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ASSEMBLY BILL NO. 393

SUMMARY OF REVISIONS TO STATUTE ON PUBLIC WORKS RETAINAGE  
(NRS 338.515)

Submitted by Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter, 150 North Durango Drive, Suite 100, Las Vegas, Nevada 89145.

Purpose: Assembly Bill 393 is intended to limit the types and amounts of withholdings other than retainage from a progress payment due and payable by a public works agency that has deemed the work to be satisfactory. Assembly Bill 393 also reduces the amount of retainage that may be withheld if progress is satisfactory. Excessive withholdings on public works projects have prevented prime contractors from paying their subcontractors who in turn have not been able to pay their labor costs.

Section 1, lines 3-6, page 1: Subsection 1, Section 1, prohibits withholdings other than retainage except for those set forth in NRS 338.515 and 338.525. Please note that NRS 338.515 allows withholdings for valid and enforceable wage claims, incomplete and unsatisfactory work, and retainage. NRS 338.525 allows withholdings for expenses the public body may incur as a result of the failure of the contractor to comply with the contract or applicable building code, law or regulation.

Section 1, lines 7-10, page 1: Subsection 2, Section 1, excludes liquidated damages from the prohibition against other withholdings.

Section 2, lines 13-15, page 4: Subsection 12, Section 2, adds the definition for a "schedule of values" to chapter 338 of NRS.

Section 2, lines 29-31, page 4: Subsection 15, Section 2, adds the definition for an "unbalanced bid" to chapter 338 of NRS.

Section 3, lines 1-3, page 6: Paragraph (d), Subsection 5, Section 3, allows a public works agency to reject a bid that is unbalanced or a bidder who has been deemed to have submitted an "unbalanced bid" during the past three years. It amends NRS 338.1385.

Section 4, lines 42-44, page 7: Paragraph (d), Subsection 5, Section 4, also allows a public works agency to reject a bid that is unbalanced or a bidder who has been deemed to have submitted an "unbalanced bid" during the past three years. It also amends NRS 338.1385.

Section 5, lines 32-34, page 9: Paragraph (c), Subsection 4, Section 5, also allows a public works agency to reject an "unbalanced bid" or a bidder who has been deemed to have submitted an "unbalanced bid" during the past three years. It amends NRS 338.143.

Section 6, lines 17-19, page 11: Paragraph (c), Subsection 4, Section 6, also allows a public works agency to reject an "unbalanced bid" or a bidder who has submitted an "unbalanced bid" during the past three years. It also amends NRS 338.143.

Section 8, lines 25-40, page 12: Subsection 1, Section 8, reduces the amount of retainage that may be withheld by a public works agency from 10% to 5% unless the agency deems the progress on the project unsatisfactory. In which case, the agency may retain up to 10% of the contract price.