

Amendment No. 823

Assembly Amendment to Senate Bill No. 254 Second Reprint	(BDR 28-791)
Proposed by: Assembly 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: 5/16/2015

S.B. No. 254—Revises provisions relating to construction. (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 construction. (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 construction; amending the amount of retainage authorized on public works; amending the retention amount ~~and certain conditions relating to that amount~~ **authorized** on private works of improvement; extending existing provisions related to retainage; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

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.

Existing law provides that in private construction projects, not more than 10 percent of progress payments may be withheld from such payments **as a retention amount** 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 **retention** amount ~~of retainage~~ allowed on private construction projects from 10 percent to 5 percent. ~~After completion of 50 percent of the project, except for horizontal construction projects, such as highways and bridges, which are subject to the 10 percent retainage limit throughout the duration of the project. Section 2.7 of this bill provides that an owner or higher tiered contractor may increase the reduced retainage back to not more than 10 percent under certain circumstances.~~ **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:

1 **Section 1.** (Deleted by amendment.)

2 **Sec. 2.** NRS 338.515 is hereby amended to read as follows:

3 338.515 1. Except as otherwise provided in NRS 338.525, a public body
4 and its officers or agents awarding a contract for a public work shall pay or cause to
5 be paid to a contractor the progress payments due under the contract within 30 days
6 after the date the public body receives the progress bill or within a shorter period if
7 the provisions of the contract so provide. ~~Not more than 95~~ *Ninety five* percent of
8 the amount of any progress payment ~~may~~ *must* be paid *and 5 percent withheld as*
9 *retainage* until 50 percent of the work required by the contract has been performed.

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

12 (a) Any of the remaining progress payments without withholding additional
13 retainage; and

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

16 ↳ if, in the opinion of the public body, satisfactory progress is being made in the
17 work.

18 3. After determining in accordance with subsection 2 whether satisfactory
19 progress is being made in the work, the public body may pay to the contractor an
20 amount of any retainage that was withheld from progress payments pursuant to
21 subsection 1 if:

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

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

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

27 ~~(c)~~ (d) The subcontractor submits to the contractor:

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

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

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

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

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

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

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

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

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

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

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

- (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.

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. 2.3. Chapter 624 of NRS is hereby amended by adding thereto the provisions set forth as sections 2.5 and 2.7 of this act. (Deleted by amendment.)~~

~~Sec. 2.5. 1. "Horizontal construction" means the construction of any fixed work, including, without limitation, any irrigation, drainage, water supply, flood control, harbor, railroad, highway, tunnel, airport or airway, sewer, sewage disposal plant or water treatment facility and any ancillary vertical components thereof, bridge, inland waterway, pipeline for the transmission of petroleum or any other liquid or gaseous substance, pier, and work incidental thereto. The term does not include vertical construction, the construction of any terminal or other building of an airport or airway, or the construction of any other building.~~

~~2. As used in this section, "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. (Deleted by amendment.)~~

~~Sec. 2.7. 1. If, at the time 50 percent of the work required by the contract has been performed, a prime contractor has, through any act or omission, materially deviated from any contractually defined condition or obligation or has performed work that is in violation of any building code, law or regulation, an~~

~~owner may increase the retention amount withheld pursuant to subparagraph (2) of paragraph (a) of subsection 2 of NRS 624.609 to not more than 10 percent.~~

~~2. If at the time 50 percent of the work required by the contract has been performed, a lower-tiered subcontractor has, through any act or omission, materially deviated from any contractually defined condition or obligation or has performed work that is in violation of any building code, law or regulation, a higher-tiered contractor may increase the retention amount withheld pursuant to subsection 2 of NRS 624.624 to not more than 10 percent.~~

~~3. If, pursuant to subsection 1 or 2, an owner or higher-tiered contractor intends to increase the retention amount withheld, he or she must, at the time 50 percent of the work required by the contract has been performed, provide a written notice to the prime contractor or lower-tiered subcontractor responsible for the deficiency. The written notice must include:~~

~~(a) The new percentage of retainage to be withheld and, in accordance with subsection 4, the date on which the new amount of retention will become effective;~~

~~(b) A reasonably detailed explanation of the condition or the reason for the increase, including, without limitation, a specific reference to the provision or section of the agreement, and any documents relating thereto, or the applicable building code, law or regulation with which the prime contractor or lower-tiered subcontractor has failed to comply; and~~

~~(c) A statement that the prime contractor or lower-tiered subcontractor may avoid the increase in the retention amount by correcting the condition before the date specified in paragraph (a);~~

~~4. If a prime contractor or lower-tiered subcontractor who receives a notice pursuant to subsection 3 does not correct the condition giving rise to the notice, to the reasonable satisfaction of the owner or higher-tiered contractor issuing the notice, within 15 days after receiving the notice, the owner or higher-tiered contractor issuing the notice may increase the retention amount withheld pursuant to subsection 1 or 2 for the remainder of the contract.~~

~~5. An owner or higher-tiered contractor shall only increase the retention amount pursuant to this section in good faith and based upon a bona fide and material deficiency.~~

~~6. A prime contractor who believes that an owner has increased the retention amount in violation of subsection 5 may bring a civil action against the owner. If the court finds that the owner increased the retention amount in violation of subsection 5, the court shall order the owner to return the wrongfully withheld amount and to pay interest on the amount withheld to the prime contractor at the rate determined pursuant to NRS 624.630. The court shall also award attorney's fees and costs to the party who prevails.~~

~~7. A lower-tiered subcontractor who believes that a higher-tiered contractor has increased the retention amount in violation of subsection 5 may file a complaint with the Board. If the Board finds, after notice and a hearing, that a higher-tiered contractor increased the retention amount in violation of subsection 5, the Board shall order the higher-tiered contractor to return the wrongfully withheld amount and to pay interest on the amount withheld to the lower-tiered subcontractor at the rate determined pursuant to NRS 624.630. The decision of the Board is a final decision for purposes of judicial review. Upon a petition for judicial review, the court shall also award attorney's fees and costs to the party who prevails.~~ **1. (Deleted by amendment.)**

Sec. 2.9. ~~NRS 624.606 is hereby amended to read as follows:~~

~~624.606 As used in NRS 624.606 to 624.630, inclusive, and sections 2.5 and 2.7 of this act, the words and terms defined in NRS 624.607 to 624.6086, inclusive,~~

~~and section 2.5 of this act have the meanings ascribed to them in those sections.~~
(Deleted by amendment.)

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; ~~until 50 percent of the work required by the contract has been performed;~~

(2) ~~Except as otherwise provided in subsection 5 and section 2.7 of this act, after 50 percent of the work required by the contract has been performed, a retention amount not to exceed 5 percent of the amount of the payment to be made;~~

~~(3)~~ 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); ~~for (2);~~ and

(3) ~~(4)~~ 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 subcontractors and suppliers in accordance with the provisions of paragraphs (a) and (c) of subsection 5 of NRS 108.2457.

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

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

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

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

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

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

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

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

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

5. ~~The retention amount an owner may withhold pursuant to subparagraph (2) of paragraph (a) of subsection 2 must not exceed 10 percent for any horizontal construction project for the entire duration of the project.~~

~~6.~~ Except as otherwise allowed in subsections 2, 3 and 4, an owner shall not withhold from a payment to be made to a prime contractor more than the retention amount.

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

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

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

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

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

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

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

(a) Withhold payment for the amount of:

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

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

(3) Money 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 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.

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

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

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

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

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

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

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

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

5. The partial occupancy or availability of a building requires payment in direct proportion to the value of the part of the building which is partially occupied or partially available. For works of improvement which involve more than one building, each building must be considered separately in determining the amount of money which is payable to the prime contractor.

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

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

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

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

(2) Within 10 days after the date the higher-tiered contractor receives payment for all or a portion of the work, materials or equipment described in a request for payment submitted by the lower-tiered subcontractor,

1 ↪ whichever is earlier.

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

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

7 (2) Within 10 days after the date the higher-tiered contractor receives
8 payment for all or a portion of the work, labor, materials, equipment or services
9 described in a request for payment submitted by the lower-tiered subcontractor,

10 ↪ whichever is earlier.

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

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

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

17 ~~until 50 percent of the work required by the contract has been performed;~~

18 (2) ~~Except as otherwise provided in subsection 5 and section 2.7 of this~~
19 ~~act, after 50 percent of the work required by the contract has been performed, a~~
20 ~~retention amount not to exceed 5 percent of the payment that is required~~
21 ~~pursuant to subsection 1;~~

22 ~~(3)~~ An amount equal to the sum of the value of:

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

26 (II) Costs and expenses reasonably necessary to correct or repair any
27 work which is the subject of the request for payment and which is not materially in
28 compliance with the agreement to the extent that such costs and expenses exceed 50
29 percent of the retention amount withheld pursuant to subparagraph (1) : ~~for (2) and~~
30 and

31 (3) ~~(4)~~ The amount the owner or higher-tiered contractor has paid or is
32 required to pay pursuant to an official notice from a state agency or employee
33 benefit trust fund, for which the owner or higher-tiered contractor is or may
34 reasonably be liable for the lower-tiered subcontractor or his or her lower-tiered
35 subcontractors in accordance with chapter 608, 612, 616A to 616D, inclusive, or
36 617 of NRS; and

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

41 3. If, pursuant to subparagraph (2) ~~(3)~~ or (3) ~~(4)~~ of paragraph (a) of
42 subsection 2 or paragraph (b) of subsection 2, a higher-tiered contractor intends to
43 withhold any amount from a payment to be made to a lower-tiered subcontractor,
44 the higher-tiered contractor must give, on or before the date the payment is due, a
45 written notice to the lower-tiered subcontractor of any amount that will be withheld
46 and give a copy of such notice to all reputed higher-tiered contractors and the
47 owner. The written notice of withholding must:

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

50 (b) Give a reasonably detailed explanation of the condition or the reason the
51 higher-tiered contractor will withhold that amount, including, without limitation, a
52 specific reference to the provision or section of the agreement with the lower-tiered
53 subcontractor, and any documents relating thereto, and the applicable building

code, law or regulation with which the lower-tiered subcontractor has failed to comply; and

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

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

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

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

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

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

5. ~~The retention amount an owner may withhold pursuant to subparagraph (2) of paragraph (a) of subsection 2 must not exceed 10 percent for any horizontal construction project for the entire duration of the project.~~

~~6.~~ Except as otherwise allowed in subsections 2, 3 and 4, a higher-tiered contractor shall not withhold from a payment to be made to a lower-tiered subcontractor more than the retention amount.

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

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

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

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

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