **made;**

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 ~~[;]~~ , **unless the agreement otherwise allows**
43 **or requires such a payment to be made;** and

44 (II) Costs and expenses reasonably necessary to correct or
45 repair any work which is the subject of the request for payment and



1 which is not materially in compliance with the ~~{contract}~~ *agreement*
2 to the extent that such costs and expenses exceed 50 percent of the
3 *retention* amount withheld pursuant to subparagraph (1); and

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

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

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

19 ~~—— (2) The lien releases must be limited to the amount of the~~
20 ~~payment received.] in accordance with the provisions of~~
21 ~~paragraphs (a) and (c) of subsection 4 of NRS 108.2457.~~

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

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

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

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

37 4. A *prime* contractor who receives a notice *of withholding*
38 pursuant to subsection 3 ~~{may}~~ *or a notice of objection pursuant to*
39 *subparagraph (2) of paragraph (b) may:*

40 (a) *Give the owner a written notice and thereby dispute in good*
41 *faith and for reasonable cause the amount withheld, or the*
42 *condition or reason for the withholding; or*

43 (b) *Correct any condition or reason for the withholding*
44 *described in the notice of withholding and thereafter* provide
45 written notice to the owner 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 must be sufficient to identify the scope and manner of the correction of the condition *or reason for the withholding* and be signed by an authorized representative of the *prime* contractor. If an owner receives a written notice from the *prime* contractor of the correction of a condition *or reason for the withholding* pursuant to this ~~[subsection.] paragraph~~, the owner ~~[must:~~
~~—(a)] shall:~~

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

~~[(b)]~~ (2) Object to the scope and manner of the correction of the condition ~~[.]~~ *or reason for the withholding*, on or before the date the next payment is due to the *prime* contractor, in a written statement which sets forth the *condition or* 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 ~~[.]~~ *or reason for the withholding*, he shall nevertheless pay to the *prime* contractor, along with *the* payment *to be* made pursuant to the *prime* contractor's next payment request, the amount withheld for the correction of ~~[conditions]~~ *the condition or reason for the withholding* to which the owner no longer objects.

5. Except as otherwise allowed in subsections 2, 3 and 4, an owner shall not withhold from a payment to be made to a prime contractor more than the retention amount.

Sec. 9. NRS 624.610 is hereby amended to read as follows:

624.610 1. If ~~[an]~~ :

(a) An owner fails ~~[to:~~

~~—(a) Pay]~~ *to pay* the *prime* contractor in the time and manner required by subsection 1 or 4 of NRS 624.609; ~~[or~~

~~—(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 ~~[.]~~ ;

(c) *After receipt of a notice of withholding given pursuant to subsection 3 or 4 of NRS 624.609, the prime contractor gives the owner written notice pursuant to subsection 4 of NRS 624.609 and thereby disputes in good faith and for reasonable cause the amount withheld or the condition or reason for the withholding; or*

(d) *Within 30 days after the date that a written 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 or does not contain sufficient information to make a determination, give written notice to the prime contractor of the reasons why the change order is unreasonable or explain that additional information and time are necessary to make a determination,*

↳ the *prime* contractor may stop work after giving written notice to the 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 act or neglect of his agent, excluding acts of God, floods, fires, labor disputes, strikes or reasonable adjustments to work schedules, causes the work to be stopped for a period of 15 days or more, the *prime* contractor may terminate the ~~contract~~ *agreement* if:

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

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

~~3.~~ 5. If a *prime* contractor stops work pursuant to subsection 1, the owner may terminate the ~~contract~~ *agreement* by giving the *prime* contractor written notice of his intent to terminate at least 15 days before terminating 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 entitled to recover from the owner payment in an amount found by a trier of fact to be due the *prime* contractor, including, without limitation:

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

(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 *and his lower-tiered subcontractors and suppliers* or, if the trier of fact determines that the *prime* contractor stopped work or terminated the ~~contract~~ *agreement* without a reasonable ~~cause,~~ *basis in law or fact*, 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.



1 ~~[6-]~~ 8. The right of a *prime* contractor to stop work or terminate
2 ~~{a contract}~~ *an agreement* pursuant to this section is in addition to
3 all other rights that the *prime* contractor may have at law or in
4 equity and does not impair or affect the right of a *prime* contractor
5 to maintain a civil action or to submit any controversy arising under
6 the ~~{contract}~~ *agreement with the owner* to arbitration.

7 ~~[7-]~~ 9. No *prime* contractor or his *lower-tiered* subcontractors
8 ~~{}~~ *or suppliers*, or their respective sureties, may be held liable for
9 any delays or damages that an owner may suffer as a result of the
10 *prime* contractor ~~{, subcontractor}~~ or lower-tiered ~~{subcontractor}~~
11 ~~stopping his~~ *subcontractors or suppliers stopping their work or*
12 *the provision of materials or equipment* or terminating ~~{a contract}~~
13 ~~for reasonable cause~~ *an agreement for a reasonable basis in law*
14 *or fact* and in accordance with this section or reasonable cause and
15 in accordance with this section or NRS 624.626.

16 **Sec. 10.** NRS 624.620 is hereby amended to read as follows:

17 624.620 1. Except as otherwise provided in this section, any
18 money remaining unpaid for the construction of a work of
19 improvement is payable to the *prime* contractor within 30 days
20 after:

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

23 (b) The availability of a work of improvement for its intended
24 use. The *prime* contractor must have ~~{given a}~~ *provided to the*
25 *owner:*

26 (1) A written notice of availability ~~{to the owner}~~ on or
27 before the day on which he claims that the work of improvement
28 became available for use or occupancy ~~{}~~; *or*

29 (2) A *certificate of occupancy issued by the appropriate*
30 *building inspector or other authority.*

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

32 (a) Withhold payment for the amount of:

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

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

41 (3) Money the owner has paid or is required to pay pursuant
42 to an official notice from a state agency, or employee benefit trust
43 fund, for which the owner is liable for the *prime* contractor or his
44 *lower-tiered* subcontractors in accordance with chapter 608, 612,
45 616A to 616D, inclusive, or 617 of NRS.



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

~~—— (1) If the amount due is paid with a check or is not paid concurrently with the owner'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.]~~ *prime contractor and his lower-tiered subcontractors and suppliers in accordance with the provisions of subparagraphs (a) and (c) of subsection 4 of NRS 108.2457.*

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

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

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

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

4. A *prime* contractor who receives a notice *of withholding* pursuant to subsection 3 may *correct any condition or reason for the withholding described in the notice of withholding 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 or reason for the withholding.* The notice of correction must be sufficient to identify the scope and manner of the correction of the condition *or reason for the withholding* and be signed by an authorized representative of the *prime* contractor. If an owner receives a written notice from the *prime* contractor of the correction of a condition *or reason for the withholding* described in an owner's notice of withholding pursuant to subsection 3, the owner must, within 10 days after receipt of such notice:

(a) Pay the amount withheld by the owner for that condition ~~[;]~~ *or reason for the withholding;* or

(b) Object to the scope and manner of the correction of the condition *or reason for the withholding* in a written statement that



1 sets forth the reason for the objection and complies with subsection
2 3. If the owner objects to the scope and manner of the correction of
3 a condition ~~{ }~~ *or reason for the withholding*, he shall nevertheless
4 pay to the *prime* contractor, along with *the* payment *to be* made
5 pursuant to the *prime* contractor's next payment request, the amount
6 withheld for the correction of ~~{conditions}~~ *the condition or reason*
7 *for the withholding* to which the owner no longer objects.

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

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

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

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

25 ~~—(a) Any residential building; or~~
26 ~~—(b) Public works.~~

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

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

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

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

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

43 (b) *Relieves an owner of any obligation or liability imposed*
44 *pursuant to NRS 624.606 to 624.630, inclusive, and sections 2, 3*
45 *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 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 *and 624.620* 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 *condition or* reason for the withholding.

Sec. 12. NRS 624.624 is hereby amended to read as follows:

624.624 1. Except as otherwise provided in this section, if a *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 (1) On or before the date payment is due; or
2 (2) Within 10 days after the date the *higher-tiered* contractor
3 ~~{or higher-tiered subcontractor}~~ receives payment for all or a portion
4 of the work, ~~{labor, materials, equipment or services}~~ *materials or*
5 *equipment* described in a request for payment submitted by the
6 *lower-tiered* subcontractor,

7 ↳ whichever is earlier.

8 (b) A written ~~{subcontract}~~ *agreement with a lower-tiered*
9 *subcontractor* that does not contain a schedule for payments, or ~~{a~~
10 ~~subcontract}~~ *an agreement* that is oral, the *higher-tiered* contractor
11 ~~{or higher-tiered subcontractor}~~ shall pay the *lower-tiered*
12 subcontractor:

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

15 (2) Within 10 days after the date the *higher-tiered* contractor
16 ~~{or higher-tiered subcontractor}~~ receives payment for all or a portion
17 of the work, labor, materials, equipment or services described in a
18 request for payment submitted by the *lower-tiered* subcontractor,
19 ↳ whichever is earlier.

20 2. If a *higher-tiered* contractor ~~{or higher-tiered subcontractor}~~
21 has complied with subsection 3, the *higher-tiered* contractor ~~{or~~
22 ~~higher-tiered subcontractor}~~ may:

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

25 (1) A retention amount that the ~~{subcontractor}~~ *higher-tiered*
26 *contractor* is authorized to withhold pursuant to the ~~{contract;}~~
27 *agreement, but the retention amount withheld must not exceed 10*
28 *percent of the payment that is required pursuant to subsection 1;*

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

30 (I) Any work or labor that has not been performed or
31 materials or equipment that has not been furnished for which
32 payment is being sought ~~{;}~~, *unless the agreement otherwise allows*
33 *or requires such a payment to be made;* and

34 (II) Costs and expenses reasonably necessary to correct or
35 repair any work which is the subject of the request for payment and
36 which is not materially in compliance with the ~~{subcontract}~~
37 *agreement* to the extent that such costs and expenses exceed
38 50 percent of the *retention* amount withheld pursuant to
39 subparagraph (1); and

40 (3) The amount the owner ~~{, contractor or higher-tiered~~
41 ~~subcontractor}~~ *or higher-tiered contractor* has paid or is required to
42 pay pursuant to an official notice from a state agency or employee
43 benefit trust fund, for which the owner ~~{, contractor or higher-tiered~~
44 ~~subcontractor}~~ *or higher-tiered contractor* is or may reasonably be
45 liable for the *lower-tiered* subcontractor or his *lower-tiered*



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 accordance with the provisions of paragraphs (a) and (c) of subsection 4 of NRS 108.2457.~~

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,]~~ contractors and the owner. The written notice of *withholding* 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 *condition or 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 of *withholding* pursuant to subsection 3 ~~[may]~~ *or a notice of objection pursuant to subparagraph (2) of paragraph (b) may:*

(a) *Give the higher-tiered contractor a written notice and thereby dispute in good faith and for reasonable cause the amount withheld or the conditions or reasons for the withholding; or*

(b) *Correct any condition or reason for the withholding described in the notice of withholding and thereafter provide*



1 written notice to the *higher-tiered* contractor ~~for higher-tiered~~
2 ~~subcontractor~~ of the correction of ~~[a condition described in the~~
3 ~~notice received pursuant to subsection 3.]~~ *the condition or reason*
4 *for the withholding*. The notice of correction must be sufficient to
5 identify the scope and manner of the correction of the condition *or*
6 *reason for the withholding* and be signed by an authorized
7 representative of the *lower-tiered* subcontractor. If a *higher-tiered*
8 contractor ~~for higher-tiered subcontractor~~ receives a written notice
9 from the *lower-tiered* subcontractor of the correction of a condition
10 *or reason for the withholding* pursuant to this ~~[subsection,]~~
11 *paragraph*, the *higher-tiered* contractor ~~for higher-tiered~~
12 ~~subcontractor must:~~

13 ~~—(a)] shall:~~

14 (1) Pay the amount withheld by the *higher-tiered* contractor
15 ~~for higher-tiered subcontractor~~ for that condition *or reason for the*
16 *withholding* on or before the date the next payment is due the
17 *lower-tiered* subcontractor; or

18 ~~[(b)]~~ (2) Object to the scope and manner of the correction of the
19 condition ~~[]~~ *or reason for the withholding*, on or before the date
20 the next payment is due to the *lower-tiered* subcontractor, in a
21 written statement which sets forth the *condition or* reason for the
22 objection and which complies with subsection 3. If the *higher-tiered*
23 contractor ~~for higher-tiered subcontractor~~ objects to the scope and
24 manner of the correction of a condition ~~[]~~ *or reason for the*
25 *withholding*, he shall nevertheless pay to the *lower-tiered*
26 subcontractor, along with the payment *to be* made pursuant to the
27 *lower-tiered* subcontractor's next payment request, the amount
28 withheld for the correction of *the* conditions *or reasons for the*
29 *withholding* to which the *higher-tiered* contractor ~~for higher-tiered~~
30 ~~subcontractor~~ no longer objects.

31 5. *Except as otherwise allowed in subsections 2, 3 and 4, a*
32 *higher-tiered contractor shall not withhold from a payment to be*
33 *made to a lower-tiered subcontractor more than the retention*
34 *amount.*

35 **Sec. 13.** NRS 624.626 is hereby amended to read as follows:

36 624.626 1. If ~~[a contractor or higher-tiered subcontractor fails~~
37 ~~to:~~

38 ~~—(a) Pay]:~~

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

42 (b) ~~[Pay]~~ *A higher-tiered contractor fails to pay* the *lower-*
43 *tiered* subcontractor within 45 days after the 25th day of the month
44 in which the *lower-tiered* subcontractor submits a request for
45 payment, even if the *higher-tiered* contractor ~~for higher-tiered~~



1 ~~subcontractor~~ has not been paid and the ~~[subcontract]~~ *agreement*
2 contains a provision which requires the *higher-tiered* contractor ~~for~~
3 ~~higher-tiered-subcontractor~~ to pay the *lower-tiered* subcontractor
4 only if or when the *higher-tiered* contractor ~~for-higher-tiered~~
5 ~~subcontractor~~ is paid; ~~for~~

6 ~~—(c) Give~~

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

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

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

19 (1) *Issue the change order; or*

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

23 *the lower-tiered subcontractor may stop work under the*
24 ~~[subcontract]~~ *agreement* until payment is received if the *lower-*
25 *tiered* subcontractor gives written notice to the *higher-tiered*
26 contractor ~~for-higher-tiered-subcontractor~~ at least 10 days before
27 stopping work.

28 2. If a *lower-tiered* subcontractor stops work pursuant to
29 paragraph (a) , ~~for~~ (c) *or (d)* of subsection 1, the *lower-tiered*
30 subcontractor may terminate the ~~[subcontract]~~ *agreement with the*
31 *higher-tiered contractor* by giving written notice of the termination
32 to the *higher-tiered* contractor ~~for-higher-tiered-subcontractor~~ after
33 stopping work but at least 15 days before the termination of the
34 ~~[subcontract]~~ *agreement*. If the *lower-tiered* subcontractor is paid
35 the amount due before the date for termination set forth in the
36 written notice, the *lower-tiered* subcontractor shall not terminate the
37 ~~[subcontract]~~ *agreement* and shall resume *his* work.

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

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

43 (b) *The time for performance must be extended by the amount*
44 *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* 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 in work schedules, causes the work to be stopped for a period of 15 days or more, the *lower-tiered* subcontractor may terminate the ~~{subcontract}~~ *agreement* if:

(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 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 award reasonable attorney's fees to the *lower-tiered* subcontractor *and his lower-tiered subcontractors and suppliers* or, if the trier of fact determines that the *lower-tiered* subcontractor stopped work or terminated the ~~[contract]~~ *agreement* without *a* reasonable ~~[cause,]~~ *basis in law or fact*, 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 suppliers*, 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



1 ~~{subcontractor or}~~ lower-tiered subcontractor *and his lower-tiered*
2 *subcontractors and suppliers* stopping ~~{his}~~ *their* work *or the*
3 *provision of materials or equipment* or terminating ~~{a subcontract~~
4 ~~for reasonable cause}~~ *an agreement for a reasonable basis in law*
5 *or fact* and in accordance with this section.

6 **Sec. 14.** NRS 624.628 is hereby amended to read as follows:

7 624.628 1. A *lower-tiered* subcontractor shall provide a copy
8 of any notice given to a *higher-tiered* contractor ~~{or higher-tiered~~
9 ~~subcontractor}~~ pursuant to this section or NRS 624.624 or 624.626
10 to each lower-tiered subcontractor with whom the *lower-tiered*
11 subcontractor has ~~{contracted}~~ *entered into an agreement and* who
12 has not fully performed under the ~~{contract}~~ *agreement*. Upon
13 receipt of payment pursuant to NRS 624.624, the *lower-tiered*
14 subcontractor shall notify all ~~{such}~~ *of his* lower-tiered
15 subcontractors in writing of his receipt of payment.

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

23 3. A condition, stipulation or provision in ~~{a subcontract or~~
24 ~~other}~~ *an agreement which {requires}* :

25 (a) *Requires a lower-tiered subcontractor to waive any rights*
26 *provided in this section or NRS 624.624 {or 624.626,}, 624.626 or*
27 *624.630 or which limits those rights {};*

28 (b) *Relieves a higher-tiered contractor of any obligation or*
29 *liability imposed pursuant to this section, NRS 624.624, 624.626 or*
30 *624.630; or*

31 (c) *Requires a lower-tiered subcontractor to waive, release or*
32 *extinguish a claim or right for damages or an extension of time*
33 *that the lower-tiered subcontractor may otherwise possess or*
34 *acquire as a result of delay, acceleration, disruption or an impact*
35 *event that is unreasonable under the circumstances, that was not*
36 *within the contemplation of the parties at the time the agreement*
37 *was entered into, or for which the lower-tiered subcontractor is*
38 *not responsible,*

39 *↪ is against public policy and* is void ~~{}~~ *and unenforceable.*

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

42 (a) Delivered personally, in which case the *lower-tiered*
43 subcontractor shall obtain a notarized statement from the person
44 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 *condition or* 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]~~ *higher of:*

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

2. *The 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:*

(a) *The time at which the agreement was signed; or*



1 ***(b) If the agreement was oral, the time at which the terms of***
2 ***the agreement were agreed to by the parties,***

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

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

5 99.040 1. When there is no express contract in writing fixing
6 a different rate of interest, interest must be allowed at a rate equal to
7 the prime rate at the largest bank in Nevada, as ascertained by the
8 Commissioner of Financial Institutions, on January 1 or July 1, as
9 the case may be, immediately preceding the date of the transaction,
10 plus 2 percent, upon all money from the time it becomes due, in the
11 following cases:

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

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

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

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

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

22 2. The provisions of this section do not apply to money owed ~~[-~~

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

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

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



