

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:

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

21 Existing law requires a contractor to disburse money paid to the contractor
22 under a contract for a project of highway improvement or construction to his or her
23 subcontractors and suppliers within a certain amount of time and provides that, if a

24 contractor withholds more than 2.5 percent from such a required payment, the
25 subcontractor or supplier may contact the Director to resolve such a dispute
26 between the contractor and the subcontractor or supplier. (NRS 408.383) **Section 1**
27 provides that a subcontractor or supplier may contact the Director to resolve such a
28 dispute if the contractor withholds more than 5 percent of a required payment.
29 **Section 2** of this bill prohibits the retroactive application of the amendatory
30 provisions of this bill to contracts made or awarded by the Department before the
31 effective date of this bill.

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

1 **Section 1.** NRS 408.383 is hereby amended to read as follows:
2 408.383 1. Except as otherwise provided in subsections 2, ~~12~~
3 ~~and 13-12~~,¹¹ the Director may pay at the end of each calendar month,
4 or
5 as soon thereafter as practicable, to any contractor satisfactorily
6 performing any highway improvement or construction as the work
7 progresses in full for the work as completed but not more than
8 ~~97.5~~ 95 percent of the entire contract price. The progress estimates
9 must be based upon materials in place, or on the job site, or at a
10 location approved by the Director, and invoiced, and labor expended
11 thereon. The remaining ~~2.5~~ 5 percent, *but not more than \$50,000*,
12 ~~must be retained until the remaining money is disposed of in the~~
13 ~~manner provided in subsection 3 or 4, as applicable~~ **entire contract is**
14 **completed satisfactorily and accepted by the Director.**
15 2. If the work in progress is being performed on a satisfactory
16 basis, the Director may reduce the percentage retained if the
17 Director finds that sufficient reasons exist for additional payment
18 and has obtained written approval from every surety furnishing
19 bonds for the work. Any remaining money must be retained until
20 ~~such money is disposed of in the manner provided in subsection 3 or~~
21 ~~4, as applicable~~ **the entire contract is completed satisfactorily and**
22 **accepted by the Director.**
23 3. ~~Upon receiving notice from the contractor of the completion~~
24 ~~of all work under a contract for a project of highway improvement~~
25 ~~or construction, the Department shall perform a final inspection of~~
26 ~~such work. If the final inspection discloses that any work, in whole~~
27 ~~or in part, is unsatisfactory, the Department will provide the~~
28 ~~contractor with notice of the deficiencies in such work that require~~
29 ~~correction before the work will be considered completed~~
30 ~~satisfactorily. Upon receiving notice from the contractor that any~~
31 ~~such unsatisfactory work has been corrected, the Department shall~~
32 ~~conduct another final inspection. If a final inspection discloses that~~
33 ~~all work under a contract for a project of highway improvement or~~
34 ~~construction has been completed satisfactorily, the Director shall~~
35 ~~reduce] pay any money being retained pursuant to subsection 1 [to~~

1 ~~not more than \$50,000,] not later than 30 days after such final~~
2 ~~inspection. [Any remaining money must be retained until the entire~~
3 ~~contract is completed satisfactorily and accepted by the Director.]~~

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

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

16 ~~5.~~ The contractor under any contract made or awarded by the
17 Department, including any contract for the construction,
18 improvement, maintenance or repair of any road or highway or the
19 appurtenances thereto, may, from time to time, withdraw the whole
20 or any portion of the sums otherwise due to the contractor under the
21 contract which are retained by the Department, pursuant to the terms
22 of the contract, if the contractor deposits with the Director:

23 (a) United States treasury bonds, United States treasury notes,
24 United States treasury certificates of indebtedness or United States
25 treasury bills;

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

27 (c) General obligation bonds of any political subdivision of the
28 State of Nevada.

29 ↪ Certificates of deposit must be of a market value not exceeding
30 par, at the time of deposit, but at least equal in value to the amount
31 so withdrawn from payments retained under the contract.

32 ~~6.~~ The Director has the power to enter into a contract or
33 agreement with any national bank, state bank, credit union, trust
34 company or safe deposit company located in the State of Nevada,
35 designated by the contractor after notice to the owner and surety, to
36 provide for the custodial care and servicing of any obligations
37 deposited with the Director pursuant to this section. Such services
38 include the safekeeping of the obligations and the rendering of all
39 services required to effectuate the purposes of this section.

40 ~~7.~~ The Director or any national bank, state bank, credit union,
41 trust company or safe deposit company located in the State of
42 Nevada, designated by the contractor to serve as custodian for the
43 obligations pursuant to subsection ~~7~~ 6, shall collect all interest or
44 income when due on the obligations so deposited and shall pay
45 them, when and as collected, to the contractor who deposited the

1 obligation. If the deposit is in the form of coupon bonds, the
2 Director shall deliver each coupon as it matures to the contractor.

3 ~~¶~~ **8.** Any amount deducted by the State of Nevada, or pursuant to
4 the terms of a contract, from the retained payments otherwise due to
5 the contractor thereunder, must be deducted first from that portion
6 of the retained payments for which no obligation has been
7 substituted, then from the proceeds of any deposited obligation. In
8 the latter case, the contractor is entitled to receive the interest,
9 coupons or income only from those obligations which remain on
10 deposit after that amount has been deducted.

11 ~~¶~~ **9.** A contractor shall disburse money paid to the contractor
12 pursuant to this section, including any interest that the contractor
13 receives, to his or her subcontractors and suppliers within 15 days
14 after receipt of the money in the proportion that the value of the
15 work performed by each subcontractor or the materials furnished by
16 each supplier bears to the total amount of the contract between the
17 principal contractor and the Department.

18 ~~¶~~ **10.** Money payable to a subcontractor or supplier accrues
19 interest at a rate equal to the lowest daily prime rate at the three
20 largest banks in the United States on the date the subcontract or
21 order for supplies was executed plus 2 percent, from 15 days after
22 the money was received by the principal contractor until the date of
23 payment.

24 ~~¶~~ **11.** If a contractor withholds more than ~~{2.5}~~ **5** percent of a
25 payment required by subsection ~~¶~~ **9**, the subcontractor or supplier
26 may inform the Director in writing of the amount due. The Director
27 shall attempt to resolve the dispute between the contractor and the
28 subcontractor or supplier within 20 working days after the date that
29 the Director receives notice of the amount due. If the dispute is not
30 resolved within 20 working days after the date that the Director
31 receives notice of the amount due, the contractor shall deposit the
32 disputed amount in an escrow account that bears interest. The
33 contractor, subcontractor or supplier may pursue any legal or
34 equitable remedy to resolve the dispute over the amount due. The
35 Director may not be made a party to any legal or equitable action
36 brought by the contractor, subcontractor or supplier.

37 **12.** If the Director awards to a railroad company a contract for
38 a project for the construction, reconstruction, improvement or
39 maintenance of a highway and the project is located on property that
40 is owned by or under the control of the railroad company, the
41 Director may agree in the contract not to retain any portion of the
42 contract price.

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

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