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Assembly Commerce & Labor  
March 24, 2003

Assembly Bill 393  
Testimony of John Simmons, Construction Manager  
City of Henderson

It is my understanding that the Associated General Contractors (AGC) is requesting that the law related to NRS 338.515 be changed.

We would respectfully ask, why does the AGC suggest or think the law should be changed? The AGC is proposing the retention be changed as follows- "a governing body may withhold retainage after 95% of the project is complete and may only withhold not more than \$50,000.00."

Allow for me to explain why you should not change the law:

1. The City of Henderson typically pays retention after 50% of the project is complete. Provided that, we are not late by an approved schedule, there are no outstanding prevailing wage rate issues, and there are no late or outstanding payments to major subcontractors.
2. If you were to revise the law, as put in front of you today, you are taking away our ability to effectively manage our projects. For example: take the new prevailing wage rate laws passed last legislative session. We have forced the penalties as outlined in the Revised Statutes and have sums up to tens of thousands of dollars, that were assessed against the General Contractor. If you were to change the law, in effect, you have removed the strength of the Labor Commissioner, and have undermined those of us who work hard every day to protect the workers and the taxpayers. You cannot expect, or should you expect, the governing agencies to burden the cost somewhere else when a contractor does not perform under the terms of their contract. It is imperative, that local agencies continue holding 10% or until the project is 50% complete, and may reduce to 5%, or may elect to release all retainage.
3. What if we have some major equipment failure or the contractor goes defunct. Recently, we have had two major projects that failed. Fortunately, with the way the law stands today, we held enough retention to recover our loss. We didn't make any profit, nor am I here to tell you that we are looking for profit. However, I am here to tell you that the taxpayers did not have to pay any additional monies due to the poor management of our contractor. There are schedules to be

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Assembly Commerce & Labor  
Date 3/24/03 Room 4100 Exhibit 0  
Submitted By: JOHN SIMMONS

submitted in accordance with the contract documents. Some of which are very complex. These kinds of schedules have early starts-early finishes, late starts-late finishes, and critical path methods, all of which could cause an owner much concern should the contractor default. This is why the retention is so important and should not be changed. You might say, "Isn't this why you have bonding," yes, but when a contractor begins to fail, the owner has a tremendous burden to finish the job. This means there is time and effort (soft cost), and we must utilize the funds available and in accordance with the contract terms. Just recently, we had a project that has taken over a year to begin finishing the punch list. In order to get to this point, we held approximately \$400,000.00 of their money. After mediation, professional consultants, legal counsel, construction management time, and with the threat of Arbitration, the total cost may have exceeded our withholdings by \$25,000 to \$50,000. Therefore, if we did not have this money, the taxpayers would be paying for the mistake of others.

4. Material Stored or Delivered onsite – the City of Henderson pays for materials onsite at every project. We have and will continue to pay in accordance with the law. We pay 100% of the invoiced value or what has been accepted and certified by Architect or Professional Engineer. A certified payment application is accepted by us, and processed within the same week. Provided that, we have received the application no later than 12 noon on Thursdays, we will have a check ready for the contractor the following Thursday.
5. In addition, I would like to emphasize that public works construction should have greater safeguards against poor construction performance than many other types of construction. These additional safeguards are warranted, not only because construction is being performed with public funds, but also because the public welfare and safety is often highly dependent on the quality of that construction.

The public relies on safe and sound water treatment and conveyance systems, storm drain systems, and sanitation systems. Public buildings should be the safest and most durable of all buildings in the community. The City of Henderson opposes any actions that would hamper our ability to assure the welfare and safety of the public as a result of poor quality construction.

6. Finally, in accordance with the NRS 338.515, the contractor earns interest on monies being held. Why change the law?