

ASSEMBLY BILL NO. 211—ASSEMBLYMAN OHRENSCHALL

MARCH 2, 2015

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions relating to mechanics' and materialmen's liens. (BDR 9-414)

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 liens; revising provisions requiring a lessee to establish a construction disbursement account or record a surety bond before beginning a work of improvement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law establishes provisions governing mechanics' and materialmen's
2 liens, which are also commonly known as construction liens. (NRS 108.221-
3 108.246) Under existing law, before a lessee may cause a work of improvement to
4 be constructed, altered or repaired upon property that the lessee is leasing, the
5 lessee must record a notice of posted security and either establish a construction
6 disbursement account or record a surety bond. (NRS 108.2403) This bill provides
7 that if a lessee establishes a construction disbursement account, the construction
8 disbursement account is not required to be funded for the cost of any material or
9 equipment if certain requirements are satisfied before the construction disbursement
10 account is established and before the commencement of any work.

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

1 **Section 1.** (Deleted by amendment.)

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

3 **Sec. 3.** NRS 108.2403 is hereby amended to read as follows:

4 108.2403 1. Except as otherwise provided in NRS 108.2405,
5 before a lessee may cause a work of improvement to be constructed,
6 altered or repaired upon property that the lessee is leasing, the lessee
7 shall:



(a) Record a notice of posted security with the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired; and

(b) Either:

(1) Establish a construction disbursement account and:

(I) ~~[Fund]~~ *Except as otherwise provided in subsection 2, fund* the account in an amount equal to the total cost of the work of improvement, but in no event less than the total amount of the prime contract;

(II) Obtain the services of a construction control to administer the construction disbursement account; and

(III) Notify each person who gives the lessee a notice of right to lien of the establishment of the construction disbursement account as provided in paragraph (f) of subsection ~~[2.] 4;~~ or

(2) Record a surety bond for the prime contract that meets the requirements of subsection 2 of NRS 108.2415 and notify each person who gives the lessee a notice of right to lien of the recording of the surety bond as provided in paragraph (f) of subsection ~~[2.] 4.~~

2. If the lessee establishes a construction disbursement account pursuant to subsection 1, the construction disbursement account is not required to be funded for the cost of any material or equipment which has been or will be furnished directly to the lessee by a supplier for the work of improvement if, before the construction disbursement account is established and before the commencement of any work:

(a) The supplier is paid in full for the cost of the material or equipment;

(b) The supplier executes and delivers to the lessee an unconditional waiver and release in the manner and form required by NRS 108.2457 after the supplier has been paid in full for the cost of the material or equipment;

(c) The lessee records or causes to be recorded a copy of the unconditional waiver and release in the office of the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired; and

(d) The lessee causes a copy of the recorded unconditional waiver and release to be served personally or by certified mail, return receipt requested, upon the prime contractor for the work of improvement.

3. Except as otherwise provided in this subsection, a supplier who executes and delivers an unconditional waiver and release pursuant to subsection 2 waives any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the supplier may have on the property or against the work of



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improvement or construction disbursement account established by the lessee. If the supplier or lessee fails to satisfy any requirement required by subsection 2, a construction disbursement account established by the lessee must be funded in an amount equal to the total cost of the work of improvement, including the cost of any material or equipment.

4. The notice of posted security required pursuant to subsection 1 must:

- (a) Identify the name and address of the lessee;
- (b) Identify the location of the improvement and the address, legal description and assessor's parcel number of the property upon which the improvement is or will be constructed, altered or repaired;
- (c) Describe the nature of the lessee's interest in:
 - (1) The property upon which the improvement is or will be constructed, altered or repaired; and
 - (2) The improvement on such property;
- (d) If the lessee establishes a construction disbursement account pursuant to subsection 1, include:
 - (1) The name and address of the construction control;
 - (2) The date that the lessee obtained the services of the construction control and the total amount of funds in the construction disbursement account; and
 - (3) The number of the construction disbursement account, if any;
- (e) If the lessee records a surety bond pursuant to subsection 1, include:
 - (1) The name and address of the surety;
 - (2) The surety bond number;
 - (3) The date that the surety bond was recorded in the office of the county recorder of the county where the property is located upon which the improvement is or will be constructed, altered or repaired;
 - (4) The book and the instrument or document number of the recorded surety bond; and
 - (5) A copy of the recorded surety bond with the notice of posted security; and
- (f) Be served upon each person who gives a notice of right to lien within 10 days after receipt of the notice of right to lien, in one of the following ways:
 - (1) By personally delivering a copy of the notice of posted security to the person who gives a notice of right to lien at the address identified in the notice of right to lien; or
 - (2) By mailing a copy of the notice of posted security by certified mail, return receipt requested, to the person who gives a



notice of right to lien at the address identified in the notice of right to lien.

~~13.1~~ 5. If a lessee fails to satisfy the requirements of subsection 1 of this section or subsection 2 of NRS 108.2407, the prime contractor who has furnished or will furnish materials or equipment for the work of improvement may stop work. If the lessee:

(a) Satisfies the requirements of subsection 1 of this section or subsection 2 of NRS 108.2407 within 25 days after any work stoppage, the prime contractor who stopped work shall resume work and the prime contractor and the prime contractor's 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 NRS 108.2407 within 25 days after the work stoppage, the prime contractor who stopped work may terminate the contract relating to the work of improvement and the prime contractor and the prime contractor's lower-tiered subcontractors and suppliers are entitled to recover:

(1) The cost of all work, materials and equipment, including any overhead the prime contractor and the lower-tiered subcontractors and suppliers incurred and profit the prime contractor and the lower-tiered subcontractors and suppliers earned through the date of termination;

(2) The balance of the profit the prime contractor and the lower-tiered subcontractors and suppliers would have earned if the contract had not been terminated;

(3) Any interest, costs and attorney's fees that the prime contractor and the lower-tiered subcontractors and suppliers are entitled to pursuant to NRS 108.237; and

(4) Any other amount awarded by a court or other trier of fact.

~~14.1~~ 6. 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.

Sec. 4. NRS 108.2407 is hereby amended to read as follows:

108.2407 1. If a construction disbursement account is established and funded pursuant to subsection 2 of this section or subsection 1 of NRS 108.2403, each lien claimant has a lien upon the funds in the account for an amount equal to the lienable amount owed.

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



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(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 NRS 108.2403 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~~ 5 of NRS 108.2403 shall be deemed to apply.

3. The construction control shall disburse money to lien claimants from the construction disbursement account for the lienable amount owed such lien claimants.

4. A lien claimant may notify the construction control of a claim of lien by:

(a) Recording a notice of lien pursuant to NRS 108.226; or

(b) Personally delivering or mailing by certified mail, return receipt requested, a written notice of a claim of lien to the construction control within 90 days after the completion of the work of improvement.

5. Except as otherwise provided in subsection 6, the construction control shall pay a legitimate claim of lien upon receipt of the written notice described in subsection 4 from the funds available in the construction disbursement account.

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.

8. If an action for interpleader is brought pursuant to subsection 6, the construction control shall:



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(a) Deposit with the court an amount equal to 1.5 times the amount of the lien claims to the extent that there are funds available in the construction disbursement account;

(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

(c) Publish a notice of the action for interpleader once each week, for 3 successive weeks, in a newspaper of general circulation in the county in which the work of improvement is located.

9. A construction control who brings an action for interpleader pursuant to subsection 6 is entitled to be reimbursed from the construction disbursement account for the reasonable costs that the construction control incurred in bringing such action.

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.

Sec. 5. (Deleted by amendment.)

