

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 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 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 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



21 public works which are set to expire on July 1, 2015. (NRS 338.515, 338.530,
22 338.555, 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
4 public body and its officers or agents awarding a contract for a
5 public work shall pay or cause to be paid to a contractor the progress
6 payments due under the contract within 30 days after the date the
7 public body receives the progress bill or within a shorter period if
8 the provisions of the contract so provide. ~~[Not more than 95]~~ *Ninety*
9 *five* percent of the amount of any progress payment ~~[may]~~ *must* be
10 paid *and 5 percent withheld as retainage* until 50 percent of the
11 work required by the contract has been performed.

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

14 (a) Any of the remaining progress payments without
15 withholding additional retainage; and

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

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

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

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

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

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

31 ~~[(e)]~~ (d) The subcontractor submits to the contractor:

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

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



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

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

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

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

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

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

(2) The public body may continue to retain the amount of any retainage 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.

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.

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



1 *higher-tiered contractor may increase the retention amount*
2 *withheld pursuant to subsection 2 of NRS 624.624 to not more*
3 *than 10 percent.*

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

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

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

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

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

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

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

42 7. *A lower-tiered subcontractor who believes that a higher-*
43 *tiered contractor has increased the retention amount in violation*
44 *of subsection 5 may file a complaint with the Board. If the Board*
45 *finds, after notice and a hearing, that a higher-tiered contractor*



1 *increased the retention amount in violation of subsection 5, the*
2 *Board shall order the higher-tiered contractor to return the*
3 *wrongfully withheld amount and to pay interest on the amount*
4 *withheld to the lower-tiered subcontractor at the rate determined*
5 *pursuant to NRS 624.630. The decision of the Board is a final*
6 *decision for purposes of judicial review. Upon a petition for*
7 *judicial review, the court shall also award attorney's fees and costs*
8 *to the party who prevails.*

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

10 624.606 As used in NRS 624.606 to 624.630, inclusive, *and*
11 *sections 2.5 and 2.7 of this act*, the words and terms defined in NRS
12 624.607 to 624.6086, inclusive, *and section 2.5 of this act* have the
13 meanings ascribed to them in those sections.

14 **Sec. 3.** NRS 624.609 is hereby amended to read as follows:

15 624.609 1. Except as otherwise provided in subsections 2 and
16 4 and subsection 4 of NRS 624.622, if an owner of real property
17 enters into a written or oral agreement with a prime contractor for
18 the performance of work or the provision of materials or equipment
19 by the prime contractor, the owner must:

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

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

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

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

29 (1) A retention amount that, if the owner is authorized to
30 withhold a retention amount pursuant to the agreement, must not
31 exceed 10 percent of the amount of the payment to be made ~~H~~ *until*
32 *50 percent of the work required by the contract has been*
33 *performed;*

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

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

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

43 (II) Costs and expenses reasonably necessary to correct or
44 repair any work which is the subject of the request for payment and
45 which is not materially in compliance with the agreement to the



1 extent that such costs and expenses exceed 50 percent of the
2 retention amount withheld pursuant to subparagraph (1) ~~(1)~~ or (2);
3 and

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

10 (b) Require as a condition precedent to the payment of any
11 amount due, lien releases furnished by the prime contractor and
12 his or her lower-tiered subcontractors and suppliers in accordance
13 with the provisions of paragraphs (a) and (c) of subsection 5 of
14 NRS 108.2457.

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

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

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

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

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

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

37 (b) Correct any condition or reason for the withholding
38 described in the notice of withholding and thereafter provide written
39 notice to the owner of the correction of the condition or reason for
40 the withholding. The notice of correction must be sufficient to
41 identify the scope and manner of the correction of the condition or
42 reason for the withholding and be signed by an authorized
43 representative of the prime contractor. If an owner receives a written
44 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 to 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



1 percent of the amount of retention being withheld pursuant to the
2 terms of the agreement; and

3 (3) Money the owner has paid or is required to pay pursuant
4 to an official notice from a state agency, or employee benefit trust
5 fund, for which the owner is liable for the prime contractor or his or
6 her lower-tiered subcontractors in accordance with chapter 608, 612,
7 616A to 616D, inclusive, or 617 of NRS.

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

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

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

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

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

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

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

41 (b) Object to the scope and manner of the correction of the
42 condition or reason for the withholding in a written statement that
43 sets forth the reason for the objection and complies with subsection
44 3. If the owner objects to the scope and manner of the correction of
45 a condition or reason for the withholding, the owner shall



1 nevertheless pay to the prime contractor, along with the payment to
2 be made pursuant to the prime contractor's next payment request,
3 the amount withheld for the correction of the condition or reason for
4 the withholding to which the owner no longer objects.

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

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

12 624.624 1. Except as otherwise provided in this section, if a
13 higher-tiered contractor enters into:

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

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

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

22 ↪ whichever is earlier.

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

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

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

33 ↪ whichever is earlier.

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

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

38 (1) A retention amount that the higher-tiered contractor is
39 authorized to withhold pursuant to the agreement, but the retention
40 amount withheld must not exceed 10 percent of the payment that is
41 required pursuant to subsection 1 ~~§~~ *until 50 percent of the work*
42 *required by the contract has been performed;*

43 (2) *Except as otherwise provided in subsection 5 and*
44 *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 payment that is required pursuant to subsection 1;

(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) ~~(3)~~ or (2); and

~~(3)~~ (4) The amount the owner or higher-tiered contractor 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 or higher-tiered contractor is or may reasonably be liable for the lower-tiered subcontractor 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 lower-tiered subcontractor 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, a higher-tiered contractor intends to withhold any amount from a payment to be made to a lower-tiered subcontractor, the higher-tiered contractor must give, on or before the date the payment is due, a written notice to the lower-tiered subcontractor of any amount that will be withheld and give a copy of such notice to all reputed higher-tiered contractors and the owner. The written notice of withholding must:

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

(b) Give a reasonably detailed explanation of the condition or the reason the higher-tiered contractor will withhold that amount, including, without limitation, a specific reference to the provision or section of the agreement with the lower-tiered 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 .

~~[, and expires by limitation on July 1, 2015.]~~



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

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

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

