

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. **Section 1** also allows a
11 public body to pay some or all of the retainage withheld during the first half of the
12 project if satisfactory progress is being made in the work or if a subcontractor has
13 completed its portion of the work.



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
6 public body receives the progress bill or within a shorter period if
7 the provisions of the contract so provide. Not more than ~~90~~ 95
8 percent of the amount of any progress payment may be paid until 50
9 percent of the work required by the contract has been performed.
10 ~~Thereafter,~~
11 2. *After 50 percent of the work required by the contract has*
12 *been performed,* the public body may pay ~~any~~ *to the contractor:*
13 (a) *Any* of the remaining progress payments without
14 withholding additional retainage ; *and*
15 (b) *Any amount of any retainage that was withheld from*
16 *progress payments pursuant to subsection 1,*
17 ↳ if, in the opinion of the public body, satisfactory progress is being
18 made in the work.
19 ~~2-~~ 3. *After determining in accordance with subsection 2*
20 *whether satisfactory progress is being made in the work, the public*
21 *body may pay to the contractor an amount of any retainage that*
22 *was withheld from progress payments pursuant to subsection 1 if:*
23 (a) *A subcontractor has performed a portion of the work;*
24 (b) *The public body determines that the portion of the work*
25 *has been completed in compliance with all applicable plans and*
26 *specifications;*
27 (c) *The subcontractor submits to the contractor:*
28 (1) *A release of the subcontractor's claim for a mechanic's*
29 *lien for the portion of the work; and*
30 (2) *From each of the subcontractor's subcontractors and*
31 *suppliers who performed work or provided material for the portion*
32 *of the work, a release of his or her claim for a mechanic's lien for*
33 *the portion of the work; and*
34 (d) *The amount of the retainage which the public body pays is*
35 *in proportion to the portion of the work which the subcontractor*
36 *has performed.*
37 4. *If, pursuant to subsection 3, the public body pays to the*
38 *contractor an amount of any retainage that was withheld from*
39 *progress payments pursuant to subsection 1 for the portion of the*
40 *work which has been performed by the subcontractor, the*
41 *contractor must pay to the subcontractor the portion of any*
42 *retainage withheld by the contractor pursuant to NRS 338.555 for*



1 *the portion of the work. If, pursuant to this subsection, the*
2 *contractor pays to the subcontractor the portion of any retainage*
3 *withheld by the contractor pursuant to NRS 338.555 for the*
4 *portion of the work which has been performed by the*
5 *subcontractor, the subcontractor must pay to the subcontractor's*
6 *subcontractors and suppliers the portion of any retainage withheld*
7 *by the subcontractor pursuant to NRS 338.595 for the portion of*
8 *the work.*

9 *5. If, after determining in accordance with subsection 2*
10 *whether satisfactory progress is being made in the work, the public*
11 *body continues to withhold retainage from remaining progress*
12 *payments:*

13 *(a) If the public body does not withhold any amount pursuant*
14 *to NRS 338.525:*

15 *(1) The public body may not withhold more than 2.5*
16 *percent of the amount of any progress payment; and*

17 *(2) Before withholding any amount pursuant to*
18 *subparagraph (1), the public body must pay to the contractor 50*
19 *percent of the amount of any retainage that was withheld from*
20 *progress payments pursuant to subsection 1; or*

21 *(b) If the public body withholds any amount pursuant to*
22 *NRS 338.525:*

23 *(1) The public body may not withhold more than 5 percent*
24 *of the amount of any progress payment; and*

25 *(2) The public body may continue to retain the amount of*
26 *any retainage that was withheld from progress payments pursuant*
27 *to subsection 1.*

28 *6. Except as otherwise provided in NRS 338.525, a public*
29 *body shall identify in the contract and pay or cause to be paid to a*
30 *contractor the actual cost of the supplies, materials and equipment*
31 *that:*

32 *(a) Are identified in the contract;*

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

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

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

40 ~~13-1~~ *7. A public body shall pay or cause to be paid to the*
41 *contractor at the end of each quarter interest for the quarter on any*
42 *amount withheld by the public body pursuant to NRS 338.400 to*
43 *338.645, inclusive, at a rate equal to the rate quoted by at least three*
44 *insured banks, credit unions or savings and loan associations in this*
45 *State as the highest rate paid on a certificate of deposit whose*



1 duration is approximately 90 days on the first day of the quarter. If
2 the amount due to a contractor pursuant to this subsection for any
3 quarter is less than \$500, the public body may hold the interest until:

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

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

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

10 ➔ whichever occurs first.

11 ~~[4.]~~ 8. If the Labor Commissioner has reason to believe that a
12 worker is owed wages by a contractor or subcontractor, the Labor
13 Commissioner may require the public body to withhold from any
14 payment due the contractor under this section and pay the Labor
15 Commissioner instead, an amount equal to the amount the Labor
16 Commissioner believes the contractor owes to the worker. This
17 amount must be paid by the Labor Commissioner to the worker if
18 the matter is resolved in the worker's favor, otherwise it must be
19 returned to the public body for payment to the contractor.

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

21 338.530 1. If a public body receives:

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

26 (b) A contractor's written notice of the correction of a condition
27 set forth pursuant to subsection 2 of NRS 338.525 as the reason for
28 the withholding, signed by an authorized agent of the contractor,
29 and fails to:

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

33 (2) Object to the scope and manner of the correction, within
34 30 days after the public body receives the notice of correction, in a
35 written statement that sets forth the reason for the objection and is
36 signed by an authorized agent of the public body,

37 ➔ the public body shall pay to the contractor, in addition to the
38 entire amount of the progress bill or retainage bill or any unpaid
39 portion thereof, interest from the 30th day on the amount delayed, at
40 a rate equal to the amount provided for in subsection ~~[3.]~~ 7 of NRS
41 338.515, until payment is made to the contractor.

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



* A B 4 1 3 R 2 *

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]~~

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

~~12~~ *If the contractor continues to withhold retainage from remaining progress payments:*

(a) *If the contractor does not withhold any amount pursuant to NRS 338.560:*

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

(2) *Before withholding any amount pursuant to subparagraph (1), the contractor must pay to the subcontractor 50 percent of the amount of any retainage that was withheld from progress payments pursuant to subsection 1; or*

(b) *If the contractor withholds any amount pursuant to NRS 338.560:*

(1) *The contractor may not withhold more than 5 percent of the amount of any progress payment; and*

(2) *The contractor may continue to retain the amount of any retainage that was withheld from progress payments pursuant to subsection 1.*

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

Sec. 4. 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 expenses the contractor reasonably expects to incur as a result of the failure of his or her subcontractor or supplier to comply with the subcontract or applicable building code, law or regulation.



(b) An amount withheld from payment to the contractor by a public body pursuant to subsection ~~4~~ 8 of NRS 338.515 for a claim for wages against the subcontractor.

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

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

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

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

3. The written notice must:

(a) Set forth:

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

(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



1 contractor to the subcontractor for the work performed or supplies
2 provided by his or her subcontractor or supplier.

3 ~~12.1~~ *If the subcontractor continues to withhold retainage from*
4 *remaining progress payments:*

5 *(a) If the subcontractor does not withhold any amount*
6 *pursuant to NRS 338.600:*

7 *(1) The subcontractor may not withhold more than 2.5*
8 *percent of the amount of any progress payment; and*

9 *(2) Before withholding any amount pursuant to*
10 *subparagraph (1), the subcontractor must pay to the subcontractor or*
11 *supplier 50 percent of the amount of any retainage that was*
12 *withheld from progress payments pursuant to subsection 1; or*

13 *(b) If the subcontractor withholds any amount pursuant to*
14 *NRS 338.600:*

15 *(1) The subcontractor may not withhold more than 5*
16 *percent of the amount of any progress payment; and*

17 *(2) The subcontractor may continue to retain the amount of*
18 *any retainage that was withheld from progress payments pursuant*
19 *to subsection 1.*

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

27 **Sec. 6.** This act becomes effective on October 1, 2011, and
28 expires by limitation on July 1, 2015.

