

ASSEMBLY BILL NO. 193—ASSEMBLYWOMAN KIRKPATRICK

MARCH 10, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to contractors.
(BDR 54-920)

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; providing that certain owners of planned unit developments are not contractors; providing that such owners are subject to certain rights and duties with respect to contracts and subcontracts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the regulation and licensure of contractors in this State. (Chapter 624 of NRS) Under existing law, a contractor is defined as a person, other than a registered architect or licensed professional engineer, who in his professional capacity undertakes in various ways to engage in forms of construction. The term includes subcontractors, specialty contractors and construction managers who perform management and counseling services on a construction project for a professional fee. (NRS 624.020)

This bill provides that the term “contractor” does not include an owner of a planned unit development who enters into certain contracts with licensed general building contractors or licensed general engineering contractors to construct a work of improvement in the planned unit development.

Existing law prescribes certain rights and duties of owners, contractors and subcontractors under contracts and subcontracts. (NRS 624.606-624.630)

This bill provides that the term “owner” for purposes of those rights and duties includes an owner of a planned unit development who enters into certain contracts with licensed general building contractors or licensed general engineering contractors to construct a work of improvement in the planned unit development.



* A B 1 9 3 R 2 *

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

Section 1. The Legislature hereby finds and declares that the provisions of this act shall not be construed as impairing or otherwise affecting:

1. The right of a person to bring an action for a constructional defect pursuant to NRS 40.600 to 40.695, inclusive; or

2. The rights, remedies, obligations, duties and liabilities set forth in the provisions of NRS 624.606 to 624.630, inclusive.

Sec. 2. Chapter 624 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 4.5, inclusive, of this act.

Sec. 3. *“Planned unit development” has the meaning ascribed to it in NRS 278A.065.*

Sec. 3.5. *“Work of improvement” has the meaning ascribed to it in NRS 108.22188.*

Sec. 4. 1. *“Owner” means an owner or lessee of real property or any improvements thereon who enters into an oral or written agreement with a prime contractor pursuant to which the prime contractor agrees to provide work, materials or equipment for a work of improvement.*

2. *The term includes, without limitation, an owner of a planned unit development who enters into one or more oral or written agreements to construct a work of improvement in the planned unit development in the manner described in subsection 5 of NRS 624.020.*

Sec. 4.5. *“Prime contractor” means a contractor who enters into an oral or written agreement with an owner pursuant to which the prime contractor agrees to provide work, materials or equipment for a work of improvement.*

Sec. 5. NRS 624.006 is hereby amended to read as follows:

624.006 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 624.010 to 624.024, inclusive, *and sections 3 and 3.5 of this act*, have the meanings ascribed to them in those sections.

Sec. 6. NRS 624.020 is hereby amended to read as follows:

624.020 1. “Contractor” is synonymous with “builder.”

2. A contractor is any person, except a registered architect or a licensed professional engineer, acting solely in his professional capacity, who in any capacity other than as the employee of another with wages as the sole compensation, undertakes to, offers to undertake to, purports to have the capacity to undertake to, or submits a bid to, or does himself or by or through others, construct,



1 alter, repair, add to, subtract from, improve, move, wreck or
2 demolish any building, highway, road, railroad, excavation or other
3 structure, project, development or improvement, or to do any part
4 thereof, including the erection of scaffolding or other structures or
5 works in connection therewith. Evidence of the securing of any
6 permit from a governmental agency or the employment of any
7 person on a construction project must be accepted by the Board or
8 any court of this State as prima facie evidence that the person
9 securing that permit or employing any person on a construction
10 project is acting in the capacity of a contractor pursuant to the
11 provisions of this chapter.

12 3. A contractor includes a subcontractor or specialty contractor,
13 but does not include anyone who merely furnishes materials or
14 supplies without fabricating them into, or consuming them in the
15 performance of, the work of a contractor.

16 4. A contractor includes a construction manager who performs
17 management and counseling services on a construction project for a
18 professional fee.

19 **5. A contractor does not include an owner of a planned unit**
20 **development who enters into one or more oral or written**
21 **agreements with one or more general building contractors or**
22 **general engineering contractors to construct a work of**
23 **improvement in the planned unit development if the general**
24 **building contractors or general engineering contractors are**
25 **licensed pursuant to this chapter and contract with the owner of**
26 **the planned unit development to construct the entire work of**
27 **improvement.**

28 **Sec. 7.** NRS 624.606 is hereby amended to read as follows:

29 624.606 As used in NRS 624.606 to 624.630, inclusive, **and**
30 **sections 4 and 4.5 of this act**, the words and terms defined in NRS
31 624.607 and 624.608 **and sections 4 and 4.5 of this act** have the
32 meanings ascribed to them in those sections.

33 **Sec. 8.** NRS 624.620 is hereby amended to read as follows:

34 624.620 1. Except as otherwise provided in this section, any
35 money remaining unpaid for the construction of a work of
36 improvement is payable to the contractor within 30 days after:

37 (a) Occupancy or use of the work of improvement by the owner
38 or by a person acting with the authority of the owner; or

39 (b) The availability of a work of improvement for its intended
40 use. The contractor must have given a written notice of availability
41 to the owner on or before the day on which he claims that the work
42 of improvement became available for use or occupancy.

43 2. If the owner has complied with subsection 3, the owner may:

44 (a) Withhold payment for the amount of:



(1) Any work or labor that has not been performed or materials or equipment that has not been furnished for which payment is sought;

(2) The costs and expenses reasonably necessary to correct or repair any work that is not materially in compliance with the contract to the extent that such costs and expenses exceed 50 percent of the amount of retention being withheld pursuant to the terms of the contract; and

(3) Money the owner has paid or is required to pay pursuant to an official notice from a state agency, or employee benefit trust fund, for which the owner is liable for the contractor or his subcontractors in accordance with chapter 608, 612, 616A to 616D, inclusive, or 617 of NRS.

(b) Require, as a condition precedent to the payment of any unpaid amount under the construction contract, that lien releases be furnished by the contractor's subcontractors, suppliers or employees. For purposes of this paragraph:

(1) If the amount due is paid with a check or is not paid concurrently with the owner's receipt of the lien releases, the lien releases must be conditioned upon the check clearing the bank upon which it is drawn and the receipt of payment and shall be deemed to become unconditional upon the receipt of payment; and

(2) The lien releases must be limited to the amount of the payment received.

3. If, pursuant to paragraph (a) of subsection 2, an owner intends to withhold any amount from a payment to be made to a contractor, the owner must, on or before the date the payment is due, give written notice to the contractor of any amount that will be withheld. The written notice must:

(a) Identify the amount that will be withheld from the contractor;

(b) Give a reasonably detailed explanation of the reason the owner will withhold that amount, including, without limitation, a specific reference to the provision or section of the contract, and any documents relating thereto, and the applicable building code, law or regulation with which the contractor has failed to comply; and

(c) Be signed by an authorized agent of the owner.

4. A contractor who receives a notice pursuant to subsection 3 may provide written notice to the owner of the correction of a condition described in the notice received pursuant to subsection 3. The notice of correction must be sufficient to identify the scope and manner of the correction of the condition and be signed by an authorized representative of the contractor. If an owner receives a written notice from the contractor of the correction of a condition



described in an owner's notice of withholding pursuant to subsection 3, the owner must, within 10 days after receipt of such notice:

(a) Pay the amount withheld by the owner for that condition; or

(b) Object to the scope and manner of the correction of the condition in a written statement that sets forth the reason for the objection and complies with subsection 3. If the owner objects to the scope and manner of the correction of a condition, he shall nevertheless pay to the contractor, along with payment made pursuant to the contractor's next payment request, the amount withheld for the correction of conditions to which the owner no longer objects.

5. The partial occupancy or availability of a building requires payment in direct proportion to the value of the part of the building which is partially occupied or partially available. For projects which involve more than one building, each building must be considered separately in determining the amount of money which is payable to the contractor.

6. Unless otherwise provided in the construction contract, any money which is payable to a contractor pursuant to this section accrues interest at a rate equal to the lowest daily prime rate at the largest bank in this State, as determined by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding:

(a) The time the contract was signed; or

(b) If the contract was oral, the time the terms of the contract were agreed to by the parties,
→ plus 2 percent.

7. This section does not apply to:

(a) Any residential building; or

(b) Public works.

~~{8. As used in this section, unless the context otherwise requires, "work of improvement" has the meaning ascribed to it in NRS 108.22188.}~~

Sec. 9. This act becomes effective on July 1, 2005.



