

Amendment No. 194

Senate Amendment to Senate Bill No. 85	(BDR 35-665)
<b>Proposed by:</b> Senate Committee on Growth and Infrastructure	
<b>Amends:</b> Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION	Initial and Date		SENATE ACTION	Initial and Date
Adopted <input type="checkbox"/>	Lost <input type="checkbox"/>	_____	Adopted <input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In <input type="checkbox"/>	Not <input type="checkbox"/>	_____	Concurred In <input type="checkbox"/>	Not <input type="checkbox"/>
Receded <input type="checkbox"/>	Not <input type="checkbox"/>	_____	Receded <input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

SLD/ERS



Date: 4/14/2023

S.B. No. 85—Revises provisions relating to retention payments under certain highway contracts. (BDR 35-665)





## SENATE BILL NO. 85—SENATOR DALY

PREFILED JANUARY 26, 2023

Referred to Committee on Growth and Infrastructure

SUMMARY—Revises provisions relating to retention payments under certain highway contracts. (BDR 35-665)

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 highways; revising provisions governing the amount of money that the Director of the Department of Transportation must retain under certain highway contracts; revising provisions governing the disbursement of money by a contractor to a subcontractor or supplier; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law authorizes the Director of the Department of Transportation, subject to certain exceptions, to make monthly payments to a contractor who satisfactorily performs any highway improvement or construction in full as the work is completed by the contractor. The payments must not exceed 97.5 percent of the contract price. The Director is required to retain the remaining 2.5 percent of the contract price until certain conditions are met. The Department is required to perform a final inspection of the work completed under a contract for a project of highway improvement or construction. If an inspection discloses that the work was completed satisfactorily, the Department is required to reduce the amount of the contract price retained to not more than \$50,000 until the entire contract is completed satisfactorily and accepted by the Director. (NRS 408.383) **Section 1** of this bill changes the percentage of the contract price which must be retained by the Director to 5 percent, but not more than \$50,000. **Section 1** eliminates **;(1) the requirement for the Department to perform a final inspection; and (2) the requirement** that if a final inspection discloses that the work was completed satisfactorily, the Director reduce the amount of the contract price retained by the Department to not more than \$50,000, with any remaining amount to be retained until the contract is completed satisfactorily and accepted by the Director. **Section 1** requires instead that ~~if a final inspection discloses the work was~~ **the amount of the contract price that is retained be retained until the entire contract is** completed satisfactorily ~~and accepted by the Director.~~ ~~shall pay the remaining amount of the contract price retained by the Department not later than 30 days after the final inspection.~~

Existing law requires a contractor to disburse money paid to the contractor under a contract for a project of highway improvement or construction to his or her subcontractors and suppliers within a certain amount of time and provides that, if a contractor withholds more than 2.5 percent from such a required payment, the subcontractor or supplier may contact the Director to resolve such a dispute between the contractor and the subcontractor or supplier. (NRS 408.383) **Section 1** provides that a subcontractor or supplier may contact the Director to resolve such a dispute if the contractor withholds more than 5 percent of a required payment.

**Section 2** of this bill prohibits the retroactive application of the amendatory provisions of this bill to contracts made or awarded by the Department before the effective date of this bill.

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

**Section 1.** NRS 408.383 is hereby amended to read as follows:

408.383 1. Except as otherwise provided in subsections 2, 11 and 12, ~~and 13,~~ the Director may pay at the end of each calendar month, or as soon thereafter as practicable, to any contractor satisfactorily performing any highway improvement or construction as the work progresses in full for the work as completed but not more than ~~97.5~~ 95 percent of the entire contract price. The progress estimates must be based upon materials in place, or on the job site, or at a location approved by the Director, and invoiced, and labor expended thereon. The remaining ~~2.5~~ 5 percent, *but not more than \$50,000*, must be retained until the remaining money is disposed of in the manner provided in subsection 3 or ~~4,~~ upon satisfactory completion of the entire contract and final acceptance by the Director, as applicable.

2. If the work in progress is being performed on a satisfactory basis, the Director may reduce the percentage retained if the Director finds that sufficient reasons exist for additional payment and has obtained written approval from every surety furnishing bonds for the work. Any remaining money must be retained until such money is disposed of in the manner provided in subsection 3 or ~~4, as applicable.~~

~~3. Upon receiving notice from the contractor of the completion of all work under a contract for a project of highway improvement or construction, the Department shall perform a final inspection of such work. If the final inspection discloses that any work, in whole or in part, is unsatisfactory, the Department will provide the contractor with notice of the deficiencies in such work that require correction before the work will be considered completed satisfactorily. Upon receiving notice from the contractor that any such unsatisfactory work has been corrected, the Department shall conduct another final inspection. If a final inspection discloses that all work under a contract for a project of highway improvement or construction has been completed satisfactorily, the Director shall reduce pay any money being retained pursuant to subsection 1 to not more than \$50,000, not later than 30 days after such final inspection. Any remaining money must be retained until~~ upon satisfactory completion of the entire contract is completed satisfactorily and accepted and final acceptance by the Director.

~~4,~~ 3. If it becomes necessary for the Department to take over the completion of any highway contract or contracts, all of the amounts owing the contractor, including the withheld percentage, must first be applied toward the cost of completion of the contract or contracts. Any balance remaining in the retained percentage after completion by the Department is payable to the contractor or the contractor's creditors.

~~5,~~ 4. Such retained percentage as may be due any contractor is due and payable at the expiration of the 30-day period as provided in NRS 408.363 for filing of creditors' claims, and this retained percentage is due and payable to the contractor at that time without regard to creditors' claims filed with the Department.

~~6,~~ 5. The contractor under any contract made or awarded by the Department, including any contract for the construction, improvement, maintenance or repair of any road or highway or the appurtenances thereto, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor

1 under the contract which are retained by the Department, pursuant to the terms of  
2 the contract, if the contractor deposits with the Director:

3 (a) United States treasury bonds, United States treasury notes, United States  
4 treasury certificates of indebtedness or United States treasury bills;

5 (b) Bonds or notes of the State of Nevada; or

6 (c) General obligation bonds of any political subdivision of the State of  
7 Nevada.

8 ➤ Certificates of deposit must be of a market value not exceeding par, at the time  
9 of deposit, but at least equal in value to the amount so withdrawn from payments  
10 retained under the contract.

11 ~~7.1~~ 6. The Director has the power to enter into a contract or agreement with  
12 any national bank, state bank, credit union, trust company or safe deposit company  
13 located in the State of Nevada, designated by the contractor after notice to the  
14 owner and surety, to provide for the custodial care and servicing of any obligations  
15 deposited with the Director pursuant to this section. Such services include the  
16 safekeeping of the obligations and the rendering of all services required to  
17 effectuate the purposes of this section.

18 ~~7.2~~ 7. The Director or any national bank, state bank, credit union, trust  
19 company or safe deposit company located in the State of Nevada, designated by the  
20 contractor to serve as custodian for the obligations pursuant to subsection ~~7.1~~ 6.  
21 shall collect all interest or income when due on the obligations so deposited and  
22 shall pay them, when and as collected, to the contractor who deposited the  
23 obligation. If the deposit is in the form of coupon bonds, the Director shall deliver  
24 each coupon as it matures to the contractor.

25 ~~7.3~~ 8. Any amount deducted by the State of Nevada, or pursuant to the terms  
26 of a contract, from the retained payments otherwise due to the contractor  
27 thereunder, must be deducted first from that portion of the retained payments for  
28 which no obligation has been substituted, then from the proceeds of any deposited  
29 obligation. In the latter case, the contractor is entitled to receive the interest,  
30 coupons or income only from those obligations which remain on deposit after that  
31 amount has been deducted.

32 ~~7.4~~ 9. A contractor shall disburse money paid to the contractor pursuant to  
33 this section, including any interest that the contractor receives, to his or her  
34 subcontractors and suppliers within 15 days after receipt of the money in the  
35 proportion that the value of the work performed by each subcontractor or the  
36 materials furnished by each supplier bears to the total amount of the contract  
37 between the principal contractor and the Department.

38 ~~7.5~~ 10. Money payable to a subcontractor or supplier accrues interest at a  
39 rate equal to the lowest daily prime rate at the three largest banks in the United  
40 States on the date the subcontract or order for supplies was executed plus 2 percent,  
41 from 15 days after the money was received by the principal contractor until the date  
42 of payment.

43 ~~7.6~~ 11. If a contractor withholds more than ~~2.5~~ 5 percent of a payment  
44 required by subsection ~~7.4~~ 9. the subcontractor or supplier may inform the  
45 Director in writing of the amount due. The Director shall attempt to resolve the  
46 dispute between the contractor and the subcontractor or supplier within 20 working  
47 days after the date that the Director receives notice of the amount due. If the dispute  
48 is not resolved within 20 working days after the date that the Director receives  
49 notice of the amount due, the contractor shall deposit the disputed amount in an  
50 escrow account that bears interest. The contractor, subcontractor or supplier may  
51 pursue any legal or equitable remedy to resolve the dispute over the amount due.  
52 The Director may not be made a party to any legal or equitable action brought by  
53 the contractor, subcontractor or supplier.

1 ~~12.~~ 12. If the Director awards to a railroad company a contract for a project  
2 for the construction, reconstruction, improvement or maintenance of a highway and  
3 the project is located on property that is owned by or under the control of the  
4 railroad company, the Director may agree in the contract not to retain any portion  
5 of the contract price.

6 **Sec. 2.** The amendatory provisions of section 1 of this act do not apply to any  
7 highway contract that is made or awarded by the Department of Transportation  
8 before the effective date of this act.

9 **Sec. 3.** This act becomes effective upon passage and approval.