

Amendment No. 496

Senate Amendment to Senate Bill No. 351 (BDR 54-225)

Proposed by: Senate Committee on Commerce, Labor and Energy

Amendment Box: Replaces Amendment No. 404.

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

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"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

RRY/WLK



Date: 4/22/2011

S.B. No. 351—Revises provisions governing disciplinary action against contractors. (BDR 54-225)



SENATE BILL NO. 351—SENATOR HARDY
(BY REQUEST)

MARCH 21, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions governing disciplinary action against contractors. (BDR 54-225)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to contractors; authorizing the State Contractors' Board to take disciplinary action against a contractor for nonpayment of taxes, fees or unemployment compensation contributions under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the licensing and regulation of contractors by the State Contractors' Board. (Chapter 624 of NRS) **Section 1** of this bill authorizes the Board to take certain actions against a contractor if the Board receives written notice from the Department of Taxation or the Department of Employment, Training and Rehabilitation regarding the contractor and of the ~~existence~~ amount of a lien against the contractor for nonpayment of taxes or fees or nonpayment of unemployment compensation contributions. Specifically, the Board, after notice and hearing, may: (1) suspend the license of the contractor until the lien expires, is released or is otherwise discharged; (2) require the contractor to file a bond with the Board; (3) require the contractor to obtain a performance bond and a payment bond; ~~and~~ (4) take certain other disciplinary action against the contractor ~~;~~ and (5) recover all costs of the hearing from the contractor. Section 1 also provides that such written notice creates a rebuttable presumption of the validity of the lien described in the notice. **Sections 4 and 6** of this bill require the Executive Director of the Department of Taxation and the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation, respectively, within 5 business days after ~~receiving~~ receiving written notice of the recording of specified documentation and the acquisition of a lien against a contractor, to notify the Board of the name and license number of the contractor and the amount of the lien and also to notify the Board ~~when~~ after receiving written notice that the lien ~~expires, is~~ has expired, has been released or ~~has~~ has been otherwise discharged.

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

Section 1. Chapter 624 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the Board receives written notice regarding a contractor and of the ~~existence~~ amount of a lien against ~~the~~ the contractor from the Executive Director of the Department of Taxation pursuant to section 4 of this act or from the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation pursuant to section 6 of this act, the Board, after notice and hearing, may:

~~1-1~~ (a) Suspend the license of the contractor until the lien expires, is released or is otherwise discharged;

~~1-2~~ (b) Require the contractor to file a bond or establish a cash deposit, subject to the terms and conditions applicable to other such bonds or cash deposits that may be required by the Board pursuant to subsection 6 of NRS 624.270;

~~1-3~~ (c) Require the contractor, before commencing work on any construction project, to obtain a performance bond and a payment bond, subject to the terms and conditions applicable to other such bonds that may be required by the Board pursuant to subsection 8 of NRS 624.270; ~~and~~

~~4-1~~ (d) Take such other disciplinary action against the contractor as is authorized by NRS 624.300 ~~1-1~~; and

(e) Recover all costs of the hearing from the contractor.

2. A written notice received by the Board pursuant to subsection 1 creates a rebuttable presumption of the validity of the lien described in the notice.

Sec. 2. NRS 624.750 is hereby amended to read as follows:

624.750 1. It is unlawful for a person to commit any act or omission described in subsection 1 of NRS 624.3012, subsection 2 of NRS 624.3013, NRS 624.3014 or subsection 1, 3 or 7 of NRS 624.3016.

2. Unless a greater penalty is otherwise provided by a specific statute, any person who violates subsection 1, NRS 624.305, subsection 1 of NRS 624.700 or NRS 624.720 or 624.740:

(a) For a first offense, is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000, and may be further punished by imprisonment in the county jail for not more than 6 months.

(b) For the second offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than \$2,000 nor more than \$4,000, and may be further punished by imprisonment in the county jail for not more than 1 year.

(c) For the third or subsequent offense, is guilty of a category E felony and shall be punished by a fine of not less than \$5,000 nor more than \$10,000 and may be further punished by imprisonment in the state prison for not less than 1 year and not more than 4 years.

3. It is unlawful for a person to receive money for the purpose of obtaining or paying for services, labor, materials or equipment if the person:

(a) Willfully fails to use that money for that purpose by failing to complete the improvements for which the person received the money or by failing to pay for any services, labor, materials or equipment provided for that construction; and

(b) Wrongfully diverts that money to a use other than that for which it was received.

4. Unless a greater penalty is otherwise provided by a specific statute, any person who violates subsection 3:

(a) If the amount of money wrongfully diverted is \$1,000 or less, is guilty of a gross misdemeanor and shall be punished by a fine of not less than \$2,000 nor more than \$4,000, and may be further punished by imprisonment in the county jail for not more than 1 year.

(b) If the amount of money wrongfully diverted is more than \$1,000, is guilty of a category E felony and shall be punished by a fine of not less than \$5,000 nor more than \$10,000, and may be further punished by imprisonment in the state prison for not less than 1 year and not more than 4 years.

5. Imposition of a penalty provided for in this section is not precluded by any disciplinary action taken by the Board against a contractor pursuant to the provisions of NRS 624.300 to 624.305, inclusive ~~and~~, *and section 1 of this act.*

Sec. 3. NRS 624.965 is hereby amended to read as follows:

624.965 1. A violation of any provision of NRS 624.900 to 624.965, inclusive, or any regulation adopted by the Board with respect to contracts for work concerning a residential pool or spa by a contractor constitutes cause for disciplinary action pursuant to NRS 624.300.

2. It is unlawful for a person to violate any provision of NRS 624.900 to 624.965, inclusive.

3. Any person who violates any provision of NRS 624.900 to 624.965, inclusive:

(a) For a first offense, is guilty of a misdemeanor and shall be punished by a fine of not more than \$1,000, and may be further punished by imprisonment in the county jail for not more than 6 months.

(b) For the second offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than \$2,000 nor more than \$4,000, and may be further punished by imprisonment in the county jail for not more than 1 year.

(c) For the third or subsequent offense, is guilty of a class E felony and shall be punished by a fine of not less than \$5,000 nor more than \$10,000 and may be further punished by imprisonment in the state prison for not less than 1 year and not more than 4 years.

4. The imposition of a penalty provided for in this section is not precluded by any disciplinary action taken by the Board against a contractor pursuant to the provisions of NRS 624.300 to 624.305, inclusive ~~and~~, *and section 1 of this act.*

Sec. 4. Chapter 360 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If the Department, pursuant to NRS 360.473, files a certificate in the office of any county recorder against a contractor for any unpaid tax or fee and thereby acquires a lien against the real and personal property of the contractor in the county, ~~pursuant to NRS 360.420,~~ the Executive Director shall, within 5 business days ~~if~~ after receiving written notice from the county recorder that the certificate has been recorded, notify the State Contractors' Board in writing of the name and license number of the contractor and the amount of the lien, including interest and penalties. The ~~notification~~ written notice provided to the State Contractors' Board must include a copy of the certificate that was ~~filed with~~ recorded and returned by the county recorder ~~if~~ if the county recorder returned a copy of the recorded certificate to the Department.

2. The Executive Director shall notify the State Contractors' Board in writing within 5 business days after receiving any written notice from the county recorder that the lien ~~expires, is~~ has expired, has been released or ~~is~~ has been otherwise discharged.

3. As used in this section, "contractor" has the meaning ascribed to it in NRS 624.020.

1 **Sec. 5.** NRS 375A.305 is hereby amended to read as follows:

2 375A.305 1. The tax imposed by NRS 375A.100 becomes a lien upon the
3 gross estate of the decedent on the date of death and remains as such until the tax,
4 interest and penalties owed to the State are paid or the lien is otherwise discharged.

5 2. If the tax is not paid when due, the person who had possession of the
6 property of the gross estate on the date of death of the decedent is personally liable
7 for the tax. If the person who is liable for the tax transfers property of the gross
8 estate to a bona fide purchaser or holder of a security interest, the lien imposed by
9 subsection 1 attaches at the moment of the transfer to all of the property of the
10 person who is liable for the tax including property the person acquires after the
11 transfer, except the property which is transferred to a bona fide purchaser or a
12 holder of a security interest. The lien does not attach to any property transferred to a
13 bona fide purchaser or a holder of a security interest but it attaches to the
14 consideration received for the property by the person who is liable for the tax.

15 3. If the lien is not extinguished or otherwise released or discharged, it expires
16 10 years after the date a determination of deficiency is issued if, within that period,
17 no notice of the lien has been recorded or filed as provided in NRS 360.450.

18 4. Except as otherwise provided in this section, the provisions of NRS
19 360.420 to 360.560, inclusive, *and section 4 of this act* apply to the lien.

20 **Sec. 6.** Chapter 612 of NRS is hereby amended by adding thereto a new
21 section to read as follows:

22 1. *If judgment is entered by a district court in favor of the Unemployment*
23 *Compensation Service and against a contractor in the amount of any unpaid*
24 *contributions, interest and forfeit provided by this chapter and an abstract of*
25 *judgment or a copy thereof is recorded in the office of any county recorder, the*
26 *Administrator shall, within 5 business days ~~if~~ after receiving written notice from*
27 *the county recorder that the abstract of judgment or a copy thereof has been*
28 *recorded, notify the State Contractors' Board in writing of the name and license*
29 *number of the contractor and the amount of the lien against the real and*
30 *personal property of the contractor in the county which, pursuant to NRS*
31 *612.635, was created by the recording of the abstract of judgment. The*
32 *~~notification~~ written notice provided to the State Contractors' Board must*
33 *include a copy of the abstract of judgment that was ~~filed with~~ recorded and*
34 *returned by the county recorder ~~if~~ if the county recorder returned a copy of the*
35 *recorded abstract of judgment to the Administrator.*

36 2. *The Administrator shall notify the State Contractors' Board in writing*
37 *within 5 business days after receiving any written notice from the county recorder*
38 *that the lien ~~expires, is~~ has expired, has been released or ~~is~~ has been otherwise*
39 *discharged.*

40 3. *As used in this section, "contractor" has the meaning ascribed to it in*
41 *NRS 624.020.*

42 **Sec. 7.** NRS 612.645 is hereby amended to read as follows:

43 612.645 1. In all proceedings under NRS 612.625 to 612.640, inclusive,
44 *and section 6 of this act*, the Unemployment Compensation Service ~~shall be~~ is
45 authorized to act in its name on behalf of the State of Nevada.

46 2. No costs or filing fees ~~shall~~ may be charged to the State of Nevada in any
47 proceedings brought under any provision of NRS 612.625 to 612.640, inclusive,
48 *and section 6 of this act* nor ~~shall~~ may any bond or undertaking be required of the
49 State of Nevada, either in proceedings in the district court or on appeal to the
50 Supreme Court.

51 **Sec. 8.** This act becomes effective on July 1, 2011.