

ASSEMBLY BILL NO. 413—ASSEMBLYMEN DALY, CONKLIN,
HICKEY; ATKINSON, BOBZIEN, BUSTAMANTE ADAMS,
CARLTON, ELLISON, HORNE, KIRKPATRICK, PIERCE AND
SMITH

MARCH 21, 2011

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing public works.
(BDR 28-718)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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; making various changes relating
to the withholding of retainage on progress payments for
public works contracts; and providing other matters
properly relating thereto.

Legislative Counsel's Digest:

1 Existing law requires a public body to withhold as retainage at least 10 percent
2 of the progress payments owed to a contractor on a public works project during the
3 first half of the project. (NRS 338.515) Similarly, contractors and subcontractors
4 may withhold as retainage not more than 10 percent of progress payments to their
5 subcontractors and suppliers during the first half of the public works project. (NRS
6 338.555, 338.595) **Sections 1, 3 and 5** of this bill revise the maximum amount of
7 retainage that may be withheld during the first half of the project to 5 percent of the
8 progress payment. **Sections 1, 3 and 5** also provide that, except under limited
9 circumstances, the amount of retainage may not exceed 2.5 percent of progress
10 payments during the second half of a public works project.

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

1 **Section 1.** NRS 338.515 is hereby amended to read as follows:
2 338.515 1. Except as otherwise provided in NRS 338.525, a
3 public body and its officers or agents awarding a contract for a
4 public work shall pay or cause to be paid to a contractor the progress
5 payments due under the contract within 30 days after the date the



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1 public body receives the progress bill or within a shorter period if
2 the provisions of the contract so provide. Not more than ~~190~~ 95
3 percent of the amount of any progress payment may be paid until 50
4 percent of the work required by the contract has been performed.

5 ~~[Thereafter,]~~

6 **2. After 50 percent of the work required by the contract has**
7 **been performed,** the public body may pay any of the remaining
8 progress payments without withholding additional retainage if, in
9 the opinion of the public body, satisfactory progress is being made
10 in the work.

11 ~~[2-]~~ **If the public body continues to withhold retainage from**
12 **remaining progress payments:**

13 **(a) The public body may not withhold more than 2.5 percent of**
14 **the amount of any progress payment; and**

15 **(b) Except as otherwise provided in NRS 338.525, before**
16 **withholding any amount pursuant to paragraph (a), the public**
17 **body must pay to the contractor the amount of any retainage that**
18 **was withheld from progress payments pursuant to subsection 1.**

19 **3.** Except as otherwise provided in NRS 338.525, a public
20 body shall identify in the contract and pay or cause to be paid to a
21 contractor the actual cost of the supplies, materials and equipment
22 that:

23 (a) Are identified in the contract;

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

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

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

31 ~~[3-]~~ **4.** A public body shall pay or cause to be paid to the
32 contractor at the end of each quarter interest for the quarter on any
33 amount withheld by the public body pursuant to NRS 338.400 to
34 338.645, inclusive, at a rate equal to the rate quoted by at least three
35 insured banks, credit unions or savings and loan associations in this
36 State as the highest rate paid on a certificate of deposit whose
37 duration is approximately 90 days on the first day of the quarter. If
38 the amount due to a contractor pursuant to this subsection for any
39 quarter is less than \$500, the public body may hold the interest until:

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

42 (b) The end of the fourth consecutive quarter for which no
43 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-]~~ 5. If the Labor Commissioner has reason to believe that a worker is owed wages by a contractor or subcontractor, the Labor Commissioner 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 worker. This amount must be paid by the Labor Commissioner to the worker if the matter is resolved in the worker's favor, otherwise it must be returned to the public body for payment to the contractor.

Sec. 2. NRS 338.530 is hereby amended to read as follows:

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; or

(b) 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, 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]~~ 4 of NRS 338.515, until payment is made to the contractor.

2. If the public body objects pursuant to subparagraph (2) of paragraph (b) 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. 3. NRS 338.555 is hereby amended to read as follows:

338.555 1. If a public body and a contractor enter into a contract for a public work, the contractor may withhold as retainage not more than ~~[10]~~ 5 percent from the amount of any progress payment due under a subcontract which is made before 50 percent of the work has been completed under the subcontract. ~~[Thereafter]~~



1 **2. After 50 percent of the work required by the contract has**
2 **been performed,** the contractor shall pay any additional progress
3 payments due under the subcontract without withholding any
4 additional retainage if, in the opinion of the contractor, satisfactory
5 progress is being made in the work under the subcontract, and the
6 payment must be equal to that paid by the public body to the
7 contractor for the work performed by the subcontractor.

8 ~~2.1~~ **If the contractor continues to withhold retainage from**
9 **remaining progress payments:**

10 **(a) The contractor may not withhold more than 2.5 percent of**
11 **the amount of any progress payment; and**

12 **(b) Except as otherwise provided in NRS 338.560, before**
13 **withholding any amount pursuant to paragraph (a), the contractor**
14 **must pay to the subcontractor the amount of any retainage that**
15 **was withheld from progress payments pursuant to subsection 1.**

16 **3.** If the contractor receives a payment of interest earned on the
17 retainage or an amount withheld from a progress payment, the
18 contractor shall, within 10 days after he or she receives the money,
19 pay to each subcontractor or supplier that portion of the interest
20 received from the public body which is attributable to the retainage
21 or amount withheld from a progress payment by the contractor to
22 the subcontractor or supplier.

23 **Sec. 4.** NRS 338.560 is hereby amended to read as follows:

24 338.560 1. A contractor may withhold from a progress
25 payment or retainage payment an amount sufficient to pay:

26 (a) The expenses the contractor reasonably expects to incur as a
27 result of the failure of his or her subcontractor or supplier to comply
28 with the subcontract or applicable building code, law or regulation.

29 (b) An amount withheld from payment to the contractor by a
30 public body pursuant to subsection ~~4.1~~ 5 of NRS 338.515 for a claim
31 for wages against the subcontractor.

32 2. A contractor shall, within 10 days after the contractor
33 receives:

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

37 (b) A progress bill or retainage bill from his or her subcontractor
38 or supplier,

39 ↳ give a written notice to his or her subcontractor or supplier of any
40 amount that will be withheld pursuant to this section.

41 3. The written notice must:

42 (a) Set forth:

43 (1) The amount of the progress payment or retainage
44 payment that will be withheld from his or her subcontractor or
45 supplier; and



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(2) A detailed explanation of the reason the contractor will withhold that amount, including, without limitation, a specific reference to the provision or section of the subcontract, or documents related thereto, or applicable building code, law or regulation with which his or her subcontractor or supplier has failed to comply; and

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

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

(a) The contractor receives a written notice of the correction of the condition that is the reason for the withholding, signed by an authorized agent of the subcontractor or supplier; or

(b) The public body pays to the contractor the amount withheld, whichever occurs later.

Sec. 5. NRS 338.595 is hereby amended to read as follows:

338.595 1. If a subcontractor and another subcontractor or supplier enter into a subcontract for a public work, the subcontractor may withhold as retainage not more than ~~10~~ 5 percent from the amount of any progress payment due under a subcontract which is made before 50 percent of the work has been completed under the subcontract. ~~The~~

2. After 50 percent of the work required by the subcontractor or supplier has been performed, the subcontractor shall pay any additional progress payments due under the subcontract without withholding any additional retainage if, in the opinion of the subcontractor, satisfactory progress is being made in the work under the subcontract. The payment must be equal to that paid by the contractor to the subcontractor for the work performed or supplies provided by his or her subcontractor or supplier.

~~2.1~~ If the subcontractor continues to withhold retainage from remaining progress payments:

(a) The subcontractor may not withhold more than 2.5 percent of the amount of any progress payment; and

(b) Except as otherwise provided in NRS 338.600, before withholding any amount pursuant to paragraph (a), the subcontractor must pay to the subcontractor or supplier the amount of any retainage that was withheld from progress payments pursuant to subsection 1.

3. If the subcontractor receives a payment of interest earned on the retainage or an amount withheld from a progress payment, the subcontractor shall, within 10 days after receiving the money, pay to each of his or her subcontractors or suppliers that portion of the interest received from the contractor which is attributable to the



- 1 retainage or amount withheld from a progress payment by the
- 2 subcontractor to his or her subcontractor or supplier.

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