

Amendment No. 470

Senate Amendment to Senate Bill No. 254	(BDR 28-791)
Proposed by: Senate Committee on Government Affairs	
Amends: Summary: No Title: Yes 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

RAE/JRS



Date: 4/14/2015

S.B. No. 254—Revises provisions relating to public works. (BDR 28-791)



SENATE BILL NO. 254—SENATORS FARLEY,
HARDY, HARRIS; AND SETTELMAYER

MARCH 12, 2015

Referred to Committee on Government Affairs

SUMMARY—Revises provisions relating to public works. (BDR 28-791)

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; ~~amending the definition of the term “public work” as it relates to buildings of the Nevada System of Higher Education;~~ amending the amount of retainage authorized on public works and certain other works; extending existing provisions related to retainage; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

~~Existing law defines the term “public work” to mean a building of the Nevada System of Higher Education of which at least 25 percent of the costs are paid from money appropriated by this State or from federal money. (NRS 338.010) Section 1 of this bill amends this definition as it pertains to such buildings, designating a building of the Nevada System of Higher Education for which any public funds are used as a public work.~~

Existing law requires a public body undertaking a public work to withhold as a retainage at least 5 percent from progress payments made to a contractor during the first half of the project. After completion of half of the project, the amount of the retainage becomes optional and any remaining progress payments or withheld retainage may be paid. (NRS 338.515) **Section 2** of this bill requires the amount of the retainage to be 5 percent. ~~Section 2 also requires that any withheld retainage be paid after half of the project is completed in certain situations where subcontractors have completed work on the project.~~

Existing law provides that in private construction projects, not more than 10 percent of progress payments may be withheld from such payments by an owner to a contractor and from a contractor to a subcontractor, and that such funds must be paid upon satisfaction of certain criteria including the issuance of a certificate of occupancy by a building inspector. (NRS 624.609, 624.620, 624.624) **Sections 3 and 5** of this bill reduce the amount of retainage allowed from 10 percent to 5 percent. **Section 4** of this bill requires that retained funds be paid upon the issuance of a temporary certificate of occupancy. Finally, **section 6** of this bill repeals the expiration of certain provisions of existing law pertaining to retainage in public works which are set to expire on July 1, 2015. (NRS 338.515, 338.530, 338.555, 338.560, 338.595)

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

Section 1. ~~NRS 338.010 is hereby amended to read as follows:~~

~~338.010 As used in this chapter:~~

~~1. "Authorized representative" means a person designated by a public body to be responsible for the development, solicitation, award or administration of contracts for public works pursuant to this chapter.~~

~~2. "Contract" means a written contract entered into between a contractor and a public body for the provision of labor, materials, equipment or supplies for a public work.~~

~~3. "Contractor" means:~~

~~(a) A person who is licensed pursuant to the provisions of chapter 624 of NRS.~~

~~(b) A design build team.~~

~~4. "Day labor" means all cases where public bodies, their officers, agents or employees, hire, supervise and pay the wages thereof directly to a worker or workers employed by them on public works by the day and not under a contract in writing.~~

~~5. "Design build contract" means a contract between a public body and a design build team in which the design build team agrees to design and construct a public work.~~

~~6. "Design build team" means an entity that consists of:~~

~~(a) At least one person who is licensed as a general engineering contractor or a general building contractor pursuant to chapter 624 of NRS; and~~

~~(b) For a public work that consists of:~~

~~(1) A building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS;~~

~~(2) Anything other than a building and its site, at least one person who holds a certificate of registration to practice architecture pursuant to chapter 623 of NRS or landscape architecture pursuant to chapter 623A of NRS or who is licensed as a professional engineer pursuant to chapter 625 of NRS.~~

~~7. "Design professional" means:~~

~~(a) A person who is licensed as a professional engineer pursuant to chapter 625 of NRS;~~

~~(b) A person who is licensed as a professional land surveyor pursuant to chapter 625 of NRS;~~

~~(c) A person who holds a certificate of registration to engage in the practice of architecture, interior design or residential design pursuant to chapter 623 of NRS;~~

~~(d) A person who holds a certificate of registration to engage in the practice of landscape architecture pursuant to chapter 623A of NRS; or~~

~~(e) A business entity that engages in the practice of professional engineering, land surveying, architecture or landscape architecture.~~

~~8. "Division" means the State Public Works Division of the Department of Administration.~~

~~9. "Eligible bidder" means a person who is:~~

~~(a) Found to be a responsible and responsive contractor by a local government or its authorized representative which requests bids for a public work in accordance with paragraph (b) of subsection 1 of NRS 338.1373; or~~

~~(b) Determined by a public body or its authorized representative which awarded a contract for a public work pursuant to NRS 338.1375 to 338.139, inclusive, to be qualified to bid on that contract pursuant to NRS 338.1379 or 338.1382.~~

1 ~~10. "General contractor" means a person who is licensed to conduct business~~
2 ~~in one, or both, of the following branches of the contracting business:~~

3 ~~(a) General engineering contracting, as described in subsection 2 of NRS~~
4 ~~624.215;~~

5 ~~(b) General building contracting, as described in subsection 3 of NRS 624.215.~~

6 ~~11. "Governing body" means the board, council, commission or other body in~~
7 ~~which the general legislative and fiscal powers of a local government are vested.~~

8 ~~12. "Horizontal construction" means the construction of any fixed work,~~
9 ~~including any irrigation, drainage, water supply, flood control, harbor, railroad,~~
10 ~~highway, tunnel, airport or airway, sewer, sewage disposal plant or water treatment~~
11 ~~facility, and any ancillary vertical components thereof, bridge, inland waterway,~~
12 ~~pipeline for the transmission of petroleum or any other liquid or gaseous substance,~~
13 ~~pier, and work incidental thereto. The term does not include vertical construction,~~
14 ~~the construction of any terminal or other building of an airport or airway, or the~~
15 ~~construction of any other building.~~

16 ~~13. "Local government" means every political subdivision or other entity~~
17 ~~which has the right to levy or receive money from ad valorem or other taxes or any~~
18 ~~mandatory assessments, and includes, without limitation, counties, cities, towns,~~
19 ~~boards, school districts and other districts organized pursuant to chapters 244A,~~
20 ~~309, 318, 379, 474, 538, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,~~
21 ~~inclusive, and any agency or department of a county or city which prepares a~~
22 ~~budget separate from that of the parent political subdivision. The term includes a~~
23 ~~person who has been designated by the governing body of a local government to~~
24 ~~serve as its authorized representative.~~

25 ~~14. "Offense" means failing to:~~

26 ~~(a) Pay the prevailing wage required pursuant to this chapter;~~

27 ~~(b) Pay the contributions for unemployment compensation required pursuant to~~
28 ~~chapter 612 of NRS;~~

29 ~~(c) Provide and secure compensation for employees required pursuant to~~
30 ~~chapters 616A to 617, inclusive, of NRS; or~~

31 ~~(d) Comply with subsection 5 or 6 of NRS 338.070.~~

32 ~~15. "Prime contractor" means a contractor who:~~

33 ~~(a) Contracts to construct an entire project;~~

34 ~~(b) Coordinates all work performed on the entire project;~~

35 ~~(c) Uses his or her own workforce to perform all or a part of the public work;~~
36 ~~and~~

37 ~~(d) Contracts for the services of any subcontractor or independent contractor or~~
38 ~~is responsible for payment to any contracted subcontractors or independent~~
39 ~~contractors.~~

40 ~~The term includes, without limitation, a general contractor or a specialty~~
41 ~~contractor who is authorized to bid on a project pursuant to NRS 338.139 or~~
42 ~~338.148.~~

43 ~~16. "Public body" means the State, county, city, town, school district or any~~
44 ~~public agency of this State or its political subdivisions sponsoring or financing a~~
45 ~~public work.~~

46 ~~17. "Public work" means any project for the new construction, repair or~~
47 ~~reconstruction of:~~

48 ~~(a) A project financed in whole or in part from public money for:~~

49 ~~[(1)] (a) Public buildings;~~

50 ~~[(2)] (b) Jails and prisons;~~

51 ~~[(3)] (c) Public roads;~~

52 ~~[(4)] (d) Public highways;~~

53 ~~[(5)] (e) Public streets and alleys;~~

~~[(6)] (f) Public utilities;~~
~~[(7)] (g) Publicly owned water mains and sewers;~~
~~[(8)] (h) Public parks and playgrounds;~~
~~[(9)] (i) Public convention facilities which are financed at least in part with public money; and~~
~~[(10)] (j) All other publicly owned works and property [~~
~~(b)] ; and~~
~~(k) A building for the Nevada System of Higher Education . [of which 25 percent or more of the costs of the building as a whole are paid from money appropriated by this State or from federal money.]~~
~~18. "Specialty contractor" means a person who is licensed to conduct business as described in subsection 4 of NRS 624.215.~~
~~19. "Stand alone underground utility project" means an underground utility project that is not integrated into a larger project, including, without limitation:~~
~~(a) An underground sewer line or an underground pipeline for the conveyance of water, including facilities appurtenant thereto; and~~
~~(b) A project for the construction or installation of a storm drain, including facilities appurtenant thereto,~~
~~that is not located at the site of a public work for the design and construction of which a public body is authorized to contract with a design-build team pursuant to subsection 2 of NRS 238.1711.~~
~~20. "Subcontract" means a written contract entered into between:~~
~~(a) A contractor and a subcontractor or supplier; or~~
~~(b) A subcontractor and another subcontractor or supplier,~~
~~for the provision of labor, materials, equipment or supplies for a construction project.~~
~~21. "Subcontractor" means a person who:~~
~~(a) Is licensed pursuant to the provisions of chapter 624 of NRS or performs such work that the person is not required to be licensed pursuant to chapter 624 of NRS; and~~
~~(b) Contracts with a contractor, another subcontractor or a supplier to provide labor, materials or services for a construction project.~~
~~22. "Supplier" means a person who provides materials, equipment or supplies for a construction project.~~
~~23. "Vertical construction" means the construction or remodeling of any building, structure or other improvement that is predominantly vertical, including, without limitation, a building, structure or improvement for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind, and any improvement appurtenant thereto.~~
~~24. "Wages" means:~~
~~(a) The basic hourly rate of pay; and~~
~~(b) The amount of pension, health and welfare, vacation and holiday pay, the cost of apprenticeship training or other similar programs or other bona fide fringe benefits which are a benefit to the worker.~~
~~25. "Worker" means a skilled mechanic, skilled worker, semiskilled mechanic, semiskilled worker or unskilled worker in the service of a contractor or subcontractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. The term does not include a design professional.] (Deleted by amendment.)~~

Sec. 2. 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

1 after the date the public body receives the progress bill or within a shorter period if
2 the provisions of the contract so provide. ~~Not more than 95~~ *Ninety five* percent of
3 the amount of any progress payment ~~may~~ *must* be paid *and 5 percent withheld as*
4 *retainage* until 50 percent of the work required by the contract has been performed.

5 2. After 50 percent of the work required by the contract has been performed,
6 the public body may pay to the contractor:

7 (a) Any of the remaining progress payments without withholding additional
8 retainage; and

9 (b) Any amount of any retainage that was withheld from progress payments
10 pursuant to subsection 1,

11 *↪* if, in the opinion of the public body, satisfactory progress is being made in the
12 work.

13 3. After determining in accordance with subsection 2 whether satisfactory
14 progress is being made in the work, the public body ~~may~~ *shall* pay to the
15 contractor an amount of any retainage that was withheld from progress payments
16 pursuant to subsection 1 if:

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

18 (b) *The contractor has determined that satisfactory progress is being made in*
19 *the work under the subcontract with the subcontractor pursuant to NRS 338.555;*

20 (c) The public body determines that the portion of the work has been
21 completed in compliance with all applicable plans and specifications;

22 ~~(e)~~ (d) The subcontractor submits to the contractor:

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

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

28 ~~(e)~~ (e) The amount of the retainage which the public body pays is in
29 proportion to the portion of the work which the subcontractor has performed.

30 4. If, after determining in accordance with subsection 2 whether satisfactory
31 progress is being made in the work, the public body continues to withhold retainage
32 from remaining progress payments:

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

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

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

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

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

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

44 5. Except as otherwise provided in NRS 338.525, a public body shall identify
45 in the contract and pay or cause to be paid to a contractor the actual cost of the
46 supplies, materials and equipment that:

47 (a) Are identified in the contract;

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

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

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

6. 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.

7. 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. 3. NRS 624.609 is hereby amended to read as follows:

624.609 1. Except as otherwise provided in subsections 2 and 4 and subsection 4 of NRS 624.622, if an owner of real property enters into a written or oral agreement with a prime contractor for the performance of work or the provision of materials or equipment by the prime contractor, the owner must:

(a) Pay the prime contractor on or before the date a payment is due pursuant to a schedule for payments established in a written agreement; or

(b) If no such schedule is established or if the agreement is oral, pay the prime contractor within 21 days after the date the prime contractor submits a request for payment.

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

(a) Withhold from any payment to be made to the prime contractor:

(1) A retention amount that, if the owner is authorized to withhold a retention amount pursuant to the agreement, must not exceed ~~10~~ 5 percent of the amount of the payment to be made;

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

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

(II) Costs and expenses reasonably necessary to correct or repair any work which is the subject of the request for payment and which is not materially in compliance with the agreement to the extent that such costs and expenses exceed 50 percent of the retention amount withheld pursuant to subparagraph (1); and

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

(b) Require as a condition precedent to the payment of any amount due, lien releases furnished by the prime contractor and his or her lower-tiered

1 subcontractors and suppliers in accordance with the provisions of paragraphs (a)
2 and (c) of subsection 5 of NRS 108.2457.

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

8 (a) Identify the amount of the request for payment that will be withheld from
9 the prime contractor;

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

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

16 4. A prime contractor who receives a notice of withholding pursuant to
17 subsection 3 or a notice of objection pursuant to subparagraph (2) of paragraph (b)
18 may:

19 (a) Give the owner a written notice and thereby dispute in good faith and for
20 reasonable cause the amount withheld, or the condition or reason for the
21 withholding; or

22 (b) Correct any condition or reason for the withholding described in the notice
23 of withholding and thereafter provide written notice to the owner of the correction
24 of the condition or reason for the withholding. The notice of correction must be
25 sufficient to identify the scope and manner of the correction of the condition or
26 reason for the withholding and be signed by an authorized representative of the
27 prime contractor. If an owner receives a written notice from the prime contractor of
28 the correction of a condition or reason for the withholding pursuant to this
29 paragraph, the owner shall:

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

33 (2) Object to the scope and manner of the correction of the condition or
34 reason for the withholding, on or before the date the next payment is due to the
35 prime contractor, in a written statement which sets forth the condition or reason for
36 the objection and which complies with subsection 3. If the owner objects to the
37 scope and manner of the correction of a condition or reason for the withholding, the
38 owner shall nevertheless pay to the prime contractor, along with the payment to be
39 made pursuant to the prime contractor's next payment request, the amount withheld
40 for the correction of the condition or reason for the withholding to which the owner
41 no longer objects.

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

45 **Sec. 4.** NRS 624.620 is hereby amended to read as follows:

46 624.620 1. Except as otherwise provided in this section, any money
47 remaining unpaid for the construction of a work of improvement is payable to the
48 prime contractor within 30 days after:

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

51 (b) The availability of a work of improvement for its intended use. The prime
52 contractor must have provided to the owner:

1 (1) A written notice of availability on or before the day on which the prime
2 contractor claims that the work of improvement became available for use or
3 occupancy; or

4 (2) A certificate of occupancy *or temporary certificate of occupancy*
5 issued by the appropriate building inspector or other authority.

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

7 (a) Withhold payment for the amount of:

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

10 (2) The costs and expenses reasonably necessary to correct or repair any
11 work that is not materially in compliance with the agreement to the extent that such
12 costs and expenses exceed 50 percent of the amount of retention being withheld
13 pursuant to the terms of the agreement; and

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

18 (b) Require, as a condition precedent to the payment of any unpaid amount
19 under the agreement, that lien releases be furnished by the prime contractor and his
20 or her lower-tiered subcontractors and suppliers in accordance with the provisions
21 of paragraphs (a) and (c) of subsection 5 of NRS 108.2457.

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

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

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

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

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

43 (a) Pay the amount withheld by the owner for that condition or reason for the
44 withholding; or

45 (b) Object to the scope and manner of the correction of the condition or reason
46 for the withholding in a written statement that sets forth the reason for the objection
47 and complies with subsection 3. If the owner objects to the scope and manner of the
48 correction of a condition or reason for the withholding, the owner shall nevertheless
49 pay to the prime contractor, along with the payment to be made pursuant to the
50 prime contractor's next payment request, the amount withheld for the correction of
51 the condition or reason for the withholding to which the owner no longer objects.

52 5. The partial occupancy or availability of a building requires payment in
53 direct proportion to the value of the part of the building which is partially occupied

1 or partially available. For works of improvement which involve more than one
2 building, each building must be considered separately in determining the amount of
3 money which is payable to the prime contractor.

4 **Sec. 5.** NRS 624.624 is hereby amended to read as follows:

5 624.624 1. Except as otherwise provided in this section, if a higher-tiered
6 contractor enters into:

7 (a) A written agreement with a lower-tiered subcontractor that includes a
8 schedule for payments, the higher-tiered contractor shall pay the lower-tiered
9 subcontractor:

10 (1) On or before the date payment is due; or

11 (2) Within 10 days after the date the higher-tiered contractor receives
12 payment for all or a portion of the work, materials or equipment described in a
13 request for payment submitted by the lower-tiered subcontractor,
14 ➤ whichever is earlier.

15 (b) A written agreement with a lower-tiered subcontractor that does not contain
16 a schedule for payments, or an agreement that is oral, the higher-tiered contractor
17 shall pay the lower-tiered subcontractor:

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

20 (2) Within 10 days after the date the higher-tiered contractor receives
21 payment for all or a portion of the work, labor, materials, equipment or services
22 described in a request for payment submitted by the lower-tiered subcontractor,
23 ➤ whichever is earlier.

24 2. If a higher-tiered contractor has complied with subsection 3, the higher-
25 tiered contractor may:

26 (a) Withhold from any payment owed to the lower-tiered subcontractor:

27 (1) A retention amount that the higher-tiered contractor is authorized to
28 withhold pursuant to the agreement, but the retention amount withheld must not
29 exceed ~~10~~ 5 percent of the payment that is required pursuant to subsection 1;

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

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

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

38 (3) The amount the owner or higher-tiered contractor has paid or is
39 required to pay pursuant to an official notice from a state agency or employee
40 benefit trust fund, for which the owner or higher-tiered contractor is or may
41 reasonably be liable for the lower-tiered subcontractor or his or her lower-tiered
42 subcontractors in accordance with chapter 608, 612, 616A to 616D, inclusive, or
43 617 of NRS; and

44 (b) Require as a condition precedent to the payment of any amount due, lien
45 releases furnished by the lower-tiered subcontractor and his or her lower-tiered
46 subcontractors and suppliers in accordance with the provisions of paragraphs (a)
47 and (c) of subsection 5 of NRS 108.2457.

48 3. If, pursuant to subparagraph (2) or (3) of paragraph (a) of subsection 2 or
49 paragraph (b) of subsection 2, a higher-tiered contractor intends to withhold any
50 amount from a payment to be made to a lower-tiered subcontractor, the higher-
51 tiered contractor must give, on or before the date the payment is due, a written
52 notice to the lower-tiered subcontractor of any amount that will be withheld and

1 give a copy of such notice to all reputed higher-tiered contractors and the owner.
2 The written notice of withholding must:

3 (a) Identify the amount of the request for payment that will be withheld from
4 the lower-tiered subcontractor;

5 (b) Give a reasonably detailed explanation of the condition or the reason the
6 higher-tiered contractor will withhold that amount, including, without limitation, a
7 specific reference to the provision or section of the agreement with the lower-tiered
8 subcontractor, and any documents relating thereto, and the applicable building
9 code, law or regulation with which the lower-tiered subcontractor has failed to
10 comply; and

11 (c) Be signed by an authorized agent of the higher-tiered contractor.

12 4. A lower-tiered subcontractor who receives a notice of withholding pursuant
13 to subsection 3 or a notice of objection pursuant to subparagraph (2) of paragraph
14 (b) may:

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

18 (b) Correct any condition or reason for the withholding described in the notice
19 of withholding and thereafter provide written notice to the higher-tiered contractor
20 of the correction of the condition or reason for the withholding. The notice of
21 correction must be sufficient to identify the scope and manner of the correction of
22 the condition or reason for the withholding and be signed by an authorized
23 representative of the lower-tiered subcontractor. If a higher-tiered contractor
24 receives a written notice from the lower-tiered subcontractor of the correction of a
25 condition or reason for the withholding pursuant to this paragraph, the higher-tiered
26 contractor shall:

27 (1) Pay the amount withheld by the higher-tiered contractor for that
28 condition or reason for the withholding on or before the date the next payment is
29 due the lower-tiered subcontractor; or

30 (2) Object to the scope and manner of the correction of the condition or
31 reason for the withholding, on or before the date the next payment is due to the
32 lower-tiered subcontractor, in a written statement which sets forth the condition or
33 reason for the objection and which complies with subsection 3. If the higher-tiered
34 contractor objects to the scope and manner of the correction of a condition or
35 reason for the withholding, the higher-tiered contractor shall nevertheless pay to the
36 lower-tiered subcontractor, along with payment to be made pursuant to the lower-
37 tiered subcontractor's next payment request, the amount withheld for the correction
38 of the conditions or reasons for the withholding to which the higher-tiered
39 contractor no longer objects.

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

43 **Sec. 6.** Section 6 of chapter 289, Statutes of Nevada 2011, at page 1624, is
44 hereby amended to read as follows:

45 **Sec. 6.** This act becomes effective on October 1, 2011. ~~It and expires~~
46 ~~by limitation on July 1, 2015.~~

47 **Sec. 7.** The amendatory provisions of this act do not apply to the provisions
48 of any contract entered into before January 1, 2016.

49 **Sec. 8.** 1. This section and section 6 of this act become effective upon
50 passage and approval.

51 2. Sections 1 to 5, inclusive, and 7 of this act become effective on January 1,
52 2016.