

ASSEMBLY BILL NO. 22—COMMITTEE
ON GROWTH AND INFRASTRUCTURE

(ON BEHALF OF THE DEPARTMENT OF TRANSPORTATION)

PREFILED NOVEMBER 16, 2018

Referred to Committee on Growth and Infrastructure

SUMMARY—Revises provisions governing the amount of money that the Director of the Department of Transportation must retain under certain highway contracts. (BDR 35-239)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~for mitted material~~ is material to be omitted.

AN ACT relating to highways; revising provisions governing the amount of money that the Director of the Department of Transportation must retain under certain highway contracts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law authorizes the Director of the Department of Transportation,
2 subject to certain exceptions, to make monthly payments to a contractor who
3 satisfactorily performs any highway improvement or construction in full as the
4 work is completed by the contractor. The payments must not exceed 95 percent of
5 the contract price. The Director is required to retain the remaining 5 percent of the
6 contract price until the entire contract is completed satisfactorily and accepted by
7 the Director. The retained amount must not exceed \$50,000. (NRS 408.383)
8 **Section 1** of this bill repeals the \$50,000 limitation on the retained amount. **Section**
9 **2** of this bill prohibits the retroactive application of the repeal of the \$50,000
10 limitation.



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

Section 1. NRS 408.383 is hereby amended to read as follows:

408.383 1. Except as otherwise provided in subsections 2, 11 and 12, the Director may pay at the end of each calendar month, or as soon thereafter as practicable, to any contractor satisfactorily performing any highway improvement or construction as the work progresses in full for the work as completed but not more than 95 percent of the entire contract price. The progress estimates must be based upon materials in place, or on the job site, or at a location approved by the Director, and invoiced, and labor expended thereon. The remaining 5 percent ~~[, but not more than \$50,000,]~~ must be retained until the entire contract is completed satisfactorily and accepted by the Director.

2. If the work in progress is being performed on a satisfactory basis, the Director may reduce the percentage retained if the Director finds that sufficient reasons exist for additional payment and has obtained written approval from every surety furnishing bonds for the work. Any remaining money must be retained until the entire contract is completed satisfactorily and accepted by the Director.

3. If it becomes necessary for the Department to take over the completion of any highway contract or contracts, all of the amounts owing the contractor, including the withheld percentage, must first be applied toward the cost of completion of the contract or contracts. Any balance remaining in the retained percentage after completion by the Department is payable to the contractor or the contractor's creditors.

4. Such retained percentage as may be due any contractor is due and payable at the expiration of the 30-day period as provided in NRS 408.363 for filing of creditors' claims, and this retained percentage is due and payable to the contractor at that time without regard to creditors' claims filed with the Department.

5. The contractor under any contract made or awarded by the Department, including any contract for the construction, improvement, maintenance or repair of any road or highway or the appurtenances thereto, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under the contract which are retained by the Department, pursuant to the terms of the contract, if the contractor deposits with the Director:

(a) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness or United States treasury bills;

(b) Bonds or notes of the State of Nevada; or



(c) General obligation bonds of any political subdivision of the State of Nevada.

➡ Certificates of deposit must be of a market value not exceeding par, at the time of deposit, but at least equal in value to the amount so withdrawn from payments retained under the contract.

6. The Director has the power to enter into a contract or agreement with any national bank, state bank, credit union, trust company or safe deposit company located in the State of Nevada, designated by the contractor after notice to the owner and surety, to provide for the custodial care and servicing of any obligations deposited with the Director pursuant to this section. Such services include the safekeeping of the obligations and the rendering of all services required to effectuate the purposes of this section.

7. The Director or any national bank, state bank, credit union, trust company or safe deposit company located in the State of Nevada, designated by the contractor to serve as custodian for the obligations pursuant to subsection 6, shall collect all interest or income when due on the obligations so deposited and shall pay them, when and as collected, to the contractor who deposited the obligation. If the deposit is in the form of coupon bonds, the Director shall deliver each coupon as it matures to the contractor.

8. Any amount deducted by the State of Nevada, or pursuant to the terms of a contract, from the retained payments otherwise due to the contractor thereunder, must be deducted first from that portion of the retained payments for which no obligation has been substituted, then from the proceeds of any deposited obligation. In the latter case, the contractor is entitled to receive the interest, coupons or income only from those obligations which remain on deposit after that amount has been deducted.

9. A contractor shall disburse money paid to the contractor pursuant to this section, including any interest that the contractor receives, to his or her subcontractors and suppliers within 15 days after receipt of the money in the proportion that the value of the work performed by each subcontractor or the materials furnished by each supplier bears to the total amount of the contract between the principal contractor and the Department.

10. Money payable to a subcontractor or supplier accrues interest at a rate equal to the lowest daily prime rate at the three largest banks in the United States on the date the subcontract or order for supplies was executed plus 2 percent, from 15 days after the money was received by the principal contractor until the date of payment.

11. If a contractor withholds more than 10 percent of a payment required by subsection 9, the subcontractor or supplier may inform the Director in writing of the amount due. The Director shall



1 attempt to resolve the dispute between the contractor and the
2 subcontractor or supplier within 20 working days after the date that
3 the Director receives notice of the amount due. If the dispute is not
4 resolved within 20 working days after the date that the Director
5 receives notice of the amount due, the contractor shall deposit the
6 disputed amount in an escrow account that bears interest. The
7 contractor, subcontractor or supplier may pursue any legal or
8 equitable remedy to resolve the dispute over the amount due. The
9 Director may not be made a party to any legal or equitable action
10 brought by the contractor, subcontractor or supplier.

11 12. If the Director awards to a railroad company a contract for
12 a project for the construction, reconstruction, improvement or
13 maintenance of a highway and the project is located on property that
14 is owned by or under the control of the railroad company, the
15 Director may agree in the contract not to retain any portion of the
16 contract price.

17 **Sec. 2.** The amendatory provisions of section 1 of this act do
18 not apply to any highway contract that is made or awarded by the
19 Department of Transportation before the effective date of this act.

20 **Sec. 3.** This act becomes effective upon passage and approval.

