

ASSEMBLY BILL NO. 219—ASSEMBLYMEN HOGAN, PARKS, ARBERRY, MCCLAIN, ANDERSON, BOBZIEN, CARPENTER, DENIS, GERHARDT, KIHUEN, KOIVISTO, LESLIE, MANENDO, MORTENSON, MUNFORD, PARNELL, PIERCE, SEGERBLOM, SMITH AND WOMACK

FEBRUARY 28, 2007

JOINT SPONSORS: SENATORS COFFIN, TITUS AND WOODHOUSE

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works. (BDR 28-199)

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 public works; requiring a contractor and certain subcontractors on certain public works to submit a monthly report on the demographics of persons employed on the public work and to participate in meetings held to discuss those reports; authorizing the withholding of payment for noncompliance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 **Section 1** of this bill requires each contractor engaged on a public work,
2 including an energy retrofit, that has an estimated cost of \$25 million or more and
3 that is located in a county whose population is 100,000 or more (currently Clark
4 and Washoe Counties) to submit a monthly report to the public body that awarded
5 the contract providing aggregate information concerning the ethnicity, race and
6 gender of the workers employed on the public work. **Section 1** also requires
7 submission of the same information monthly by a subcontractor who provides labor
8 or a portion of the work on the public work that is estimated to exceed 1 percent of
9 the estimated cost of the public work. **Section 1** further directs a public body
10 awarding a contract for such a public work to establish a committee to meet



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monthly to discuss the demographic report for the previous month. If a contractor or subcontractor fails to submit a demographic report or participate in a meeting held to discuss the demographic report, **sections 1, 9-13 and 15** of this bill authorize the withholding of payment to the contractor or subcontractor, as applicable, until compliance occurs. (NRS 338.515, 338.525, 338.530, 338.560, 338.565, 408.383)

Sections 2-8 and 14 of this bill require that each advertisement for bids or request for proposals for such public works include a provision which informs contractors of their duty to comply with the demographic reporting requirements. (NRS 338.1385, 338.143, 338.1723, 338.1906, 338.1907, 408.327)

Section 16 of this bill requires the Legislative Auditor to conduct an audit which assesses compliance with and the effectiveness of the demographic reporting requirements during the interim 4 years after the commencement of the first public work for which the filing of a demographic report is required.

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 a new section to read as follows:

1. A contractor engaged on a public work, including, without limitation, an energy retrofit of a public building, which has an estimated cost of \$25,000,000 or more and which is located in a county whose population is 100,000 or more, and each subcontractor engaged on such a public work who provides labor or a portion of the work on the public work which is estimated to exceed 1 percent of the estimated cost of the public work, shall prepare a report, on the form prescribed by the Labor Commissioner pursuant to subsection 7, concerning the demographics of the workmen employed by the contractor and subcontractor in connection with the public work during each calendar month that the contractor or subcontractor is engaged on the public work. The report must include only aggregate information for statistical purposes concerning the races, ethnicities and genders of the workmen employed by the contractor and subcontractor in connection with the public work in a manner which excludes any identifying information relating to a particular workman. The contractor and each subcontractor who is required to prepare such a report shall submit the report to the public body awarding the contract not later than 15 days after the end of the month to which the report pertains.

2. A contractor and any subcontractor who prepares a report pursuant to subsection 1 shall maintain a record of the information used to prepare the report and, upon request, make that information available to the public body awarding the contract for inspection. The contractor or subcontractor may



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1 *discard the record of information 2 years after final payment is*
2 *made by the public body for the public work.*

3 *3. For each public work which has an estimated cost of*
4 *\$25,000,000 or more and which is located in a county whose*
5 *population is 100,000 or more, the public body awarding the*
6 *contract for the public work shall establish a committee consisting*
7 *of:*

8 *(a) The public body;*

9 *(b) The contractor engaged on the public work;*

10 *(c) Each subcontractor engaged on the public work who*
11 *provides labor or a portion of the work on the public work which*
12 *is estimated to exceed 1 percent of the estimated cost of the public*
13 *work; and*

14 *(d) Representatives appointed by the contractor engaged on the*
15 *public work from a variety of groups that represent or promote the*
16 *interests of minorities or women who are qualified to perform*
17 *work on the public work.*

18 *4. The committee established pursuant to subsection 3 shall*
19 *meet monthly to discuss the reports submitted pursuant to*
20 *subsection 1 for the previous month, unless conditions affecting*
21 *the public work would make the holding of a meeting impractical,*
22 *including, without limitation, delays on the public work caused by*
23 *weather. Any such meeting must be open and public, but is not*
24 *subject to any provision of chapter 241 of NRS.*

25 *5. A public body awarding a contract for a public work which*
26 *has an estimated cost of \$25,000,000 or more and which is located*
27 *in a county whose population is 100,000 or more shall cause a*
28 *stipulation to be inserted in the contract providing that the public*
29 *body may withhold payment from the contractor engaged on the*
30 *public work pursuant to NRS 338.400 to 338.645, inclusive, or*
31 *408.383, as applicable, if the contractor or a subcontractor*
32 *engaged on the public work fails to:*

33 *(a) Submit a report required pursuant to subsection 1; or*

34 *(b) Participate in a meeting held pursuant to subsection 4.*

35 *6. The public body shall not divide a public work into*
36 *separate portions to avoid the requirements of this section.*

37 *7. The Labor Commissioner shall prescribe a form for the*
38 *report required pursuant to subsection 1.*

39 **Sec. 2.** NRS 338.1385 is hereby amended to read as follows:

40 338.1385 1. Except as otherwise provided in subsection 9
41 and NRS 338.1906 and 338.1907, this State, or a governing body or
42 its authorized representative that awards a contract for a public work
43 in accordance with paragraph (a) of subsection 1 of NRS 338.1373
44 shall not:



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(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864.

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the ~~[requirement]~~ *requirements* that a contractor ~~[must be]~~ :

(a) *Be* qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract ~~[]~~ ; and

(b) *If the public work has an estimated cost of \$25,000,000 or more and is located in a county whose population is 100,000 or more, comply with the provisions of section 1 of this act.*

4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(b) The bidder is not responsive or responsible;

(c) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:



1 (a) The public body publishes a notice stating that no bids were
2 received and that the contract may be let without further bidding;

3 (b) The public body considers any bid submitted in response to
4 the notice published pursuant to paragraph (a);

5 (c) The public body lets the contract not less than 7 days after
6 publishing a notice pursuant to paragraph (a); and

7 (d) The contract is awarded to the bidder who has submitted the
8 lowest responsive and responsible bid.

9 8. Before a public body may commence the performance of a
10 public work itself pursuant to the provisions of this section, based
11 upon a determination that the public interest would be served by
12 rejecting any bids received in response to an advertisement for bids,
13 the public body shall prepare and make available for public
14 inspection a written statement containing:

15 (a) A list of all persons, including supervisors, whom the public
16 body intends to assign to the public work, together with their
17 classifications and an estimate of the direct and indirect costs of
18 their labor;

19 (b) A list of all equipment that the public body intends to use on
20 the public work, together with an estimate of the number of hours
21 each item of equipment will be used and the hourly cost to use each
22 item of equipment;

23 (c) An estimate of the cost of administrative support for the
24 persons assigned to the public work;

25 (d) An estimate of the total cost of the public work, including
26 the fair market value of or, if known, the actual cost of all materials,
27 supplies, labor and equipment to be used for the public work; and

28 (e) An estimate of the amount of money the public body expects
29 to save by rejecting the bids and performing the public work itself.

30 9. This section does not apply to:

31 (a) Any utility subject to the provisions of chapter 318 or 710 of
32 NRS;

33 (b) Any work of construction, reconstruction, improvement and
34 maintenance of highways subject to NRS 408.323 or 408.327;

35 (c) Normal maintenance of the property of a school district;

36 (d) The Las Vegas Valley Water District created pursuant to
37 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
38 District created pursuant to chapter 477, Statutes of Nevada 1983 or
39 the Virgin Valley Water District created pursuant to chapter 100,
40 Statutes of Nevada 1993; or

41 (e) The design and construction of a public work for which a
42 public body contracts with a design-build team pursuant to NRS
43 338.1711 to 338.1727, inclusive.



Sec. 3. NRS 338.1385 is hereby amended to read as follows:

338.1385 1. Except as otherwise provided in subsection 9, this State, or a governing body or its authorized representative that awards a contract for a public work in accordance with paragraph (a) of subsection 1 of NRS 338.1373 shall not:

(a) Commence a public work for which the estimated cost exceeds \$100,000 unless it advertises in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed for bids for the public work. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and having a general circulation within the county.

(b) Commence a public work for which the estimated cost is \$100,000 or less unless it complies with the provisions of NRS 338.1386, 338.13862 and 338.13864.

(c) Divide a public work into separate portions to avoid the requirements of paragraph (a) or (b).

2. At least once each quarter, the authorized representative of a public body shall report to the public body any contract that the authorized representative awarded pursuant to subsection 1 in the immediately preceding quarter.

3. Each advertisement for bids must include a provision that sets forth the ~~[requirement]~~ *requirements* that a contractor ~~[must be]~~ *:*

(a) *Be* qualified pursuant to NRS 338.1379 or 338.1382 to bid on the contract ~~[]~~ *; and*

(b) *If the public work has an estimated cost of \$25,000,000 or more and is located in a county whose population is 100,000 or more, comply with the provisions of section 1 of this act.*

4. Approved plans and specifications for the bids must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons. Contracts for the public work must be awarded on the basis of bids received.

5. Except as otherwise provided in subsection 6 and NRS 338.1389, a public body or its authorized representative shall award a contract to the lowest responsive and responsible bidder.

6. Any bids received in response to an advertisement for bids may be rejected if the public body or its authorized representative responsible for awarding the contract determines that:

(a) The bidder is not a qualified bidder pursuant to NRS 338.1379 or 338.1382;

(b) The bidder is not responsive or responsible;



(c) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(d) The public interest would be served by such a rejection.

7. A public body may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The public body publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The public body considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The public body lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

8. Before a public body may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the public body shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the public body intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the public body intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including, the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the public body expects to save by rejecting the bids and performing the public work itself.

9. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water District created pursuant to chapter 477, Statutes of Nevada 1983 or



1 the Virgin Valley Water District created pursuant to chapter 100,
2 Statutes of Nevada 1993; or

3 (e) The design and construction of a public work for which a
4 public body contracts with a design-build team pursuant to NRS
5 338.1711 to 338.1727, inclusive.

6 **Sec. 4.** NRS 338.143 is hereby amended to read as follows:

7 338.143 1. Except as otherwise provided in subsection 8 and
8 NRS 338.1907, a local government or its authorized representative
9 that awards a contract for a public work in accordance with
10 paragraph (b) of subsection 1 of NRS 338.1373 shall not:

11 (a) Commence a public work for which the estimated cost
12 exceeds \$100,000 unless it advertises in a newspaper qualified
13 pursuant to chapter 238 of NRS that is published in the county
14 where the public work will be performed for bids for the public
15 work. If no qualified newspaper is published in the county where the
16 public work will be performed, the required advertisement must be
17 published in some qualified newspaper that is printed in the State of
18 Nevada and has a general circulation in the county. *If the public*
19 *work has an estimated cost of \$25,000,000 or more and is located*
20 *in a county whose population is 100,000 or more, each*
21 *advertisement for bids must include a provision that sets forth the*
22 *requirement that a contractor comply with the provisions of*
23 *section 1 of this act.*

24 (b) Commence a public work for which the estimated cost is
25 \$100,000 or less unless it complies with the provisions of NRS
26 338.1442, 338.1444 and 338.1446.

27 (c) Divide a project work into separate portions to avoid the
28 requirements of paragraph (a) or (b).

29 2. At least once each quarter, the authorized representative of a
30 local government shall report to the governing body any contract
31 that the authorized representative awarded pursuant to subsection 1
32 in the immediately preceding quarter.

33 3. Approved plans and specifications for the bids must be on
34 file at a place and time stated in the advertisement for the inspection
35 of all persons desiring to bid thereon and for other interested
36 persons. Contracts for the public work must be awarded on the basis
37 of bids received.

38 4. Except as otherwise provided in subsection 5 and NRS
39 338.147, the local government or its authorized representative shall
40 award a contract to the lowest responsive and responsible bidder.

41 5. Any bids received in response to an advertisement for bids
42 may be rejected if the local government or its authorized
43 representative responsible for awarding the contract determines that:

44 (a) The bidder is not responsive or responsible;



(b) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(c) The public interest would be served by such a rejection.

6. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The local government publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The local government considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The local government lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

7. Before a local government may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the local government shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water



1 District created pursuant to chapter 477, Statutes of Nevada 1983 or
2 the Virgin Valley Water District created pursuant to chapter 100,
3 Statutes of Nevada 1993; or

4 (e) The design and construction of a public work for which a
5 public body contracts with a design-build team pursuant to NRS
6 338.1711 to 338.1727, inclusive.

7 **Sec. 5.** NRS 338.143 is hereby amended to read as follows:

8 338.143 1. Except as otherwise provided in subsection 8, a
9 local government or its authorized representative that awards a
10 contract for a public work in accordance with paragraph (b) of
11 subsection 1 of NRS 338.1373 shall not:

12 (a) Commence a public work for which the estimated cost
13 exceeds \$100,000 unless it advertises in a newspaper qualified
14 pursuant to chapter 238 of NRS that is published in the county
15 where the public work will be performed for bids for the public
16 work. If no qualified newspaper is published within the county
17 where the public work will be performed, the required
18 advertisement must be published in some qualified newspaper that is
19 printed in the State of Nevada and has a general circulation within
20 the county. *If the public work has an estimated cost of \$25,000,000*
21 *or more and is located in a county whose population is 100,000 or*
22 *more, each advertisement for bids must include a provision that*
23 *sets forth the requirement that a contractor comply with the*
24 *provisions of section 1 of this act.*

25 (b) Commence a public work for which the estimated cost is
26 \$100,000 or less unless it complies with the provisions of NRS
27 338.1442, 338.1444 or 338.1446.

28 (c) Divide a public work into separate portions to avoid the
29 requirements of paragraph (a) or (b).

30 2. At least once each quarter, the authorized representative of a
31 local government shall report to the governing body any contract
32 that the authorized representative awarded pursuant to subsection 1
33 in the immediately preceding quarter.

34 3. Approved plans and specifications for the bids must be on
35 file at a place and time stated in the advertisement for the inspection
36 of all persons desiring to bid thereon and for other interested
37 persons. Contracts for the public work must be awarded on the basis
38 of bids received.

39 4. Except as otherwise provided in subsection 5 and NRS
40 338.147, the local government or its authorized representative shall
41 award a contract to the lowest responsive and responsible bidder.

42 5. Any bids received in response to an advertisement for bids
43 may be rejected if the local government or its authorized
44 representative responsible for awarding the contract determines that:

45 (a) The bidder is not responsive or responsible;



(b) The quality of the services, materials, equipment or labor offered does not conform to the approved plans or specifications; or

(c) The public interest would be served by such a rejection.

6. A local government may let a contract without competitive bidding if no bids were received in response to an advertisement for bids and:

(a) The local government publishes a notice stating that no bids were received and that the contract may be let without further bidding;

(b) The local government considers any bid submitted in response to the notice published pursuant to paragraph (a);

(c) The local government lets the contract not less than 7 days after publishing a notice pursuant to paragraph (a); and

(d) The contract is awarded to the lowest responsive and responsible bidder.

7. Before a local government may commence the performance of a public work itself pursuant to the provisions of this section, based upon a determination that the public interest would be served by rejecting any bids received in response to an advertisement for bids, the local government shall prepare and make available for public inspection a written statement containing:

(a) A list of all persons, including supervisors, whom the local government intends to assign to the public work, together with their classifications and an estimate of the direct and indirect costs of their labor;

(b) A list of all equipment that the local government intends to use on the public work, together with an estimate of the number of hours each item of equipment will be used and the hourly cost to use each item of equipment;

(c) An estimate of the cost of administrative support for the persons assigned to the public work;

(d) An estimate of the total cost of the public work, including the fair market value of or, if known, the actual cost of all materials, supplies, labor and equipment to be used for the public work; and

(e) An estimate of the amount of money the local government expects to save by rejecting the bids and performing the public work itself.

8. This section does not apply to:

(a) Any utility subject to the provisions of chapter 318 or 710 of NRS;

(b) Any work of construction, reconstruction, improvement and maintenance of highways subject to NRS 408.323 or 408.327;

(c) Normal maintenance of the property of a school district;

(d) The Las Vegas Valley Water District created pursuant to chapter 167, Statutes of Nevada 1947, the Moapa Valley Water



1 District created pursuant to chapter 477, Statutes of Nevada 1983 or
2 the Virgin Valley Water District created pursuant to chapter 100,
3 Statutes of Nevada 1993; or

4 (e) The design and construction of a public work for which a
5 public body contracts with a design-build team pursuant to NRS
6 338.1711 to 338.1727, inclusive.

7 **Sec. 6.** NRS 338.1723 is hereby amended to read as follows:

8 338.1723 1. A public body shall advertise for preliminary
9 proposals for the design and construction of a public work by a
10 design-build team in a newspaper qualified pursuant to chapter 238
11 of NRS that is published in the county where the public work will
12 be performed. If no qualified newspaper is published in the county
13 where the public work will be performed, the required
14 advertisement must be published in some qualified newspaper that is
15 printed in the State of Nevada and has a general circulation in the
16 county.

17 2. A request for preliminary proposals published pursuant to
18 subsection 1 must include, without limitation:

19 (a) A description of the public work to be designed and
20 constructed;

21 (b) An estimate of the cost to design and construct the public
22 work;

23 (c) The dates on which it is anticipated that the separate phases
24 of the design and construction of the public work will begin and
25 end;

26 (d) The date by which preliminary proposals must be submitted
27 to the public body;

28 (e) If the proposal is for a public work of the State, a statement
29 setting forth that the prime contractor must be qualified to bid on a
30 public work of the State pursuant to NRS 338.1379 before
31 submitting a preliminary proposal;

32 (f) A description of the extent to which designs must be
33 completed for both preliminary and final proposals and any other
34 requirements for the design and construction of the public work that
35 the public body determines to be necessary;

36 (g) A list of the requirements set forth in NRS 338.1721;

37 (h) A list of the factors and relative weight assigned to each
38 factor that the public body will use to evaluate design-build teams
39 who submit a proposal for the public work;

40 (i) Notice that a design-build team desiring to submit a proposal
41 for the public work must include with its proposal the information
42 used by the public body to determine finalists among the design-
43 build teams submitting proposals pursuant to subsection 2 of NRS
44 338.1725 and a description of that information; ~~and~~



(j) A statement as to whether a design-build team that is selected as a finalist pursuant to NRS 338.1725 but is not awarded the design-build contract pursuant to NRS 338.1727 will be partially reimbursed for the cost of preparing a final proposal and, if so, an estimate of the amount of the partial reimbursement ~~(H)~~; and

(k) If the public work has an estimated cost of \$25,000,000 or more and is located in a county whose population is 100,000 or more, a provision that sets forth the requirement that the design-build team comply with the provisions of section 1 of this act.

Sec. 7. NRS 338.1906 is hereby amended to read as follows:

338.1906 1. Upon request by or consultation with an officer or employee of the State who is responsible for the budget of a department, board, commission, agency or other entity of the State, the appropriate energy retrofit coordinator may request the approval of the State Board of Examiners to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the department, board, commission, agency or other entity, to make the use of energy in the building, or portion thereof, more efficient.

2. Upon approval of the State Board of Examiners, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:

(a) The name and location of the coordinator;

(b) If the retrofit has an estimated cost of \$25,000,000 or more and is to be completed on one or more buildings or any portion thereof that is located in a county whose population is 100,000 or more, a provision that sets forth the requirement that the contractor comply with the provisions of section 1 of this act;

(c) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;

~~(e)~~ (d) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;

~~(d)~~ (e) The date and time not later than which proposals must be received by the coordinator; and

~~(e)~~ (f) The date and time when responses will be opened.

3. The request for proposals must be published in at least one newspaper of general circulation in the State.

4. After receiving the proposals but before making a decision on the proposals, the coordinator shall consider:

(a) The best interests of the State;

(b) The experience and financial stability of the persons submitting the proposals;

(c) Whether the proposals conform with the terms of the request for proposals;

(d) The prices of the proposals; and



(e) Any other factor disclosed in the request for proposals.

5. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.

6. After reviewing the proposals, if the coordinator determines that the dollar value of the annual energy savings resulting from the retrofit will meet or exceed the total annual contract payments to be made by the State, including any financing charges to be incurred by the State over the life of the contract, the coordinator shall select the best proposal and request the approval of the State Board of Examiners to award the contract. The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the State to make payments beyond the biennium in which the contract is executed, but the interest due on any debt created pursuant to this section must be paid at least semiannually, payments must be made on the principal at least annually and the debt must be fully repaid on or before May 1, 2013.

7. Before approving a retrofit pursuant to this section, the State Board of Examiners shall evaluate any projects that would utilize shared savings as a method of payment or any method of financing that would commit the State to make payments beyond the biennium in which the contract is executed to ensure that:

(a) The dollar value of the annual energy savings resulting from the retrofit will meet or exceed the total annual contract payments to be made by the State, including any financing charges to be incurred by the State over the life of the contract;

(b) The State is likely to continue to occupy the building for the entire period required to recoup the cost of the retrofit in energy savings; and

(c) The limitation set forth in subsection 9 will not be exceeded.

8. Upon approval of the State Board of Examiners, the coordinator shall execute the contract and notify:

(a) The State Board of Examiners of the total amount of money committed by the contract per year; and

(b) Each officer or employee who is responsible for the budget of a department, board, commission, agency or other entity which occupies a portion of a building that will be retrofitted of the amount of money it will be required to pay annually for its portion of the retrofit.



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9. The total amount of money committed beyond the biennium for all contracts executed pursuant to this section must not exceed \$15,000,000 at any one time.

10. The Legislature hereby pledges that a tax will be levied to pay the principal and interest on any indebtedness resulting from a contract executed pursuant to this section as they become due if the required payments will not be made by the entity that executed the contract from its budgeted accounts and the proceeds from any such taxes are hereby specially appropriated for this purpose.

11. A change order to a contract executed pursuant to this section may not be approved by the State if the cost of the change order would cause the dollar value of the annual energy savings resulting from the retrofit to be less than the total annual contract payments to be made by the State, including any financing charges to be incurred by the State over the life of the contract, unless approval of the change order is more economically feasible than termination of the retrofit.

12. NRS 338.1385 does not apply to a project for which a request for proposals is advertised and the contract is awarded pursuant to the provisions of this section.

Sec. 8. NRS 338.1907 is hereby amended to read as follows:

338.1907 1. A governing body may designate one or more energy retrofit coordinators for the buildings occupied by the local government.

2. If such a coordinator is designated, upon request by or consultation with an officer or employee of the local government who is responsible for the budget of a department, board, commission or other entity of the local government, the coordinator may request the approval of the governing body to advertise a request for proposals to retrofit a building, or any portion thereof, that is occupied by the department, board, commission or other entity, to make the use of energy in the building, or portion thereof, more efficient.

3. Upon approval of the governing body, the coordinator shall prepare a request for proposals for the retrofitting of one or more buildings, or any portion thereof, which includes:

(a) The name and location of the coordinator;

(b) *If the retrofit has an estimated cost of \$25,000,000 or more and is to be completed on one or more buildings or any portion thereof that is located in a county whose population is 100,000 or more, a provision that sets forth the requirement that the contractor comply with the provisions of section 1 of this act;*

(c) A brief description of the requirements for the initial audit of the use of energy and the retrofitting;



~~(e)~~ (d) Where and how specifications of the requirements for the initial audit of the use of energy and the retrofitting may be obtained;

~~(d)~~ (e) The date and time not later than which proposals must be received by the coordinator; and

~~(e)~~ (f) The date and time when responses will be opened.

4. The request for proposals must be published in a newspaper qualified pursuant to chapter 238 of NRS that is published in the county where the public work will be performed. If no qualified newspaper is published in the county where the public work will be performed, the required advertisement must be published in some qualified newspaper that is printed in the State of Nevada and has a general circulation in the county where the public work will be performed.

5. After receiving the proposals but before making a decision on the proposals, the coordinator shall consider:

(a) The best interests of the local government;

(b) The experience and financial stability of the persons submitting the proposals;

(c) Whether the proposals conform with the terms of the request for proposals;

(d) The prices of the proposals; and

(e) Any other factor disclosed in the request for proposals.

6. The coordinator shall determine the relative weight of each factor before a request for proposals is advertised. The weight of each factor must not be disclosed before the date proposals are required to be submitted to the coordinator.

7. After reviewing the proposals, if the coordinator determines that the dollar value of the annual energy savings resulting from the retrofit will meet or exceed the total annual contract payments to be made by the local government, including any financing charges to be incurred by the local government over the life of the contract, the coordinator shall select the best proposal and request the approval of the governing body to award the contract. The request for approval must include the proposed method of financing the audit and retrofit, which may include an installment contract, a shared savings contract or any other contract for a reasonable financing arrangement. Such a contract may commit the local government to make payments beyond the fiscal year in which the contract is executed or beyond the terms of office of the governing body, or both.

8. Before approving a retrofit pursuant to this section, the governing body shall evaluate any projects that would utilize shared savings as a method of payment or any method of financing that would commit the local government to make payments beyond the



1 fiscal year in which the contract is executed or beyond the terms of
2 office of the governing body to ensure that:

3 (a) The dollar value of the annual energy savings resulting from
4 the retrofit will meet or exceed the total annual contract payments to
5 be made by the local government ~~[related]~~ relating to the retrofit,
6 including any financing charges to be incurred by the local
7 government over the life of the contract; and

8 (b) The local government is likely to continue to occupy the
9 building for the entire period required to recoup the cost of the
10 retrofit in energy savings.

11 9. Upon approval of the governing body, the coordinator shall
12 execute the contract and notify each officer or employee who is
13 responsible for the budget of a department, board, commission or
14 other entity which occupies a portion of a building that will be
15 retrofitted of the amount of money it will be required to pay
16 annually for its portion of the retrofit.

17 10. A change order to a contract executed pursuant to this
18 section may not be approved by the local government if the cost of
19 the change order would cause the dollar value of the annual energy
20 savings resulting from the retrofit to be less than the total annual
21 contract payments to be made by the local government, including
22 financing charges to be incurred by the local government over the
23 life of the contract, unless approval of the change order is more
24 economically feasible than termination of the retrofit.

25 11. NRS 338.1385 and 338.143 do not apply to a project for
26 which a request for proposals is advertised and the contract is
27 awarded pursuant to the provisions of this section.

28 **Sec. 9.** NRS 338.515 is hereby amended to read as follows:

29 338.515 1. Except as otherwise provided in NRS 338.525, a
30 public body and its officers or agents awarding a contract for a
31 public work shall pay or cause to be paid to a contractor the progress
32 payments due under the contract within 30 days after the date the
33 public body receives the progress bill or within a shorter period if
34 the provisions of the contract so provide. Not more than 90 percent
35 of the amount of any progress payment may be paid until 50 percent
36 of the work required by the contract has been performed. Thereafter
37 the public body may pay any of the remaining progress payments
38 without withholding additional retainage if, in the opinion of the
39 public body, satisfactory progress is being made in the work.

40 2. Except as otherwise provided in NRS 338.525, a public
41 body shall identify in the contract and pay or cause to be paid to a
42 contractor the actual cost of the supplies, materials and equipment
43 that:

44 (a) Are identified in the contract;



(b) Have been delivered and stored at a location, and in the time and manner, specified in a contract by the contractor or a subcontractor or supplier for use in a public work; and

(c) Are in short supply or were specially made for the public work,

↳ within 30 days after the public body receives a progress bill from the contractor for those supplies, materials or equipment.

3. ~~[A]~~ *Except as otherwise provided in subsection 4, a public body shall pay or cause to be paid to the contractor at the end of each quarter interest for the quarter on any amount withheld by the public body pursuant to NRS 338.400 to 338.645, inclusive, at a rate equal to the rate quoted by at least three financial institutions as the highest rate paid on a certificate of deposit whose duration is approximately 90 days on the first day of the quarter. If the amount due to a contractor pursuant to this subsection for any quarter is less than \$500, the public body may hold the interest until:*

(a) The end of a subsequent quarter after which the amount of interest due is \$500 or more;

(b) The end of the fourth consecutive quarter for which no interest has been paid to the contractor; or

(c) The amount withheld under the contract is due pursuant to NRS 338.520,

↳ whichever occurs first.

4. *A public body shall not pay or cause to be paid to the contractor interest on any amount withheld pursuant to paragraph (a) or (b) of subsection 1 of NRS 338.525.*

5. If the Labor Commissioner has reason to believe that a workman is owed wages by a contractor or subcontractor, he may require the public body to withhold from any payment due the contractor under this section and pay the Labor Commissioner instead, an amount equal to the amount the Labor Commissioner believes the contractor owes to the workman. This amount must be paid to the workman by the Labor Commissioner if the matter is resolved in his favor, otherwise it must be returned to the public body for payment to the contractor.

Sec. 10. NRS 338.525 is hereby amended to read as follows:

338.525 1. A public body may, but is not required to, withhold ~~[from]~~ :

(a) *The entire amount of a progress payment or retainage payment as a result of the failure of the contractor or his subcontractor to submit a report required pursuant to subsection 1 of section 1 of this act.*

(b) *The entire amount of a progress payment or retainage payment as a result of the failure of the contractor or his*



1 *subcontractor to participate in a meeting held pursuant to*
2 *subsection 4 of section 1 of this act.*

3 (c) *A portion of a progress payment or retainage payment in* an
4 amount sufficient to pay the expenses the public body reasonably
5 expects to incur as a result of the failure of the contractor to comply
6 with the contract or applicable building code, law or regulation.

7 2. A public body shall, within 20 days after it receives a
8 progress bill or retainage bill from a contractor, give a written notice
9 to the contractor of any amount that will be withheld pursuant to this
10 section. The written notice must set forth:

11 (a) The amount of the progress payment or retainage payment
12 that will be withheld from the contractor; and

13 (b) A detailed explanation of the reason the public body will
14 withhold that amount, including, without limitation ~~[-a]~~ :

15 (1) *A specification of the reporting period for which the*
16 *contractor or his subcontractor failed to submit a report required*
17 *pursuant to subsection 1 of section 1 of this act;*

18 (2) *A specification of the meeting held pursuant to*
19 *subsection 4 of section 1 of this act in which the contractor or his*
20 *subcontractor failed to participate; or*

21 (3) A specific reference to the provision or section of
22 the contract, or any documents ~~[related]~~ relating thereto, or the
23 applicable building code, law or regulation with which the
24 contractor has failed to comply.

25 ➔ The written notice must be signed by an authorized agent of the
26 public body.

27 3. If the public body receives ~~[a]~~, as applicable:

28 (a) *The report from the contractor or subcontractor that is the*
29 *reason for the withholding pursuant to paragraph (a) of*
30 *subsection 1;*

31 (b) *Information satisfactory to the public body that a*
32 *contractor or subcontractor subject to withholding pursuant to*
33 *paragraph (b) of subsection 1 has resumed participating in the*
34 *meetings held pursuant to subsection 4 of section 1 of this act; or*

35 (c) A written notice of the correction of the condition that is the
36 reason for the withholding ~~[:]~~ *pursuant to paragraph (c) of*
37 *subsection 1*, signed by an authorized agent of the contractor,

38 ➔ the public body shall, after *receipt of the report or satisfactory*
39 *information concerning participation in the meetings, or after*
40 confirming that the condition has been corrected, *as applicable*, pay
41 the amount withheld by the public body within 30 days after the
42 public body receives the next progress bill or retainage bill.

43 **Sec. 11.** NRS 338.530 is hereby amended to read as follows:

44 338.530 1. If a public body receives:



(a) A progress bill or retainage bill, fails to give a contractor a written notice of any withholding in the manner set forth in subsection 2 of NRS 338.525, and does not pay the contractor within 30 days after receiving the progress bill or retainage bill; ~~for~~

(b) *The report from a contractor or subcontractor that is the reason for the withholding pursuant to paragraph (a) of subsection 1 of NRS 338.525 and fails to pay the progress payment or retainage payment that was withheld from the contractor within 10 days after the public body receives the next progress bill or retainage bill;*

(c) *The satisfactory information described in paragraph (b) of subsection 3 of NRS 338.525 from a contractor or subcontractor subject to withholding pursuant to paragraph (b) of subsection 1 of that section and fails to pay the progress payment or retainage payment that was withheld from the contractor within 10 days after the public body receives the next progress bill or retainage bill; or*

(d) A contractor's written notice of the correction of a condition set forth pursuant to subsection 2 of NRS 338.525 as the reason for the withholding ~~is~~ *pursuant to paragraph (c) of subsection 1 of NRS 338.525*, signed by an authorized agent of the contractor, and fails to:

(1) Pay the amount of the progress payment or retainage payment that was withheld from the contractor within 30 days after the public body receives the next progress bill or retainage bill; or

(2) Object to the scope and manner of the correction, within 30 days after the public body receives the notice of correction, in a written statement that sets forth the reason for the objection and is signed by an authorized agent of the public body,

↳ the public body shall pay to the contractor, in addition to the entire amount of the progress bill or retainage bill or any unpaid portion thereof, interest from the 30th day on the amount delayed, at a rate equal to the amount provided for in subsection 3 of NRS 338.515, until payment is made to the contractor.

2. If the public body objects pursuant to subparagraph (2) of paragraph ~~(b)~~ *(d)* of subsection 1, it shall pay to the contractor an amount equal to the value of the corrections to which the public body does not object.

Sec. 12. NRS 338.560 is hereby amended to read as follows:

338.560 1. A contractor may withhold from a progress payment or retainage payment an amount sufficient to pay:

(a) *The progress payment or retainage payment withheld from the contractor by a public body pursuant to paragraph (a) of subsection 1 of NRS 338.525 for failure of his subcontractor to*



1 *submit a report required pursuant to subsection 1 of section 1 of*
2 *this act.*

3 *(b) The progress payment or retainage payment withheld from*
4 *the contractor by a public body pursuant to paragraph (b) of*
5 *subsection 1 of NRS 338.525 for failure of his subcontractor to*
6 *participate in a meeting held pursuant to subsection 4 of section 1*
7 *of this act.*

8 (c) The expenses the contractor reasonably expects to incur as a
9 result of the failure of his subcontractor or supplier to comply with
10 the subcontract or applicable building code, law or regulation.

11 ~~[(b)]~~ (d) An amount withheld from payment to the contractor by
12 a public body pursuant to subsection ~~[(4)]~~ 5 of NRS 338.515 for a
13 claim for wages against the subcontractor.

14 2. A contractor shall, within 10 days after he receives:

15 (a) A progress payment or retainage payment from the public
16 body for an amount that is less than the amount set forth in the
17 applicable progress bill or retainage bill; or

18 (b) A progress bill or retainage bill from his subcontractor or
19 supplier,

20 ➤ give a written notice to his subcontractor or supplier of any
21 amount that will be withheld pursuant to this section.

22 3. The written notice must:

23 (a) Set forth:

24 (1) The amount of the progress payment or retainage
25 payment that will be withheld from his subcontractor or supplier;
26 and

27 (2) A detailed explanation of the reason the contractor will
28 withhold that amount, including, without limitation ~~[(a)]~~ :

29 *(I) A specification of the reporting period for which his*
30 *subcontractor failed to submit a report required pursuant to*
31 *subsection 1 of section 1 of this act;*

32 *(II) A specification of the meeting held pursuant to*
33 *subsection 4 of section 1 of this act in which his subcontractor*
34 *failed to participate; or*

35 *(III) A specific reference to the provision or section of the*
36 *subcontract, or documents ~~[(related)]~~ relating thereto, or applicable*
37 *building code, law or regulation with which his subcontractor or*
38 *supplier has failed to comply; and*

39 (b) Be signed by an authorized agent of the contractor.

40 4. The contractor shall pay to his subcontractor or supplier the
41 amount withheld by the public body or the contractor within 10 days
42 after:

43 (a) The contractor receives a written notice of the correction of
44 the condition that is the reason for the withholding ~~[(H)]~~ *pursuant to*



1 *paragraph (c) of subsection 1*, signed by an authorized agent of the
2 subcontractor or supplier; or

3 (b) The public body pays to the contractor the amount withheld
4 ~~§~~ *pursuant to paragraph (a), (b) or (d) of subsection 1*,
5 ~~↪~~ whichever occurs later.

6 **Sec. 13.** NRS 338.565 is hereby amended to read as follows:

7 338.565 1. If a contractor makes payment to a subcontractor
8 or supplier more than 10 days after the occurrence of any of the
9 following acts or omissions:

10 (a) The contractor fails to pay his subcontractor or supplier in
11 accordance with the provisions of subsection 1 of NRS 338.550;

12 (b) The contractor fails to give his subcontractor or supplier the
13 written notice of any withholding as required by subsections 2 and 3
14 of NRS 338.560; ~~for~~

15 (c) *The contractor receives the progress payment or retainage*
16 *payment withheld by the public body pursuant to paragraph (a) of*
17 *subsection 1 of NRS 338.525 for failure of his subcontractor to*
18 *submit the report that is the reason for the withholding pursuant*
19 *to paragraph (a) of subsection 1 of NRS 338.560 and fails to pay*
20 *the amount of the progress payment or retainage payment that was*
21 *withheld from his subcontractor within 10 days after the*
22 *contractor receives the next progress bill or retainage bill;*

23 (d) *The contractor receives the progress payment or retainage*
24 *payment withheld by the public body pursuant to paragraph (b) of*
25 *subsection 1 of NRS 338.525 for failure of his subcontractor to*
26 *participate in the meeting that is the reason for the withholding*
27 *pursuant to paragraph (b) of subsection 1 of NRS 338.560 and*
28 *fails to pay the amount of the progress payment or retainage*
29 *payment that was withheld from his subcontractor within 10 days*
30 *after the contractor receives the next progress bill or retainage*
31 *bill; or*

32 (e) The contractor receives a subcontractor's or supplier's
33 written notice of correction of the condition set forth pursuant to
34 subsection 4 of NRS 338.560 as the reason for the withholding ~~§~~
35 *pursuant to paragraph (c) of subsection 1 of NRS 338.560*, signed
36 by an authorized agent of the subcontractor or supplier, and fails to:

37 (1) Pay the amount of the progress payment or retainage
38 payment that was withheld from his subcontractor or supplier within
39 10 days after the contractor receives the next progress bill or
40 retainage bill; or

41 (2) Object to the scope and manner of the correction, within
42 10 days after receiving the written notice of correction, in a written
43 statement that sets forth the reason for the objection and is signed by
44 an authorized agent of the subcontractor, statement that sets forth



1 the reason for the objection and is accompanied by a notarized
2 affidavit signed by the contractor,
3 ➔ the contractor shall pay to the subcontractor or supplier, in
4 addition to the entire amount of the progress bill or the retainage bill
5 or any unpaid portion thereof, interest from the 10th day on the
6 amount delayed, at a rate equal to the lowest daily prime rate at the
7 three largest banks or other financial institutions of the United States
8 on the date the contract was executed plus 2 percent, until payment
9 is made to the subcontractor or supplier.

10 2. If the contractor objects pursuant to subparagraph (2) of
11 paragraph ~~(e)~~ (e) of subsection 1, the contractor shall pay to the
12 subcontractor or supplier an amount that is equal to the value of the
13 corrections to which the contractor does not object.

14 **Sec. 14.** NRS 408.327 is hereby amended to read as follows:

15 408.327 Except as otherwise provided in NRS 408.3875 to
16 408.3887, inclusive:

17 1. Whenever the provisions of NRS 408.323 do not apply, the
18 Director shall advertise for bids for such work according to the plans
19 and specifications prepared by him.

20 2. The advertisement must state the place where the bidders
21 may obtain or inspect the plans and specifications and the time and
22 place for opening the plans and specifications. *If the public work
23 has an estimated cost of \$25,000,000 or more and is located in a
24 county whose population is 100,000 or more, the advertisement
25 must include a provision that sets forth the requirement that a
26 contractor comply with the provisions of section 1 of this act.*

27 3. Publication of the advertisement must be made at least once
28 a week for 2 consecutive weeks for a total of at least two
29 publications in a newspaper of general circulation in the county in
30 which the major portion of the proposed improvement or
31 construction is to be made, and the advertisement must also be
32 published at least once a week for 2 consecutive weeks for a total of
33 at least two publications in one or more daily papers of general
34 circulation throughout the State. The first publication of the
35 advertisement in the daily newspapers having general circulation
36 throughout the State must be made not less than 15 days before the
37 time set for opening bids.

38 **Sec. 15.** NRS 408.383 is hereby amended to read as follows:

39 408.383 1. Except as otherwise provided in subsections 2,
40 ~~11 and 12,~~ 3, 4, 13 and 14, the Director may pay at the end of each
41 calendar month, or as soon thereafter as practicable, to any
42 contractor satisfactorily performing any highway improvement or
43 construction as the work progresses in full for the work as
44 completed but not more than 95 percent of the entire contract price.
45 The progress estimates must be based upon materials in place, or on



1 the job site, or at a location approved by the Director, and invoiced,
2 and labor expended thereon. The remaining 5 percent, but not more
3 than \$50,000, must be retained until the entire contract is completed
4 satisfactorily and accepted by the Director.

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

11 3. *The Director may withhold payment from a contractor as a*
12 *result of the failure of the contractor or his subcontractor to*
13 *submit a report required pursuant to subsection 1 of section 1 of*
14 *this act. The Director shall pay to the contractor, without interest,*
15 *the amount withheld by the Director pursuant to this subsection*
16 *within 30 days after receipt of the report from the contractor or*
17 *subcontractor that was the reason for the withholding.*

18 4. *The Director may withhold payment from a contractor as a*
19 *result of the failure of the contractor or his subcontractor to*
20 *participate in a meeting held pursuant to subsection 4 of section 1*
21 *of this act. The Director shall pay to the contractor, without*
22 *interest, the amount withheld by the Director pursuant to this*
23 *subsection within 30 days after receipt of information satisfactory*
24 *to the Director that the contractor or subcontractor, as applicable,*
25 *has resumed participating in the meetings held pursuant to*
26 *subsection 4 of section 1 of this act.*

27 5. If it becomes necessary for the Department to take over the
28 completion of any highway contract or contracts, all of the amounts
29 owing the contractor, including the withheld percentage, must first
30 be applied toward the cost of completion of the contract or
31 contracts. Any balance remaining in the retained percentage after
32 completion by the Department is payable to the contractor or the
33 contractor's creditors.

34 ~~[4-]~~ 6. Such retained percentage as may be due any contractor
35 is due and payable at the expiration of the 30-day period as provided
36 in NRS 408.363 for filing of creditors' claims, and this retained
37 percentage is due and payable to the contractor at that time without
38 regard to creditors' claims filed with the Department.

39 ~~[5-]~~ 7. The contractor under any contract made or awarded by
40 the Department, including any contract for the construction,
41 improvement, maintenance or repair of any road or highway or the
42 appurtenances thereto, may, from time to time, withdraw the whole
43 or any portion of the sums otherwise due to the contractor under the
44 contract which are retained by the Department, pursuant to the terms
45 of the contract, if the contractor deposits with the Director:



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

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

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

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

~~[6.]~~ 8. The Director has the power to enter into a contract or agreement with any national bank, state bank, credit union, trust company or safe deposit company located in the State of Nevada, designated by the contractor after notice to the owner and surety, to provide for the custodial care and servicing of any obligations deposited with him pursuant to this section. Such services include the safekeeping of the obligations and the rendering of all services required to effectuate the purposes of this section.

~~[7.]~~ 9. The Director or any national bank, state bank, credit union, trust company or safe deposit company located in the State of Nevada, designated by the contractor to serve as custodian for the obligations pursuant to subsection ~~[6.]~~ 8, shall collect all interest or income when due on the obligations so deposited and shall pay them, when and as collected, to the contractor who deposited the obligation. If the deposit is in the form of coupon bonds, the Director shall deliver each coupon as it matures to the contractor.

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

~~[9.—A]~~

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

~~[10.]~~ A contractor may withhold from money paid to him pursuant to this section any amount withheld from the contractor by the Director:



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(a) Pursuant to subsection 3 for failure of his subcontractor to submit a report required pursuant to subsection 1 of section 1 of this act; or

(b) Pursuant to subsection 4 for failure of his subcontractor to participate in a meeting held pursuant to subsection 4 of section 1 of this act.

↪ The contractor shall pay the withheld amount to his subcontractor, without interest, within 10 days after the Director pays to the contractor the amount withheld from the contractor.

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

~~H1.1~~ 13. If a contractor withholds more than 10 percent of a payment required by subsection ~~9.1~~ 11, except for any amount the contractor is authorized to withhold pursuant to that subsection, the subcontractor or supplier may inform the Director in writing of the amount due. The Director shall attempt to resolve the dispute between the contractor and the subcontractor or supplier within 20 working days after the date that the Director receives notice of the amount due. If the dispute is not resolved within 20 working days after the date that the Director receives notice of the amount due, the contractor shall deposit the disputed amount in an escrow account that bears interest. The contractor, subcontractor or supplier may pursue any legal or equitable remedy to resolve the dispute over the amount due. The Director may not be made a party to any legal or equitable action brought by the contractor, subcontractor or supplier.

~~H2.1~~ 14. If the Director awards to a railroad company a contract for a project for the construction, reconstruction, improvement or maintenance of a highway and the project is located on property that is owned by or under the control of the railroad company, the Director may agree in the contract not to retain any portion of the contract price.

Sec. 16. The Legislative Auditor shall conduct an audit during the interim immediately following the fourth year after the commencement of the first public work that requires the filing of a report pursuant to section 1 of this act. The audit must assess:

1. The level of compliance with section 1 of this act;
2. The effectiveness of section 1 of this act in increasing the rate of employment of minorities and women on public works; and
3. The degree of burden, if any, experienced by public bodies, contractors and subcontractors as a result of compliance with section 1 of this act.



- 1 **Sec. 17.** 1. This section and sections 1, 2, 4 and 6 to 16,
2 inclusive, of this act become effective on October 1, 2007.
3 2. Sections 2 and 4 of this act expire by limitation on April 30,
4 2013.
5 3. Sections 3 and 5 of this act become effective on May 1,
6 2013.
7 4. Sections 7 and 8 of this act expire by limitation on May 1,
8 2013.

