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TESTIMONY IN FAVOR OF ASSEMBLY BILL NO. 393

Submitted by Steve G. Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter, 150 N. Durango Dr., Suite 100, Las Vegas, NV 89145.

I would like to reiterate that AB 393 still allows a public body to withhold all or a portion of a progress payment if it deems the work to be unsatisfactory. Furthermore, it allows a public body to withhold any payment due the contractor and pay the Labor Commissioner instead if the Labor Commissioner believes that an employee has a valid and enforceable claim for wages.

I would also like to point out that every public works project is bonded. The Nevada Revised Statutes require that the general contractor awarded a public works project provide a performance and payment security bond for 100 percent (100%) of the contract price. Furthermore, the general contractor may require that every subcontractor on the project provide a payment bond for the labor indebtedness that the subcontractors may incur. These bonds remain in effect for a year after the project has been satisfactorily completed.

The 5 percent (5%) of the contract price withheld by a public body on a public works project is therefore redundant. It is unnecessary. Nevertheless, AB393 allows a public body to continue to withhold retainage to ensure that a public work, e.g. a pump station, works as intended when completed, even though the public body has approved each and every step taken to construct that public work.

AB 393 does reduce the amount of retainage that a public body may withhold and prohibit other additional withholdings that are both unnecessary and dilutory.

Waiting to speak are contractors who will testify that public bodies are currently withholding in the form of retainage and other additional withholdings as much as 30 percent (30%) of the contract price. These additional withholdings not only violate the intent of the prompt pay act for public works which this body passed in 1999, they also affect the general contractors ability to promptly pay his subcontractors for the labor, materials and equipment expended on the public works project.

Also waiting to speak are representatives of the Security Association who will testify that these practices are affecting the bonding capacity of contractors and their ability to bid on public works. As a result, the dilutory withholdings that AB 393 proposes to prohibit are dramatically increasing the costs of all public works.

Thank you.

Assembly Commerce & Labor
Date 3/24/03 Room 4100 Exhibit H
Submitted By: STEVE HOLLOWAY

H 10F2

ASSEMBLY BILL NO. 393

SUMMARY

Purpose: Assembly Bill No. 393 is intended to limit needless and dilutory withholdings of scheduled progress payments by public works agencies to a general contractor who must in turn pass these payments along to his subcontractors for payment of the labor, materials and equipment already expended on a construction project. These withholdings violate both the intent and the spirit of NRS 338.515, 338.525 and 338.530, which require that progress payments be promptly paid when earned.

The provisions of AB 393 are proposed in lieu of entitling the contractors on a public works project to stop work as they may do on a private construction project when payments are overdue.

Section 1, page 1, lines 3-6: Subsection 1 simply allows a public works agency to adjust the contract price during the term of the contract as a result of change orders approved by the responsible public body. Please note that 99.9% of all change orders on a public works project are initiated by the public body or its officers and agents.

Section 1, page 1, lines 7-12: Subsection 2 prohibits a public works agency from withholding any portion (except retainage) of a payment due a contractor for labor, materials and equipment already expended on a public works project. Please note that this expenditure of labor, materials and equipment must meet the contractual plans and specifications developed and approved by the public works agency and must be deemed satisfactory by the public body and its officers and agents in accordance with NRS 338.515, 338.525 and 338.530.

Section 2, page 2, lines 1-5: Section 2 is a conforming amendment.

Section 3, page 2, lines 6-24: Subsection 1 limits the amount of retainage that may be withheld upon satisfactory completion of the work on a public works project to 5 percent (5%) of the contract price or \$50,000, whichever is less. The retainage may be withheld until the construction project is satisfactorily completed and accepted by the public works agency. Please note that this is the exact same retainage withheld by statute on any public works project administered by the Nevada Department of Transportation (NDOT). This is also the same retainage allowed by regulation for the U.S. Corp of Engineers.

Section 3, page 2, lines 25-31: Subsection 2 allows a public works agency to reduce the amount of retainage if the work in progress is satisfactory. Again, this language is borrowed from chapter 408 of NRS which regulates the public works projects of NDOT.

Section 3, page 2, line 32: Subsection 3 is a conforming amendment.

Section 3, page 3, line 1: Subsection 4 is a conforming amendment.

Section 3, page 3, line 17: Subsection 5 is a conforming amendment.

Section 4, page 4, line 1: Section 4 is a conforming amendment. Please note that NRS 338.515, 338.525 and 338.530 which is amended by Section 4 still allows a public works agency to withhold payment if it deems the work to be unsatisfactory.