

ASSEMBLY BILL NO. 393—ASSEMBLYMAN GOLDWATER

MARCH 17, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to public works projects.
(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; prohibiting a public body from withholding payment from contractors in excess of retainage in certain circumstances; authorizing the State or a local government to reject a bid on the basis that the bid is unbalanced or on the basis that the contractor submitting the bid has unbalanced a bid or a schedule of values within the immediately preceding 3 years; 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. *Except as otherwise provided in subsection 2 and NRS*
4 *338.515 and 338.525, a public body and its officers or agents*
5 *awarding a contract for a public work shall not withhold payment*
6 *from the contractor in excess of retainage.*
7 2. *The prohibition set forth in subsection 1 does not apply*
8 *with respect to any and all liquidated damages that the contractor*
9 *has agreed to pay in the event that the contractor breaches the*
10 *contract.*



* A B 3 9 3 R 1 *

1 **Sec. 2.** NRS 338.010 is hereby amended to read as follows:
2 338.010 As used in this chapter:
3 1. “Day labor” means all cases where public bodies, their
4 officers, agents or employees, hire, supervise and pay the wages
5 thereof directly to a workman or workmen employed by them on
6 public works by the day and not under a contract in writing.
7 2. “Design-build contract” means a contract between a public
8 body and a design-build team in which the design-build team agrees
9 to design and construct a public work.
10 3. “Design-build team” means an entity that consists of:
11 (a) At least one person who is licensed as a general engineering
12 contractor or a general building contractor pursuant to chapter 624
13 of NRS; and
14 (b) For a public work that consists of:
15 (1) A building and its site, at least one person who holds a
16 certificate of registration to practice architecture pursuant to chapter
17 623 of NRS.
18 (2) Anything other than a building and its site, at least one
19 person who holds a certificate of registration to practice architecture
20 pursuant to chapter 623 of NRS or is licensed as a professional
21 engineer pursuant to chapter 625 of NRS.
22 4. “Design professional” means:
23 (a) A person who is licensed as a professional engineer pursuant
24 to chapter 625 of NRS;
25 (b) A person who is licensed as a professional land surveyor
26 pursuant to chapter 625 of NRS;
27 (c) A person who holds a certificate of registration to engage in
28 the practice of architecture pursuant to chapter 623 of NRS;
29 (d) A person who holds a certificate of registration to engage in
30 the practice of landscape architecture pursuant to chapter 623A of
31 NRS; or
32 (e) A business entity that engages in the practice of professional
33 engineering, land surveying, architecture or landscape architecture.
34 5. “Eligible bidder” means a person who is:
35 (a) Found to be a responsible and responsive contractor by a
36 local government which requests bids for a public work in
37 accordance with paragraph (b) of subsection 1 of NRS 338.1373; or
38 (b) Determined by a public body which awarded a contract for a
39 public work pursuant to NRS 338.1375 to 338.139, inclusive, to be
40 qualified to bid on that contract pursuant to NRS 338.1379 or was
41 exempt from meeting such qualifications pursuant to
42 NRS 338.1383.
43 6. “General contractor” means a person who is licensed to
44 conduct business in one, or both, of the following branches of the
45 contracting business:



- 1 (a) General engineering contracting, as described in subsection 2
- 2 of NRS 624.215.
- 3 (b) General building contracting, as described in subsection 3 of
- 4 NRS 624.215.
- 5 7. "Local government" means every political subdivision or
- 6 other entity which has the right to levy or receive money from ad
- 7 valorem or other taxes or any mandatory assessments, and includes,
- 8 without limitation, counties, cities, towns, boards, school districts
- 9 and other districts organized pursuant to chapters 244A, 309, 318,
- 10 379, 474, 541, 543 and 555 of NRS, NRS 450.550 to 450.750,
- 11 inclusive, and any agency or department of a county or city which
- 12 prepares a budget separate from that of the parent political
- 13 subdivision.
- 14 8. "Offense" means failing to:
- 15 (a) Pay the prevailing wage required pursuant to this chapter;
- 16 (b) Pay the contributions for unemployment compensation
- 17 required pursuant to chapter 612 of NRS;
- 18 (c) Provide and secure compensation for employees required
- 19 pursuant to chapters 616A to 617, inclusive, of NRS; or
- 20 (d) Comply with subsection 4 or 5 of NRS 338.070.
- 21 9. "Prime contractor" means a person who:
- 22 (a) Contracts to construct an entire project;
- 23 (b) Coordinates all work performed on the entire project;
- 24 (c) Uses his own workforce to perform all or a part of the
- 25 construction, repair or reconstruction of the project; and
- 26 (d) Contracts for the services of any subcontractor or
- 27 independent contractor or is responsible for payment to any
- 28 contracted subcontractors or independent contractors.
- 29 The term includes, without limitation, a general contractor or a
- 30 specialty contractor who is authorized to bid on a project pursuant to
- 31 NRS 338.139 or 338.148.
- 32 10. "Public body" means the State, county, city, town, school
- 33 district or any public agency of this state or its political subdivisions
- 34 sponsoring or financing a public work.
- 35 11. "Public work" means any project for the new construction,
- 36 repair or reconstruction of:
- 37 (a) A project financed in whole or in part from public money
- 38 for:
- 39 (1) Public buildings;
- 40 (2) Jails and prisons;
- 41 (3) Public roads;
- 42 (4) Public highways;
- 43 (5) Public streets and alleys;
- 44 (6) Public utilities which are financed in whole or in part by
- 45 public money;



- 1 (7) Publicly owned water mains and sewers;
- 2 (8) Public parks and playgrounds;
- 3 (9) Public convention facilities which are financed at least in
- 4 part with public funds; and

5 (10) All other publicly owned works and property whose cost

6 as a whole exceeds \$20,000.

7 Each separate unit that is a part of a project is included in the cost of

8 the project to determine whether a project meets that threshold.

9 (b) A building for the University and Community College

10 System of Nevada of which 25 percent or more of the costs of the

11 building as a whole are paid from money appropriated by this state

12 or from federal money.

13 12. *“Schedule of values” means a document detailing the cost*

14 *of materials and labor necessary to carry out a particular public*

15 *works contract.*

16 13. “Specialty contractor” means a person who is licensed to

17 conduct business as described in subsection 4 of NRS 624.215.

18 ~~13.~~ 14. “Stand-alone underground utility project” means an

19 underground utility project that is not integrated into a larger

20 project, including, without limitation:

21 (a) An underground sewer line or an underground pipeline for

22 the conveyance of water, including facilities appurtenant thereto;

23 and

24 (b) A project for the construction or installation of a storm drain,

25 including facilities appurtenant thereto,

26 that is not located at the site of a public work for the design and

27 construction of which a public body is authorized to contract with a

28 design-build team pursuant to subsection 2 of NRS 338.1711.

29 ~~14.~~ 15. *“Unbalanced bid” means a bid that is based on*

30 *prices which are significantly less than cost for some bid items and*

31 *significantly more than cost for others.*

32 16. “Wages” means:

- 33 (a) The basic hourly rate of pay; and
- 34 (b) The amount of pension, health and welfare, vacation and
- 35 holiday pay, the cost of apprenticeship training or other similar
- 36 programs or other bona fide fringe benefits which are a benefit to
- 37 the workman.

38 ~~15.~~ 17. “Workman” means a skilled mechanic, skilled

39 workman, semiskilled mechanic, semiskilled workman or unskilled

40 workman. The term does not include a design professional.

41 **Sec. 3.** NRS 338.1385 is hereby amended to read as follows:

42 338.1385 1. Except as otherwise provided in subsection 7

43 and NRS 338.1906 and 338.1907, this state, or a local government

44 that awards a contract for the construction, alteration or repair of a

45 public work in accordance with paragraph (a) of subsection 1 of



1 NRS 338.1373, or a public officer, public employee or other person
2 responsible for awarding a contract for the construction, alteration
3 or repair of a public work who represents the State or the local
4 government, shall not:

5 (a) Commence such a project for which the estimated cost
6 exceeds \$100,000 unless it advertises in a newspaper of general
7 circulation in this state for bids for the project; or

8 (b) Divide such a project into separate portions to avoid the
9 requirements of paragraph (a).

10 2. Except as otherwise provided in subsection 7, a public body
11 that maintains a list of properly licensed contractors who are
12 interested in receiving offers to bid on public works projects for
13 which the estimated cost is more than \$25,000 but less than
14 \$100,000 shall solicit bids from not more than three of the
15 contractors on the list for a contract of that value for the
16 construction, alteration or repair of a public work. The public body
17 shall select contractors from the list in such a manner as to afford
18 each contractor an equal opportunity to bid on a public works
19 project. A properly licensed contractor must submit a written
20 request annually to the public body to remain on the list. Offers for
21 bids which are made pursuant to this subsection must be sent by
22 certified mail.

23 3. Each advertisement for bids must include a provision that
24 sets forth:

25 (a) The requirement that a contractor must be qualified pursuant
26 to NRS 338.1379 to bid on the contract or must be exempt from
27 meeting such qualifications pursuant to NRS 338.1383; and

28 (b) The period during which an application to qualify as a bidder
29 on the contract must be submitted.

30 4. Approved plans and specifications for the bids must be on
31 file at a place and time stated in the advertisement for the inspection
32 of all persons desiring to bid thereon and for other interested
33 persons. Contracts for the project must be awarded on the basis of
34 bids received.

35 5. Any bids received in response to an advertisement for bids
36 may be rejected if the person responsible for awarding the contract
37 determines that:

38 (a) The bidder is not a qualified bidder pursuant to NRS
39 338.1379, unless the bidder is exempt from meeting such
40 qualifications pursuant to NRS 338.1383;

41 (b) The bidder is not responsive;

42 (c) The quality of the services, materials, equipment or labor
43 offered does not conform to the approved plan or specifications; ~~for~~



1 (d) *The bid is unbalanced or, during the immediately*
2 *preceding 3 years, the bidder has unbalanced a bid or schedule of*
3 *values in connection with one or more public works contracts; or*

4 (e) The public interest would be served by such a rejection.
5 6. Before the State or a local government may commence a
6 project subject to the provisions of this section, based upon a
7 determination that the public interest would be served by rejecting
8 any bids received in response to an advertisement for bids, it shall
9 prepare and make available for public inspection a written statement
10 containing:

11 (a) A list of all persons, including supervisors, whom the State
12 or the local government intends to assign to the project, together
13 with their classifications and an estimate of the direct and indirect
14 costs of their labor;

15 (b) A list of all equipment that the State or the local government
16 intends to use on the project, together with an estimate of the
17 number of hours each item of equipment will be used and the hourly
18 cost to use each item of equipment;

19 (c) An estimate of the cost of administrative support for the
20 persons assigned to the project;

21 (d) An estimate of the total cost of the project; and

22 (e) An estimate of the amount of money the State or the local
23 government expects to save by rejecting the bids and performing the
24 project itself.

25 7. This section does not apply to:

26 (a) Any utility subject to the provisions of chapter 318 or 710 of
27 NRS;

28 (b) Any work of construction, reconstruction, improvement and
29 maintenance of highways subject to NRS 408.323 or 408.327;

30 (c) Normal maintenance of the property of a school district;

31 (d) The Las Vegas Valley Water District created pursuant to
32 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
33 District created pursuant to chapter 477, Statutes of Nevada 1983 or
34 the Virgin Valley Water District created pursuant to chapter 100,
35 Statutes of Nevada 1993; or

36 (e) The design and construction of a public work for which a
37 public body contracts with a design-build team pursuant to NRS
38 338.1711 to 338.1727.

39 **Sec. 4.** NRS 338.1385 is hereby amended to read as follows:

40 338.1385 1. Except as otherwise provided in subsection 8,
41 this state, or a local government that awards a contract for the
42 construction, alteration or repair of a public work in accordance with
43 paragraph (a) of subsection 1 of NRS 338.1373, or a public officer,
44 public employee or other person responsible for awarding a contract



1 for the construction, alteration or repair of a public work who
2 represents the State or the local government, shall not:

3 (a) Commence such a project for which the estimated cost
4 exceeds \$100,000 unless it advertises in a newspaper of general
5 circulation in this state for bids for the project; or

6 (b) Divide such a project into separate portions to avoid the
7 requirements of paragraph (a).

8 2. Except as otherwise provided in subsection 8, a public body
9 that maintains a list of properly licensed contractors who are
10 interested in receiving offers to bid on public works projects for
11 which the estimated cost is more than \$25,000 but less than
12 \$100,000 shall solicit bids from not more than three of the
13 contractors on the list for a contract of that value for the
14 construction, alteration or repair of a public work. The public body
15 shall select contractors from the list in such a manner as to afford
16 each contractor an equal opportunity to bid on a public works
17 project. A properly licensed contractor must submit a written
18 request annually to the public body to remain on the list. Offers for
19 bids which are made pursuant to this subsection must be sent by
20 certified mail.

21 3. Each advertisement for bids must include a provision that
22 sets forth:

23 (a) The requirement that a contractor must be qualified pursuant
24 to NRS 338.1379 to bid on the contract or must be exempt from
25 meeting such qualifications pursuant to NRS 338.1383; and

26 (b) The period during which an application to qualify as a bidder
27 on the contract must be submitted.

28 4. Approved plans and specifications for the bids must be on
29 file at a place and time stated in the advertisement for the inspection
30 of all persons desiring to bid thereon and for other interested
31 persons. Contracts for the project must be awarded on the basis of
32 bids received.

33 5. Any bids received in response to an advertisement for bids
34 may be rejected if the person responsible for awarding the contract
35 determines that:

36 (a) The bidder is not a qualified bidder pursuant to NRS
37 338.1379, unless the bidder is exempt from meeting such
38 qualifications pursuant to NRS 338.1383;

39 (b) The bidder is not responsive;

40 (c) The quality of the services, materials, equipment or labor
41 offered does not conform to the approved plan or specifications; ~~or~~

42 (d) *The bid is unbalanced or, during the immediately*
43 *preceding 3 years, the bidder has unbalanced a bid or schedule of*
44 *values in connection with one or more public works contracts; or*

45 (e) The public interest would be served by such a rejection.



1 6. Before the State or a local government may commence a
2 project subject to the provisions of this section, based upon a
3 determination that the public interest would be served by rejecting
4 any bids received in response to an advertisement for bids, it shall
5 prepare and make available for public inspection a written statement
6 containing:

7 (a) A list of all persons, including supervisors, whom the State
8 or the local government intends to assign to the project, together
9 with their classifications and an estimate of the direct and indirect
10 costs of their labor;

11 (b) A list of all equipment that the State or the local government
12 intends to use on the project, together with an estimate of the
13 number of hours each item of equipment will be used and the hourly
14 cost to use each item of equipment;

15 (c) An estimate of the cost of administrative support for the
16 persons assigned to the project;

17 (d) An estimate of the total cost of the project; and

18 (e) An estimate of the amount of money the State or the local
19 government expects to save by rejecting the bids and performing the
20 project itself.

21 7. In preparing the estimated cost of a project pursuant to
22 subsection 6, the State or a local government must include the fair
23 market value of, or, if known, the actual cost of, all materials,
24 supplies, labor and equipment to be used for the project.

25 8. This section does not apply to:

26 (a) Any utility subject to the provisions of chapter 318 or 710 of
27 NRS;

28 (b) Any work of construction, reconstruction, improvement and
29 maintenance of highways subject to NRS 408.323 or 408.327;

30 (c) Normal maintenance of the property of a school district; ~~for~~

31 (d) The Las Vegas Valley Water District created pursuant to
32 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
33 District created pursuant to chapter 477, Statutes of Nevada 1983 or
34 the Virgin Valley Water District created pursuant to chapter 100,
35 Statutes of Nevada 1993; or

36 (e) The design and construction of a public work for which a
37 public body contracts with a design-build team pursuant to NRS
38 338.1711 to 338.1727, inclusive.

39 **Sec. 5.** NRS 338.143 is hereby amended to read as follows:

40 338.143 1. Except as otherwise provided in subsection 6 and
41 NRS 338.1907, a local government that awards a contract for the
42 construction, alteration or repair of a public work in accordance with
43 paragraph (b) of subsection 1 of NRS 338.1373, or a public officer,
44 public employee or other person responsible for awarding a contract



1 for the construction, alteration or repair of a public work who
2 represents that local government, shall not:

3 (a) Commence such a project for which the estimated cost
4 exceeds \$100,000 unless it advertises in a newspaper of general
5 circulation in this state for bids for the project; or

6 (b) Divide such a project into separate portions to avoid the
7 requirements of paragraph (a).

8 2. Except as otherwise provided in subsection 6, a local
9 government that maintains a list of properly licensed contractors
10 who are interested in receiving offers to bid on public works
11 projects for which the estimated cost is more than \$25,000 but less
12 than \$100,000 shall solicit bids from not more than three of the
13 contractors on the list for a contract of that value for the
14 construction, alteration or repair of a public work. The local
15 government shall select contractors from the list in such a manner as
16 to afford each contractor an equal opportunity to bid on a public
17 works project. A properly licensed contractor must submit a written
18 request annually to the local government to remain on the list.
19 Offers for bids which are made pursuant to this subsection must be
20 sent by certified mail.

21 3. Approved plans and specifications for the bids must be on
22 file at a place and time stated in the advertisement for the inspection
23 of all persons desiring to bid thereon and for other interested
24 persons. Contracts for the project must be awarded on the basis of
25 bids received.

26 4. Any bids received in response to an advertisement for bids
27 may be rejected if the person responsible for awarding the contract
28 determines that:

29 (a) The bidder is not responsive or responsible;

30 (b) The quality of the services, materials, equipment or labor
31 offered does not conform to the approved plan or specifications; ~~for~~

32 (c) *The bid is unbalanced or, during the immediately*
33 *preceding 3 years, the bidder has unbalanced a bid or schedule of*
34 *values in connection with one or more public works contracts; or*

35 (d) The public interest would be served by such a rejection.

36 5. Before a local government may commence a project subject
37 to the provisions of this section, based upon a determination that the
38 public interest would be served by rejecting any bids received in
39 response to an advertisement for bids, it shall prepare and make
40 available for public inspection a written statement containing:

41 (a) A list of all persons, including supervisors, whom the local
42 government intends to assign to the project, together with their
43 classifications and an estimate of the direct and indirect costs of
44 their labor;



- 1 (b) A list of all equipment that the local government intends to
- 2 use on the project, together with an estimate of the number of hours
- 3 each item of equipment will be used and the hourly cost to use each
- 4 item of equipment;
- 5 (c) An estimate of the cost of administrative support for the
- 6 persons assigned to the project;
- 7 (d) An estimate of the total cost of the project; and
- 8 (e) An estimate of the amount of money the local government
- 9 expects to save by rejecting the bids and performing the project
- 10 itself.

11 6. This section does not apply to:

- 12 (a) Any utility subject to the provisions of chapter 318 or 710 of
- 13 NRS;
- 14 (b) Any work of construction, reconstruction, improvement and
- 15 maintenance of highways subject to NRS 408.323 or 408.327;
- 16 (c) Normal maintenance of the property of a school district;
- 17 (d) The Las Vegas Valley Water District created pursuant to
- 18 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
- 19 District created pursuant to chapter 477, Statutes of Nevada 1983 or
- 20 the Virgin Valley Water District created pursuant to chapter 100,
- 21 Statutes of Nevada 1993; or
- 22 (e) The design and construction of a public work for which a
- 23 public body contracts with a design-build team pursuant to NRS
- 24 338.1711 to 338.1727, inclusive.

25 **Sec. 6.** NRS 338.143 is hereby amended to read as follows:

26 338.143 1. Except as otherwise provided in subsection 7, a

27 local government that awards a contract for the construction,

28 alteration or repair of a public work in accordance with paragraph

29 (b) of subsection 1 of NRS 338.1373, or a public officer, public

30 employee or other person responsible for awarding a contract for the

31 construction, alteration or repair of a public work who represents

32 that local government, shall not:

33 (a) Commence such a project for which the estimated cost

34 exceeds \$100,000 unless it advertises in a newspaper of general

35 circulation in this state for bids for the project; or

36 (b) Divide such a project into separate portions to avoid the

37 requirements of paragraph (a).

38 2. Except as otherwise provided in subsection 7, a local

39 government that maintains a list of properly licensed contractors

40 who are interested in receiving offers to bid on public works

41 projects for which the estimated cost is more than \$25,000 but less

42 than \$100,000 shall solicit bids from not more than three of the

43 contractors on the list for a contract of that value for the

44 construction, alteration or repair of a public work. The local

45 government shall select contractors from the list in such a manner as



1 to afford each contractor an equal opportunity to bid on a public
2 works project. A properly licensed contractor must submit a written
3 request annually to the local government to remain on the list.
4 Offers for bids which are made pursuant to this subsection must be
5 sent by certified mail.

6 3. Approved plans and specifications for the bids must be on
7 file at a place and time stated in the advertisement for the inspection
8 of all persons desiring to bid thereon and for other interested
9 persons. Contracts for the project must be awarded on the basis of
10 bids received.

11 4. Any bids received in response to an advertisement for bids
12 may be rejected if the person responsible for awarding the contract
13 determines that:

- 14 (a) The bidder is not responsive or responsible;
- 15 (b) The quality of the services, materials, equipment or labor
16 offered does not conform to the approved plan or specifications; ~~for~~
- 17 (c) *The bid is unbalanced or, during the immediately*
18 *preceding 3 years, the bidder has unbalanced a bid or schedule of*
19 *values in connection with one or more public works contracts; or*
- 20 (d) The public interest would be served by such a rejection.

21 5. Before a local government may commence a project subject
22 to the provisions of this section, based upon a determination that the
23 public interest would be served by rejecting any bids received in
24 response to an advertisement for bids, it shall prepare and make
25 available for public inspection a written statement containing:

- 26 (a) A list of all persons, including supervisors, whom the local
27 government intends to assign to the project, together with their
28 classifications and an estimate of the direct and indirect costs of
29 their labor;
- 30 (b) A list of all equipment that the local government intends to
31 use on the project, together with an estimate of the number of hours
32 each item of equipment will be used and the hourly cost to use each
33 item of equipment;
- 34 (c) An estimate of the cost of administrative support for the
35 persons assigned to the project;
- 36 (d) An estimate of the total cost of the project; and
- 37 (e) An estimate of the amount of money the local government
38 expects to save by rejecting the bids and performing the project
39 itself.

40 6. In preparing the estimated cost of a project pursuant to
41 subsection 5, a local government must include the fair market value
42 of, or, if known, the actual cost of, all materials, supplies, labor and
43 equipment to be used for the project.

44 7. This section does not apply to:



- 1 (a) Any utility subject to the provisions of chapter 318 or 710 of
- 2 NRS;
- 3 (b) Any work of construction, reconstruction, improvement and
- 4 maintenance of highways subject to NRS 408.323 or 408.327;
- 5 (c) Normal maintenance of the property of a school district;
- 6 (d) The Las Vegas Valley Water District created pursuant to
- 7 chapter 167, Statutes of Nevada 1947, the Moapa Valley Water
- 8 District created pursuant to chapter 477, Statutes of Nevada 1983 or
- 9 the Virgin Valley Water District created pursuant to chapter 100,
- 10 Statutes of Nevada 1993; or
- 11 (e) The design and construction of a public work for which a
- 12 public body contracts with a design-build team pursuant to NRS
- 13 338.1711 to 338.1727, inclusive.

14 **Sec. 7.** NRS 338.400 is hereby amended to read as follows:
15 338.400 As used in NRS 338.400 to 338.645, inclusive, *and*
16 *section 1 of this act*, unless the context otherwise requires, the
17 words and terms defined in NRS 338.405 to 338.450, inclusive,
18 have the meanings ascribed to them in those sections.

19 **Sec. 8.** NRS 338.515 is hereby amended to read as follows:
20 338.515 1. Except as otherwise provided in NRS 338.525, a
21 public body and its officers or agents awarding a contract for a
22 public work shall pay or cause to be paid to a contractor the progress
23 payments due under the contract within 30 days after the date the
24 public body receives the progress bill or within a shorter period if
25 the provisions of the contract so provide. ~~Not more than 90 percent~~
26 ~~of the amount of any progress payment may be paid.~~ *Payments*
27 *must be based upon estimates of work completed under the terms*
28 *of the contract that are approved by the public body. The public*
29 *body shall withhold payment of 5 percent of the value of the work*
30 *completed until 50 percent of the work required by the contract has*
31 *been performed. Thereafter the public body may pay any of the*
32 *remaining progress payments without withholding additional*
33 *retainage if, in the opinion of the public body, satisfactory progress*
34 *is being made in the work. If, after 50 percent of the work required*
35 *by the contract has been performed and, in the opinion of the*
36 *public body, satisfactory progress is not being made in the work,*
37 *the public body may withhold additional retainage from any*
38 *progress payment in an amount sufficient to establish the*
39 *retainage at up to 10 percent of the value of the work completed*
40 *up to that time.*

41 2. Except as otherwise provided in NRS 338.525, a public
42 body shall identify in the contract and pay or cause to be paid to a
43 contractor the actual cost of the supplies, materials and equipment
44 that:

- 45 (a) Are identified in the contract;



1 (b) Have been delivered and stored at a location, and in the time
2 and manner, specified in a contract by the contractor or a
3 subcontractor or supplier for use in the construction, repair or
4 reconstruction of the public work; and

5 (c) Are in short supply or were specially made for the public
6 work,
7 within 30 days after the public body receives a progress bill from
8 the contractor for those supplies, materials or equipment.

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

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

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

21 (c) The amount withheld under the contract is due pursuant to
22 NRS 338.520,
23 whichever occurs first.

24 4. If the Labor Commissioner has reason to believe that an
25 employee has a valid and enforceable claim for wages against a
26 contractor, he may require the public body to withhold from any
27 payment due the contractor under this section and pay the Labor
28 Commissioner instead, an amount equal to the amount claimed by
29 the employee. This amount must be paid to the employee if the
30 claim is resolved in his favor, otherwise it must be returned to the
31 public body for payment to the contractor.

32 **Sec. 9.** 1. This section and sections 1, 2, 3, 5, 7 and 8 of this
33 act become effective on October 1, 2003.

34 2. Sections 3 and 5 of this act expire by limitation on April 30,
35 2013.

36 3. Sections 4 and 6 of this act become effective at 12:01 a.m.
37 on May 1, 2013.

