

SENATE BILL NO. 85—SENATOR DALY

PREFILED JANUARY 26, 2023

Referred to Committee on Growth and Infrastructure

SUMMARY—Revises provisions relating to retention payments under certain highway contracts. (BDR 35-665)

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 ~~omitted 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; revising provisions governing the disbursement of money by a contractor to a subcontractor or supplier; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the Director of the Department of Transportation, subject to certain exceptions, to make monthly payments to a contractor who satisfactorily performs any highway improvement or construction in full as the work is completed by the contractor. The payments must not exceed 97.5 percent of the contract price. The Director is required to retain the remaining 2.5 percent of the contract price until certain conditions are met. The Department is required to perform a final inspection of the work completed under a contract for a project of highway improvement or construction. If an inspection discloses that the work was completed satisfactorily, the Department is required to reduce the amount of the contract price retained to not more than \$50,000 until the entire contract is completed satisfactorily and accepted by the Director. (NRS 408.383) **Section 1** of this bill changes the percentage of the contract price which must be retained by the Director to 5 percent, but not more than \$50,000. **Section 1** eliminates: (1) the requirement for the Department to perform a final inspection; and (2) the requirement that if a final inspection discloses that the work was completed satisfactorily, the Director reduce the amount of the contract price retained by the Department to not more than \$50,000, with any remaining amount to be retained until the contract is completed satisfactorily and accepted by the Director. **Section 1** requires instead that the amount of the contract price that is retained be retained until the entire contract is completed satisfactorily and accepted by the Director.

Existing law requires a contractor to disburse money paid to the contractor under a contract for a project of highway improvement or construction to his or her subcontractors and suppliers within a certain amount of time and provides that, if a



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contractor withholds more than 2.5 percent from such a required payment, the subcontractor or supplier may contact the Director to resolve such a dispute between the contractor and the subcontractor or supplier. (NRS 408.383) **Section 1** provides that a subcontractor or supplier may contact the Director to resolve such a dispute if the contractor withholds more than 5 percent of a required payment.

Section 2 of this bill prohibits the retroactive application of the amendatory provisions of this bill to contracts made or awarded by the Department before the effective date of this bill.

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, ~~and 13,~~ 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 ~~97.5~~ *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 ~~2.5~~ *5* percent, *but not*
more than \$50,000, must be retained until the remaining money is
disposed of in the manner provided in subsection 3 or ~~4,~~ *upon*
satisfactory completion of the entire contract and final acceptance
by the Director, as applicable.

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
such money is disposed of in the manner provided in subsection 3 or
~~4, as applicable.~~

~~3. Upon receiving notice from the contractor of the completion
of all work under a contract for a project of highway improvement
or construction, the Department shall perform a final inspection of
such work. If the final inspection discloses that any work, in whole
or in part, is unsatisfactory, the Department will provide the
contractor with notice of the deficiencies in such work that require
correction before the work will be considered completed
satisfactorily. Upon receiving notice from the contractor that any
such unsatisfactory work has been corrected, the Department shall
conduct another final inspection. If a final inspection discloses that
all work under a contract for a project of highway improvement or
construction has been completed satisfactorily, the Director shall
reduce any money being retained pursuant to subsection 1 to not~~



~~more than \$50,000, not later than 30 days after such final inspection. Any remaining money must be retained until~~ **upon satisfactory completion of** the entire contract ~~is completed satisfactorily and accepted~~ **and final acceptance** by the Director.

~~[4.]~~ **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.

~~[5.]~~ **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.

~~[6.]~~ **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.

~~[7.]~~ **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.

~~[8.]~~ **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 ~~[7.]~~ **6**, shall collect all interest or income when due on the obligations so deposited and shall pay



1 them, when and as collected, to the contractor who deposited the
2 obligation. If the deposit is in the form of coupon bonds, the
3 Director shall deliver each coupon as it matures to the contractor.

4 ~~[9-]~~ 8. Any amount deducted by the State of Nevada, or
5 pursuant to the terms of a contract, from the retained payments
6 otherwise due to the contractor thereunder, must be deducted first
7 from that portion of the retained payments for which no obligation
8 has been substituted, then from the proceeds of any deposited
9 obligation. In the latter case, the contractor is entitled to receive the
10 interest, coupons or income only from those obligations which
11 remain on deposit after that amount has been deducted.

12 ~~[10-]~~ 9. A contractor shall disburse money paid to the
13 contractor pursuant to this section, including any interest that the
14 contractor receives, to his or her subcontractors and suppliers within
15 15 days after receipt of the money in the proportion that the value of
16 the work performed by each subcontractor or the materials furnished
17 by each supplier bears to the total amount of the contract between
18 the principal contractor and the Department.

19 ~~[11-]~~ 10. Money payable to a subcontractor or supplier accrues
20 interest at a rate equal to the lowest daily prime rate at the three
21 largest banks in the United States on the date the subcontract or
22 order for supplies was executed plus 2 percent, from 15 days after
23 the money was received by the principal contractor until the date of
24 payment.

25 ~~[12-]~~ 11. If a contractor withholds more than ~~[2.5]~~ 5 percent of
26 a payment required by subsection ~~[10-]~~ 9, the subcontractor or
27 supplier may inform the Director in writing of the amount due. The
28 Director shall attempt to resolve the dispute between the contractor
29 and the subcontractor or supplier within 20 working days after
30 the date that the Director receives notice of the amount due. If the
31 dispute is not resolved within 20 working days after the date that the
32 Director receives notice of the amount due, the contractor shall
33 deposit the disputed amount in an escrow account that bears interest.
34 The contractor, subcontractor or supplier may pursue any legal or
35 equitable remedy to resolve the dispute over the amount due. The
36 Director may not be made a party to any legal or equitable action
37 brought by the contractor, subcontractor or supplier.

38 ~~[13-]~~ 12. If the Director awards to a railroad company a
39 contract for a project for the construction, reconstruction,
40 improvement or maintenance of a highway and the project is located
41 on property that is owned by or under the control of the railroad
42 company, the Director may agree in the contract not to retain any
43 portion of the contract price.



- 1 **Sec. 2.** The amendatory provisions of section 1 of this act do
2 not apply to any highway contract that is made or awarded by the
3 Department of Transportation before the effective date of this act.
4 **Sec. 3.** This act becomes effective upon passage and approval.

