

Amendment No. 1080

Assembly Amendment to Senate Bill No. 343 First Reprint

(BDR 9-787)

Proposed by: Committee on Judiciary**Amendment Box:** Replaces Amendment No. 853.**Resolves Conflicts with:** N/A**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

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"/>	_____

Amend the bill as a whole by deleting sec. 2 and adding:

“**Sec. 2.** (Deleted by amendment.)”.

Amend sec. 4, page 2, line 14, by deleting “2,” and inserting “4,”.

Amend sec. 4, page 2, line 30, by deleting:

“*subparagraph (1) or (2) of*”.

Amend sec. 4, page 2, line 31, by deleting “3;” and inserting “2;”.

Amend sec. 4, page 2, by deleting lines 35 and 36 and inserting:

“*recording of the surety bond as provided in paragraph (f) of subsection 2.*”.

Amend sec. 4, pages 2 and 3, by deleting lines 37 through 41 on page 2 and lines 1 through 29 on page 3.

Amend sec. 4, page 3, line 30, by deleting “3.” and inserting “2.”.

RBL

Date: 5/27/2005

S.B. No. 343—Makes various changes to provisions related to mechanics’ and materialmen’s liens.

Amend sec. 4, page 3, line 31, by deleting “*or 2*”.

Amend sec. 4, page 3, line 42, by deleting:

“1 or subsection 2,” and inserting “***1,***”.

Amend sec. 4, page 4, by deleting line 5 and inserting “***if any;***”.

Amend sec. 4, page 4, line 28, by deleting “***4.***” and inserting “***3.***”.

Amend sec. 4, page 4, by deleting line 29 and inserting:

“of this section or subsection 2 of section 5 of this act, the prime contractor”.

Amend sec. 4, page 4, by deleting lines 32 through 40 and inserting:

“(a) Satisfies the requirements of subsection 1 of this section or subsection 2 of section 5 of this act within 25 days after any work stoppage, the prime contractor who stopped work shall resume work and the prime contractor and his lower-tiered subcontractors and suppliers are entitled to compensation for any reasonable costs and expenses that any of them have incurred because of the delay and remobilization; or

(b) Does not satisfy the requirements of subsection 1 of this section or subsection 2 of section 5 of this act within 25 days after the work stoppage, the prime contractor who stopped work may terminate his contract relating to the work of improvement and the prime contractor and his lower-tiered subcontractors and suppliers are entitled to recover: ”.

Amend sec. 4, page 4, lines 42 and 43, by deleting “***he***” and inserting:

“the prime contractor”.

Amend sec. 4, page 5, lines 1 and 4, by deleting “***he***” and inserting:

“the prime contractor”.

Amend sec. 4, page 5, between lines 8 and 9, by inserting:

“4. The rights and remedies provided pursuant to this section are in addition to any other rights and remedies that may exist at law or in equity, including, without limitation, the rights and remedies provided pursuant to NRS 624.606 to 624.630, inclusive.”.

Amend the bill as a whole by adding a new section designated sec. 4.5, following sec. 4, to read as follows:

“Sec. 4.5. 1. The provisions of sections 4 and 5 of this act do not apply:

(a) In a county with a population of 400,000 or more with respect to a ground lessee who enters into a ground lease for real property which is designated for use or development by the county for commercial purposes which are compatible with the operation of the international airport for the county.

(b) If all owners of the property, individually or collectively, record a written notice of waiver of the owners’ rights set forth in NRS 108.234 with the county recorder of the county where the property is located before the commencement of construction of the work of improvement.

2. Each owner who serves a notice of waiver pursuant to paragraph (b) of subsection 1 must serve such notice by certified mail, return receipt requested, upon the prime contractor of the work of improvement and all other lien claimants who may give the owner a notice of right to lien pursuant to NRS 108.245, within 10 days after the owner’s receipt of a notice of right to lien or 10 days after the date on which the notice of waiver is recorded pursuant to this subsection.

3. As used in this section:

(a) “Ground lease” means a written agreement:

(1) To lease real property which, on the date on which the agreement is signed, does not include any existing buildings or improvements that may be occupied on the land; and

(2) That is entered into for a period of not less than 10 years, excluding any options to renew that may be included in any such lease.

(b) "Ground lessee" means a person who enters into a ground lease as a lessee with the county as record owner of the real property as the lessor."

Amend sec. 5, page 5, by deleting line 10 and inserting:

"established and funded pursuant to subsection 2 of this section or subsection 1 of section 4".

Amend sec. 5, page 5, by deleting lines 13 and 14 and inserting:

"2. Upon the disbursement of any funds from the construction disbursement account for a given pay period:

(a) The lessee shall deposit into the account such additional funds as may be necessary to pay for the completion of the work of improvement, including, without limitation, the costs attributable to additional and changed work, material or equipment;

(b) The construction control described in subsection 1 of section 4 of this act shall certify in writing the amount necessary to pay for the completion of the work of improvement; and

(c) If the amount necessary to pay for the completion of the work of improvement exceeds the amount remaining in the construction disbursement account:

(1) The construction control shall give written notice of the deficiency by certified mail, return receipt requested, to the prime contractor and each person who has given the construction control a notice of right to lien; and

(2) The provisions of subsection 3 of section 4 of this act shall be deemed to apply.

3. The construction control shall disburse money to lien claimants from".

Amend sec. 5, page 5, line 17, by deleting "3." and inserting "4.".

Amend sec. 5, page 5, by deleting line 24 and inserting:

“5. Except as otherwise provided in subsection 6, the”.

Amend sec. 5, page 5, line 25, by deleting “*meritorious*” and inserting “*legitimate*”.

Amend sec. 5, page 5, line 26, by deleting “3” and inserting “4”.

Amend sec. 5, page 5, by deleting lines 28 through 33 and inserting:

“6. The construction control may bring an action for interpleader in the district court for the county where the property or some part thereof is located if:

(a) The construction control reasonably believes that all or a portion of a claim of lien is not legitimate; or

(b) The construction disbursement account does not have sufficient funds to pay all claims of liens for which the construction control has received notice.

7. If the construction control brings an action for interpleader pursuant to paragraph (a) of subsection 6, the construction control shall pay to the lien claimant any portion of the claim of lien that the construction control reasonably believes is legitimate.”.

Amend sec. 5, page 5, line 34, by deleting “6.” and inserting “8.”.

Amend sec. 5, page 5, line 35, by deleting “5,” and inserting “6,”.

Amend sec. 5, page 5, by deleting lines 39 through 43 and inserting:

“(b) Provide notice of the action for interpleader by certified mail, return receipt requested, to each person:

(1) Who gives the construction control a notice of right to lien;

(2) Who serves the construction control with a claim of lien;

(3) Who has performed work or furnished materials or equipment for the work of improvement; or

(4) Of whom the construction control is aware may perform work or furnish materials or equipment for the work of improvement; and”.

Amend sec. 5, page 6, line 3, by deleting “7.” and inserting “9.”.

Amend sec. 5, page 6, line 4, by deleting “5” and inserting “6”.

Amend sec. 5, page 6, by deleting lines 7 through 12 and inserting:

“10. If a construction control for a construction disbursement account established by a lessee does not provide a proper certification as required pursuant to paragraph (b) of subsection 2 or does not comply with any other requirement of this section, the construction control and its bond are liable for any resulting damages to any lien claimants.”.

Amend the bill as a whole by adding a new section designated sec. 8.5, following sec. 8, to read as follows:

“Sec. 8.5. NRS 108.22148 is hereby amended to read as follows:

108.22148 1. “Owner” includes:

(a) The record owner or owners of the property or an improvement to the property as evidenced by a conveyance or other instrument which transfers that interest to him and is recorded in the office of the county recorder in which the improvement or the property is located;

(b) The reputed owner or owners of the property or an improvement to the property;

(c) The owner or owners of the property or an improvement to the property, as shown on the records of the county assessor for the county where the property or improvement is located;

(d) The person or persons whose name appears as owner of the property or an improvement to the property on the building permit; ~~or~~

(e) A person who claims an interest in or possesses less than a fee simple estate in the property ~~or~~ ;

(f) This State or a political subdivision of this State, including, without limitation, an incorporated city or town, that owns the property or an improvement to the property if the property or improvement is used for a private or nongovernmental use or purpose; or

(g) A person described in paragraph (a), (b), (c), (d) or (e) who leases the property or an improvement to the property to this State or a political subdivision of this State, including, without limitation, an incorporated city or town, if the property or improvement is privately owned.

2. The term does not include:

(a) A mortgagee;

(b) A trustee or beneficiary of a deed of trust; ~~or~~

(c) The owner or holder of a lien encumbering the property or an improvement to the property ~~or~~ ; *or*

(d) Except as otherwise provided in paragraph (f) of subsection 1, this State or a political subdivision of this State, including, without limitation, an incorporated city or town.”.

Amend sec. 12, page 7, line 10, by deleting “furnished ,” and inserting:
“furnished *or to be furnished*,”.

Amend sec. 12, page 7, line 18, by deleting “or furnished” and inserting:
“; ~~or~~ furnished *or to be performed or furnished*”.

Amend sec. 12, page 7, line 22, by deleting:

“existing or new”.

Amend sec. 12, page 7, line 23, after “claimant,” by inserting:

“including, without limitation, any additional or changed work, material or equipment,”.

Amend sec. 12, page 7, line 26, by deleting “or furnished” and inserting:

“; ~~for~~ furnished or to be performed or furnished”.

Amend sec. 13, page 8, line 28, after “furnished” by inserting:

“or to be furnished”.

Amend sec. 13, page 8, line 31, by deleting “*new*” and inserting:

“additional or changed”.

Amend sec. 13, page 8, line 39, after “furnished” by inserting:

“or agreed to furnish”.

Amend sec. 13, page 9, by deleting line 38 and inserting:

“materials or equipment furnished or to be furnished for work or services performed or to be performed,”.

Amend sec. 13, page 9, line 45, by deleting “*commercial*” and inserting “*nonresidential*”.

Amend sec. 15, pages 12 and 13, by deleting lines 28 through 45 on page 12 and lines 1 through 12 on page 13, and inserting:

“4. To be effective and valid, each notice of nonresponsibility that is recorded by a lessor pursuant to this section must be served by personal delivery or by certified mail, return receipt requested:

(a) Upon the lessee within 10 days after the date on which the notice of nonresponsibility is recorded pursuant to subsection 2; and

(b) Upon the prime contractor for the work of improvement within 10 days after the date on which the lessee contracts with the prime contractor for the construction, alteration or repair of the work of improvement.

5. If the prime contractor for the work of improvement receives a notice of nonresponsibility pursuant to paragraph (b) of subsection 4, the prime contractor shall:

(a) Post a copy of the notice of nonresponsibility in an open and conspicuous place on the property within 3 days after his receipt of the notice of nonresponsibility; and

(b) Serve a copy of the notice of nonresponsibility by personal delivery, facsimile or by certified mail, return receipt requested, upon each lien claimant from whom he received a notice of right to lien, within 10 days after his receipt of the notice of nonresponsibility or a notice of right to lien, whichever occurs later.

6. An owner who does not comply with the provisions of this section may not assert any claim that his interest in any improvement and the property upon which an improvement is constructed, altered or repaired is not subject to or is immune from the attachment of a lien pursuant to NRS 108.221 to 108.246, inclusive, and sections 2 to 5, inclusive, of this act.

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

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

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

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

(a) Does not record a notice of waiver as provided in subsection 4 of section 4 of this act; and

(b) Does not personally or through his agent or representative, directly or indirectly, contract for or cause a work of improvement, or any portion thereof, to be constructed, altered or repaired upon the property or an improvement of the owner.

↪ *The term does not include an owner who is a lessor if the lessee fails to satisfy the requirements set forth in sections 4 and 5 of this act.”.*

Amend sec. 16, page 13, lines 20 and 30, after “furnished” by inserting:

“or to be furnished”.

Amend sec. 24, page 25, lines 5 and 6, by deleting “[for services]” and inserting “or services”.

Amend sec. 24, page 25, by deleting lines 8 and 9 and inserting:

“inclusive, of this act unless the notice has been given.”.

Amend sec. 25, page 26, by deleting lines 1 through 3 and inserting:

“subcontractor may otherwise possess *or acquire* for delay , *acceleration, disruption or impact* damages or an extension of time for delays incurred, for any delay , *acceleration, disruption or impact event* which was”.

Amend sec. 25, page 26, line 6, before “contractor” by inserting “*prime*”.

Amend sec. 26, page 26, line 39, by deleting “owner” and inserting “[~~owner~~] *payor*”.