
ASSEMBLY BILL NO. 393—ASSEMBLYMAN GOLDWATER

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing payments on public works. (BDR 28-996)

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 public works; providing that the contract price for a public work may be increased or decreased during the term of the contract as a result of change orders; prohibiting a public body from making a deduction from the contract price or withholding payment from contractors in excess of retainage in certain circumstances; revising the provisions prescribing the amount that may be withheld from the progress payments made to contractors on public works; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 338 of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 1. *The contract price for a public work may be increased or*
4 *decreased during the term of the contract as a result of change*
5 *orders approved by the public body and its officers or agents*
6 *awarding the contract.*
7 2. *Except as otherwise provided in NRS 338.515 and 338.525,*
8 *a public body and its officers or agents awarding a contract for a*
9 *public work shall not:*
10 (a) *Make a deduction from the contract price; or*
11 (b) *Withhold payment from the contractor in excess of*
12 *retainage.*



* A B 3 9 3 *

1 **Sec. 2.** NRS 338.400 is hereby amended to read as follows:
2 338.400 As used in NRS 338.400 to 338.645, inclusive, *and*
3 *section 1 of this act*, unless the context otherwise requires, the
4 words and terms defined in NRS 338.405 to 338.450, inclusive,
5 have the meanings ascribed to them in those sections.

6 **Sec. 3.** NRS 338.515 is hereby amended to read as follows:
7 338.515 1. Except as otherwise provided in NRS 338.525, a
8 public body and its officers or agents awarding a contract for a
9 public work shall pay or cause to be paid to a contractor the progress
10 payments due under the contract within 30 days after the date the
11 public body receives the progress bill or within a shorter period if
12 the provisions of the contract so provide. ~~[Not more than 90 percent~~
13 ~~of the amount of any progress payment may be paid until 50 percent~~
14 ~~of the work required by the contract has been performed. Thereafter~~
15 ~~the public body may pay any of the remaining progress payments~~
16 ~~without withholding additional retainage if, in the opinion of the~~
17 ~~public body, satisfactory progress is being made in the work.] *The*~~
18 *public body shall pay the entire amount of the progress payment*
19 *for the work as completed until 95 percent of the entire contract*
20 *price has been paid, or until the final \$50,000 of the contract price*
21 *is due, whichever is less. Except as otherwise provided in*
22 *subsection 2, the remaining portion of the contract price must be*
23 *retained by the public body until the entire contract is completed*
24 *satisfactorily and accepted by the public body.*

25 2. *If the work in progress is being performed on a satisfactory*
26 *basis, the public body may reduce the amount retained pursuant to*
27 *subsection 1 if the public body finds that sufficient reasons exist*
28 *for additional payment and has obtained written approval from*
29 *every surety furnishing bonds for the work. Any remaining money*
30 *must be retained by the public body until the entire contract is*
31 *completed satisfactorily and accepted by the public body.*

32 3. Except as otherwise provided in NRS 338.525, a public
33 body shall identify in the contract and pay or cause to be paid to a
34 contractor the actual cost of the supplies, materials and equipment
35 that:

- 36 (a) Are identified in the contract;
37 (b) Have been delivered and stored at a location, and in the time
38 and manner, specified in a contract by the contractor or a
39 subcontractor or supplier for use in the construction, repair or
40 reconstruction of the public work; and
41 (c) Are in short supply or were specially made for the public
42 work,
43 within 30 days after the public body receives a progress bill from
44 the contractor for those supplies, materials or equipment.



1 ~~3.1~~ 4. A public body shall pay or cause to be paid to the
2 contractor at the end of each quarter interest for the quarter on any
3 amount withheld by the public body pursuant to NRS 338.400 to
4 338.645, inclusive, at a rate equal to the rate quoted by at least three
5 financial institutions as the highest rate paid on a certificate of
6 deposit whose duration is approximately 90 days on the first day of
7 the quarter. If the amount due to a contractor pursuant to this
8 subsection for any quarter is less than \$500, the public body may
9 hold the interest until:

10 (a) The end of a subsequent quarter after which the amount of
11 interest due is \$500 or more;

12 (b) The end of the fourth consecutive quarter for which no
13 interest has been paid to the contractor; or

14 (c) The amount withheld under the contract is due pursuant to
15 NRS 338.520,
16 whichever occurs first.

17 ~~4.1~~ 5. If the Labor Commissioner has reason to believe that an
18 employee has a valid and enforceable claim for wages against a
19 contractor, he may require the public body to withhold from any
20 payment due the contractor under this section and pay the Labor
21 Commissioner instead, an amount equal to the amount claimed by
22 the employee. This amount must be paid to the employee if the
23 claim is resolved in his favor, otherwise it must be returned to the
24 public body for payment to the contractor.

25 **Sec. 4.** NRS 338.530 is hereby amended to read as follows:

26 338.530 1. If a public body receives:

27 (a) A progress bill or retainage bill, fails to give a contractor a
28 written notice of any withholding in the manner set forth in
29 subsection 2 of NRS 338.525, and does not pay the contractor
30 within 30 days after receiving the progress bill or retainage bill; or

31 (b) A contractor's written notice of the correction of a condition
32 set forth pursuant to subsection 2 of NRS 338.525 as the reason for
33 the withholding, signed by an authorized agent of the contractor,
34 and fails to:

35 (1) Pay the amount of the progress payment or retainage
36 payment that was withheld from the contractor within 30 days after
37 the public body receives the next progress bill or retainage bill; or

38 (2) Object to the scope and manner of the correction, within
39 30 days after the public body receives the notice of correction, in a
40 written statement that sets forth the reason for the objection and is
41 signed by an authorized agent of the public body,

42 the public body shall pay to the contractor, in addition to the entire
43 amount of the progress bill or retainage bill or any unpaid portion
44 thereof, interest from the 30th day on the amount delayed, at a rate



1 equal to the amount provided for in subsection ~~3~~ 4 of NRS
2 338.515, until payment is made to the contractor.
3 2. If the public body objects pursuant to subparagraph (2) of
4 paragraph (b) of subsection 1, it shall pay to the contractor an
5 amount equal to the value of the corrections to which the public
6 body does not object.

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