

SENATE BILL NO. 71—COMMITTEE ON GOVERNMENT AFFAIRS

FEBRUARY 10, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Authorizes original contractors to require subcontractors and other contractors to provide surety bonds to guarantee the payment of certain indebtedness. (BDR 53-402)

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 contractors; authorizing original contractors to require subcontractors and other contractors to provide surety bonds to guarantee the payment of certain indebtedness; establishing requirements governing the payment of claims under such surety bonds; 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 608 of NRS is hereby amended by adding  
2     thereto a new section to read as follows:  
3     ***1. If a surety issues a surety bond pursuant to NRS 608.150 to***  
4     ***guarantee the payment of the indebtedness incurred by a***  
5     ***subcontractor or contractor for labor and for the requirements***  
6     ***imposed by chapters 616A to 617, inclusive, of NRS, the surety***  
7     ***must pay any claim against the surety bond or bring an action for***  
8     ***interpleader in the manner provided by NRS 624.273 not later***  
9     ***than 30 days after the date the surety receives the first claim***  
10    ***against the surety bond which is supported by objective evidence***  
11    ***that reasonably supports the amount of the claim. Such objective***  
12    ***evidence shall be deemed to include, without limitation:***  
13    ***(a) A judgment in favor of the claimant which shows that the***  
14    ***subcontractor or contractor incurred indebtedness for labor and***



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1 *for the requirements imposed by chapters 616A to 617, inclusive,*  
2 *of NRS in an amount equal to or exceeding the amount of the*  
3 *claim against the surety bond;*

4 *(b) An audit or any other similar accounting report prepared*  
5 *by an accountant which shows that the subcontractor or*  
6 *contractor incurred indebtedness for labor and for the*  
7 *requirements imposed by chapters 616A to 617, inclusive, of NRS*  
8 *in an amount equal to or exceeding the amount of the claim*  
9 *against the surety bond; or*

10 *(c) A written acknowledgment executed by the indebted*  
11 *subcontractor or contractor which shows that the subcontractor or*  
12 *contractor incurred indebtedness for labor and for the*  
13 *requirements imposed by chapters 616A to 617, inclusive, of NRS*  
14 *in an amount equal to or exceeding the amount of the claim*  
15 *against the surety bond.*

16 *2. If the surety receives any claim against the surety bond*  
17 *that satisfies the requirements of subsection 1 and the surety fails*  
18 *to either pay the claim or bring an action for interpleader within*  
19 *the time required by subsection 1, the surety is liable to the*  
20 *claimant for:*

21 *(a) The amount of the claim;*

22 *(b) Interest on the amount of the claim, at the rate set forth in*  
23 *NRS 17.130, beginning on the date that the surety first received*  
24 *the claim;*

25 *(c) The actual costs incurred by the claimant to file and pursue*  
26 *the claim;*

27 *(d) Reasonable attorney's fees incurred by the claimant; and*

28 *(e) Any other amounts that the claimant is entitled to recover*  
29 *from the surety pursuant to any other statute, any court rule or the*  
30 *common law.*

31 *3. The liability imposed on the surety pursuant to subsection*  
32 *2 is not limited by the amount of the surety bond that was issued*  
33 *by the surety, and the claimant is entitled to recover from the*  
34 *surety all amounts set forth in subsection 2, regardless of whether*  
35 *those amounts exceed the amount of the surety bond.*

36 *4. If the surety receives any claim against the surety bond*  
37 *that satisfies the requirements of subsection 1 and the surety*  
38 *brings an action for interpleader within the time required by*  
39 *subsection 1, the surety is entitled to deduct its costs of the action*  
40 *from its liability under the surety bond to the extent provided by*  
41 *NRS 624.273.*

42 **Sec. 2.** NRS 608.150 is hereby amended to read as follows:

43 608.150 1. Every original contractor making or taking any  
44 contract in this state for the erection, construction, alteration or  
45 repair of any building or structure, or other work, shall assume and



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1 is liable for the indebtedness for labor incurred by any subcontractor  
2 or any contractors acting under, by or for the original contractor in  
3 performing any labor, construction or other work included in the  
4 subject of the original contract, for labor, and for the requirements  
5 imposed by chapters 616A to 617, inclusive, of NRS.

6 2. *Except as otherwise provided in subsection 5, every*  
7 *original contractor making or taking any contract may, with*  
8 *regard to a subcontractor or contractor acting under, by or for the*  
9 *original contractor in performing any labor, construction or other*  
10 *work included in the subject of the original contract, require the*  
11 *subcontractor or contractor to provide a surety bond in an amount*  
12 *sufficient to guarantee the payment of the indebtedness incurred*  
13 *by the subcontractor or contractor for labor and for the*  
14 *requirements imposed by chapters 616A to 617, inclusive, of NRS.*

15 3. *If an original contractor requires a subcontractor or*  
16 *contractor to provide a surety bond pursuant to this section, the*  
17 *surety bond must remain in effect for not less than 1 year after the*  
18 *date on which the subcontractor or contractor ceases to perform*  
19 *any labor, construction or other work included in the subject of*  
20 *the original contract.*

21 4. *Except as otherwise provided in subsection 5, if an original*  
22 *contractor requires a subcontractor or contractor to provide a*  
23 *surety bond pursuant to this section and the subcontractor or*  
24 *contractor fails to provide the surety bond within 15 days after the*  
25 *date on which the request is made, the original contractor may:*

26 (a) *Obtain a surety bond in an amount sufficient to guarantee*  
27 *the payment of the indebtedness incurred by the subcontractor or*  
28 *contractor for labor and for the requirements imposed by chapters*  
29 *616A to 617, inclusive, of NRS; and*

30 (b) *Withhold from any payments due to the subcontractor or*  
31 *contractor the costs incurred by the original contractor to obtain*  
32 *the surety bond.*

33 5. *If an original contractor intends to require a subcontractor*  
34 *or contractor to provide a surety bond pursuant to this section on a*  
35 *project that is competitively bid, the original contractor, in the*  
36 *request for bids, must include information which notifies potential*  
37 *bidders that a surety bond will be required and which specifies the*  
38 *amount of the surety bond or the method that must be used to*  
39 *calculate the amount of the surety bond. If the original contractor*  
40 *fails to include such information in the request for bids, the*  
41 *original contractor may not require a subcontractor or contractor*  
42 *to provide a surety bond for the project unless the original*  
43 *contractor agrees to pay, as part of the contract price for the*  
44 *project, the costs incurred by the subcontractor or contractor to*  
45 *provide the surety bond.*



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1       6. It is unlawful for any contractor or any other person to fail to  
2 comply with the provisions of ~~subsection 1,~~ *this section*, or to  
3 attempt to evade the responsibility imposed thereby, or to do any  
4 other act or thing tending to render nugatory the provisions of this  
5 section.

6       ~~3-~~ 7. The district attorney of any county wherein the  
7 defendant may reside or be found shall institute civil proceedings  
8 against any ~~such~~ original contractor failing to comply with the  
9 provisions of this section in a civil action for the amount of all  
10 wages and damage that may be owing or have accrued ~~as a result of~~  
11 ~~the failure of any~~ *because a subcontractor or contractor who was*  
12 *acting under, by or for the original contractor* ~~and any~~ *failed to*  
13 *pay the indebtedness incurred by the subcontractor or contractor*  
14 *for labor or for the requirements imposed by chapters 616A to 617,*  
15 *inclusive, of NRS. Any* property of the original contractor, not  
16 exempt by law, is subject to attachment and execution for the  
17 payment of any judgment that may be recovered in any action under  
18 the provisions of this section.

19       8. *The provisions of this section do not preclude any person*  
20 *or governmental entity from bringing any action or pursuing any*  
21 *remedy or penalty against a subcontractor or contractor who was*  
22 *acting under, by or for an original contractor and who failed to*  
23 *pay the indebtedness incurred by the subcontractor or contractor*  
24 *for labor or for the requirements imposed by chapters 616A to 617,*  
25 *inclusive, of NRS.*

