

Amendment No. 631

Senate Amendment to Assembly Bill No. 413 First Reprint (BDR 28-718)

Proposed by: Senate Committee on Government Affairs**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

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

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

AAK/WLK



Date: 5/28/2011

A.B. No. 413—Revises provisions governing public works. (BDR 28-718)



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:

Existing law requires a public body to withhold as retainage at least 10 percent of the progress payments owed to a contractor on a public works project during the first half of the project. (NRS 338.515) Similarly, contractors and subcontractors may withhold as retainage not more than 10 percent of progress payments to their subcontractors and suppliers during the first half of the public works project. (NRS 338.555, 338.595) **Sections 1, 3 and 5** of this bill revise the maximum amount of retainage that may be withheld during the first half of the project to 5 percent of the progress payment. **Sections 1, 3 and 5** also provide that, except under limited circumstances, the amount of retainage may not exceed 2.5 percent of progress payments during the second half of a public works project. **Section 1 also allows a public body to pay some or all of the retainage withheld during the first half of the project if satisfactory progress is being made in the work or if a subcontractor has completed its portion of the work.**

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

Section 1. NRS 338.515 is hereby amended to read as follows:

338.515 1. Except as otherwise provided in NRS 338.525, a public body and its officers or agents awarding a contract for a public work shall pay or cause to be paid to a contractor the progress payments due under the contract within 30 days after the date the public body receives the progress bill or within a shorter period if the provisions of the contract so provide. Not more than ~~90~~ 95 percent of the amount of any progress payment may be paid until 50 percent of the work required by the contract has been performed. ~~[Thereafter,]~~

2. *After 50 percent of the work required by the contract has been performed, the public body may pay ~~any~~ to the contractor.*

1 (a) Any of the remaining progress payments without withholding additional
2 retainage ; and

3 (b) Any amount of any retainage that was withheld from progress payments
4 pursuant to subsection 1.

5 if, in the opinion of the public body, satisfactory progress is being made in the
6 work.

7 ~~2-~~ 3. After determining in accordance with subsection 2 whether
8 satisfactory progress is being made in the work, the public body may pay to the
9 contractor an amount of any retainage that was withheld from progress payments
10 pursuant to subsection 1 if:

11 (a) A subcontractor has performed a portion of the work;

12 (b) The public body determines that the portion of the work has been
13 completed in compliance with all applicable plans and specifications;

14 (c) The subcontractor submits to the contractor:

15 (1) A release of the subcontractor's claim for a mechanic's lien for the
16 portion of the work; and

17 (2) From each of the subcontractor's subcontractors and suppliers who
18 performed work or provided material for the portion of the work, a release of his
19 or her claim for a mechanic's lien for the portion of the work; and

20 (d) The amount of the retainage which the public body pays is in proportion
21 to the portion of the work which the subcontractor has performed.

22 4. If, pursuant to subsection 3, the public body pays to the contractor an
23 amount of any retainage that was withheld from progress payments pursuant to
24 subsection 1 for the portion of the work which has been performed by the
25 subcontractor, the contractor must pay to the subcontractor the portion of any
26 retainage withheld by the contractor pursuant to NRS 338.555 for the portion of
27 the work. If, pursuant to this subsection, the contractor pays to the subcontractor
28 the portion of any retainage withheld by the contractor pursuant to NRS 338.555
29 for the portion of the work which has been performed by the subcontractor, the
30 subcontractor must pay to the subcontractor's subcontractors and suppliers the
31 portion of any retainage withheld by the subcontractor pursuant to NRS 338.595
32 for the portion of the work.

33 5. If , after determining in accordance with subsection 2 whether
34 satisfactory progress is being made in the work, the public body continues to
35 withhold retainage from remaining progress payments:

36 (a) If the public body does not withhold any amount pursuant to NRS
37 338.525:

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

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

43 (b) If the public body withholds any amount pursuant to NRS 338.525:

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

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

48 ~~6-~~ 6. Except as otherwise provided in NRS 338.525, a public body shall
49 identify in the contract and pay or cause to be paid to a contractor the actual cost of
50 the supplies, materials and equipment that:

51 (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-)~~ ~~(4-)~~ 7. 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 insured banks, credit unions or savings and loan associations in this State 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-)~~ ~~(5-)~~ 8. 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-)~~ 7 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.

1 **Sec. 3.** NRS 338.555 is hereby amended to read as follows:

2 338.555 1. If a public body and a contractor enter into a contract for a
3 public work, the contractor may withhold as retainage not more than ~~10~~ 5 percent
4 from the amount of any progress payment due under a subcontract which is made
5 before 50 percent of the work has been completed under the subcontract.

6 ~~{Thereafter}~~

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

13 ~~{2.}~~ *If the contractor continues to withhold retainage from remaining*
14 *progress payments:*

15 (a) *If the contractor does not withhold any amount pursuant to NRS*
16 *338.560:*

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

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

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

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

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

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

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

34 338.560 1. A contractor may withhold from a progress payment or retainage
35 payment an amount sufficient to pay:

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

39 (b) An amount withheld from payment to the contractor by a public body
40 pursuant to subsection ~~44~~ ~~54~~ 8 of NRS 338.515 for a claim for wages against the
41 subcontractor.

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

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

46 (b) A progress bill or retainage bill from his or her subcontractor or supplier,
47 give a written notice to his or her subcontractor or supplier of any amount that
48 will be withheld pursuant to this section.

49 3. The written notice must:

50 (a) Set forth:

51 (1) The amount of the progress payment or retainage payment that will be
52 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 ~~four~~ 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.~~ *If the subcontractor continues to withhold retainage from remaining progress payments:*

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

(1) The subcontractor 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 subcontractor must pay to the subcontractor or supplier 50 percent of the amount of any retainage that was withheld from progress payments pursuant to subsection 1; or

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

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

(2) The subcontractor may continue to retain 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 retainage or amount withheld from a progress payment by the subcontractor to his or her subcontractor or supplier.

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