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ASSEMBLY BILL NO. 238—ASSEMBLYMAN HARDY

MARCH 21, 2005

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Referred to Committee on Judiciary

SUMMARY—Revises type and amount of security required for certain construction contracts under certain circumstances. (BDR 9-1238)

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.

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AN ACT relating to statutory liens; lowering the amount of the surety bond that must be provided by a lessee for the benefit of a contractor under certain circumstances; allowing for alternative types and amounts of security to be agreed upon by a lessee and contractor under certain circumstances; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 Under existing law, any lessee who causes a work of improvement to be  
2 constructed, altered or repaired upon property that is leased must provide a payment  
3 and completion bond from a licensed surety in an amount equal to not less than 1.5  
4 times the total amount of the construction contract. The surety bond must be  
5 recorded and must be payable upon default by the lessee of any undisputed amount  
6 under the construction contract that is due and payable to the prime contractor for  
7 more than 30 days. If a lessee fails to record a surety bond, the prime contractor  
8 may invalidate the contract and may recover damages, reasonable attorney's fees  
9 and costs. (NRS 108.234)

10 This bill reduces the required amount of the surety bond to an amount equal to  
11 the total amount of the construction contract. This bill provides further that a lessee  
12 is not required to furnish a surety bond if: (1) the total amount of the construction  
13 contract exceeds \$1 million; and (2) the contractor and lessee agree that the lessee  
14 may provide a different type and amount of security.

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

1       **Section 1.** NRS 108.234 is hereby amended to read as follows:

2       108.234 1. Except as otherwise provided in subsection 2,  
3 every improvement constructed, altered or repaired upon property  
4 shall be deemed to have been constructed, altered or repaired at the  
5 instance of each owner having or claiming any interest therein, and  
6 the interest owned or claimed must be subject to each notice of lien  
7 recorded in accordance with the provisions of NRS 108.221 to  
8 108.246, inclusive.

9       2. The interest of a disinterested owner in any improvement  
10 and the property upon which an improvement is constructed, altered  
11 or repaired is not subject to a notice of lien if the disinterested  
12 owner, within 3 days after he first obtains knowledge of the  
13 construction, alteration or repair, or the intended construction,  
14 alteration or repair, gives notice that he will not be responsible for  
15 the improvement by recording a notice in writing to that effect with  
16 the county recorder of the county where the property is located and,  
17 in the instance of a disinterested owner who is:

18       (a) A lessor, the notice of nonresponsibility shall be deemed  
19 timely recorded if the notice is recorded within 3 days immediately  
20 following the effective date of the lease or by the time of the  
21 execution of the lease by all parties, whichever occurs first; or

22       (b) An optionor, the notice of nonresponsibility shall be deemed  
23 timely recorded if the notice is recorded within 3 days immediately  
24 following the date on which the option is exercised in writing.

25       3. Each notice of nonresponsibility recorded pursuant to this  
26 section must identify:

27       (a) The name and address of the disinterested owner;

28       (b) The location of the improvement and the property upon  
29 which the improvement is or will be constructed, altered or repaired;

30       (c) The nature and extent of the disinterested owner's interest in  
31 the improvement and the property upon which the improvement is  
32 or will be constructed, altered or repaired; and

33       (d) The date on which the disinterested owner first learned of the  
34 construction, alteration or repair of the improvement that is the  
35 subject of the notice of nonresponsibility.

36       4. ~~[Any]~~ *Except as otherwise provided in subsection 5, any*  
37 lessee who causes a work of improvement to be constructed, altered  
38 or repaired upon property that is leased shall provide a payment and  
39 completion bond from a surety licensed to do business in this State  
40 in an amount equal to ~~[not less than 1.5 times]~~ the total amount of  
41 the construction contract. The surety bond must be recorded in  
42 accordance with NRS 108.2415 to 108.2425, inclusive, before



1 commencement of the construction, alteration or repair of the work  
2 of improvement and must be payable upon default by the lessee of  
3 any undisputed amount pursuant to the construction contract that is  
4 due and payable to the prime contractor for more than 30 days. If a  
5 lessee fails to record a surety bond as required pursuant to this  
6 section, the prime contractor may invalidate the construction  
7 contract and may recover damages , including, without limitation,  
8 consequential damages, reasonable attorney's fees and costs.

9 5. *If a lessee causes a work of improvement to be constructed,*  
10 *altered or repaired upon property that is leased and the total*  
11 *amount of the construction contract exceeds \$1,000,000, the*  
12 *contractor and lessee may enter into an agreement providing that*  
13 *the lessee will furnish an alternative amount and type of security,*  
14 *including, without limitation, a guaranty. If the contractor and*  
15 *lessee enter into such an agreement, the lessee is not required to*  
16 *provide a surety bond as otherwise required pursuant to*  
17 *subsection 4.*

18 6. As used in this section, "disinterested owner" means an  
19 owner who did not personally or through his agent or representative,  
20 directly or indirectly, request, require, authorize, consent to or cause  
21 a work of improvement, or any portion thereof, to be constructed,  
22 altered or repaired upon the property of the owner. The term must  
23 not be interpreted to invalidate a notice of nonresponsibility  
24 recorded pursuant to this section or to deny the rights granted  
25 pursuant to this section upon the recording of a notice of  
26 nonresponsibility because:

27 (a) The disinterested owner is a lessor or an optionor under a  
28 lease that requests, requires, authorizes or consents to his lessee  
29 causing the work of improvement to be constructed, altered or  
30 repaired upon the property;

31 (b) The lessee personally or through his agent or representative  
32 enters into a contract and causes the work of improvement to be  
33 constructed, altered or repaired upon the property; and

34 (c) The lessor or optionor notifies the lessee in writing that  
35 pursuant to subsection 4, the lessee must record a surety bond before  
36 causing a work of improvement to be constructed, altered or  
37 repaired upon the property.

38 **Sec. 2.** This act becomes effective upon passage and approval.



