

Amendment No. 371

Assembly Amendment to Assembly Bill No. 211	(BDR 9-414)
Proposed by: Assembly Committee on Commerce and Labor	
Amends: Summary: Yes Title: Yes 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

DY/BAW



Date: 4/19/2015

A.B. No. 211—Revises provisions relating to mechanics’ and materialmen’s liens involving certain renewable energy projects. (BDR 9-414)



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 involving certain renewable energy projects. (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 involving certain renewable energy projects; ~~revising provisions concerning the disbursement of funds from a construction disbursement account and the form of surety bonds required to be posted to release prospective and existing lien rights with respect to such projects;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes provisions governing mechanics' and materialmen's liens, which are also commonly known as construction liens. (NRS 108.221-108.246) Under existing law, before a lessee may cause a work of improvement to be constructed, altered or repaired upon property that the lessee is leasing, the lessee must record a notice of posted security and either establish a construction disbursement account or record a surety bond. (NRS 108.2403) ~~[Section 3 of this] This bill provides that if a lessee establishes a construction disbursement account, [and the work of improvement to be constructed, altered or repaired is a renewable energy project that generates electricity greater than 18 megawatts,] the construction disbursement account [is required to be funded in an amount equal to the total cost for the performance of work and] is not required to be funded for the cost of any material or equipment. Similarly, section 4 of this bill provides that a construction disbursement account which is established for such a work of improvement is required to be additionally funded upon the disbursement of funds in a pay period in an amount necessary to pay for costs attributable to additional and changed work and is not required to be additionally funded to pay for costs attributable to material or equipment. (NRS 108.2407)~~

~~Existing law requires a surety bond in an amount equal to 1.5 times the amount of the prime contract to be recorded to obtain the release of all prospective and existing lien rights of lien claimants related to a work of improvement. (NRS 108.2415) Section 5 of this bill provides that if the prime contract relates to a work of improvement that is a renewable energy project that generates electricity greater than 18 megawatts, the release of such existing lien rights may be obtained by recording a surety bond in an amount equal to 1.5 times the amount of the total cost for the performance of work rather than the total cost of the prime contract. equipment if certain requirements are satisfied before the construction disbursement 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.** ~~[Chapter 108 of NRS is hereby amended by adding thereto a new~~
2 ~~section to read as follows:~~

3 ~~“Renewable energy project” means a project for the construction or~~
4 ~~installation of a facility for the generation of renewable energy. As used in this~~
5 ~~section, “renewable energy” has the meaning ascribed to it in NRS 701.070.]~~
6 ~~(Deleted by amendment.)~~

7 **Sec. 2.** ~~[NRS 108.221 is hereby amended to read as follows:~~

8 ~~108.221 As used in NRS 108.221 to 108.246, inclusive, and section 1 of this~~
9 ~~act, unless the context otherwise requires, the words and terms defined in NRS~~
10 ~~108.22104 to 108.22188, inclusive, and section 1 of this act have the meanings~~
11 ~~ascribed to them in those sections.] (Deleted by amendment.)~~

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

13 108.2403 1. Except as otherwise provided in NRS 108.2405, before a lessee
14 may cause a work of improvement to be constructed, altered or repaired upon
15 property that the lessee is leasing, the lessee shall:

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

19 (b) Either:

20 (1) Establish a construction disbursement account and:

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

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

26 (III) Notify each person who gives the lessee a notice of right to lien of
27 the establishment of the construction disbursement account as provided in
28 paragraph (f) of subsection ~~12-314~~ 4; or

29 (2) Record a surety bond for the prime contract that meets the requirements
30 of subsection 2 of NRS 108.2415 and notify each person who gives the lessee a
31 notice of right to lien of the recording of the surety bond as provided in paragraph
32 (f) of subsection ~~12-314~~ 4.

33 2. If the lessee establishes a construction disbursement account pursuant to
34 subsection 1 ~~[and the work of improvement to be constructed, altered or~~
35 ~~repaired is a renewable energy project that generates electricity greater than 18~~
36 ~~megawatts], the construction disbursement account is~~

37 ~~(a) Is required to be funded in an amount equal to the total cost for the~~
38 ~~performance of work; and~~

39 ~~(b) Is is not required to be funded for the cost of any material or~~
40 ~~equipment; equipment which has been or will be furnished directly to the lessee~~
41 by a supplier for the work of improvement if, before the construction
42 disbursement account is established and before the commencement of any work;

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

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

47 (c) The lessee records or causes to be recorded a copy of the unconditional
48 waveer 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 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.
- ~~3.4.7~~ 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.

~~4-5-6.~~ 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 ~~Except as otherwise provided in subsection 3, 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 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 ~~3-4~~ 5 of NRS 108.2403 shall be deemed to apply.

3. ~~For the purposes of subsection 2, if the work of improvement for which the disbursement account was established pursuant to subsection 1 of NRS 108.2403 is a renewable energy project that generates electricity greater than 18~~

~~megawatts, the additional funds required to be deposited upon the disbursement of funds from the disbursement account for a given pay period;~~

~~— (a) Is required to be in an amount necessary to pay for costs attributable to additional and changed work; and~~

~~— (b) Is not required to be in an amount necessary to pay for costs attributable to material or equipment.~~

~~4.~~ The construction control shall disburse money to lien claimants from the construction disbursement account for the lienable amount owed such lien claimants.

~~4.~~ ~~5.~~ 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.~~ ~~6.~~ Except as otherwise provided in subsection ~~6.~~ ~~7.~~ the construction control shall pay a legitimate claim of lien upon receipt of the written notice described in subsection ~~4.~~ ~~5.~~ from the funds available in the construction disbursement account.

~~6.~~ ~~7.~~ 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.~~ ~~8.~~ If the construction control brings an action for interpleader pursuant to paragraph (a) of subsection ~~6.~~ ~~7.~~ 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.~~ ~~9.~~ If an action for interpleader is brought pursuant to subsection ~~6.~~ ~~7.~~ the construction control shall:

(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.~~ ~~10.~~ A construction control who brings an action for interpleader pursuant to subsection ~~6.~~ ~~7.~~ is entitled to be reimbursed from the construction disbursement account for the reasonable costs that the construction control incurred in bringing such action.

~~10.~~ ~~11.~~ 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. ~~NRS 108.2415 is hereby amended to read as follows:~~

~~108.2415 1. To obtain the release of a lien for which notice of lien has been recorded against the property, the principal and a surety must execute a surety bond in an amount equal to 1.5 times the lienable amount in the notice of lien, which must be in the following form:~~

~~(Assessor's Parcel Numbers)~~

~~(Title of court and cause, if action has been commenced)~~

~~WHEREAS, (name of principal), located at (address of principal), desires to give a bond for releasing the following described property owned by (name of owners) from that certain notice of lien in the sum of \$ recorded (month) (day), (year), in the office of the recorder in (name of county where the property is located);~~

~~(Legal Description)~~

~~NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to the lien claimant named in the notice of lien, (name of lien claimant) under the conditions prescribed by NRS 108.2413 to 108.2425, inclusive, in the sum of \$ (1 1/2 x lienable amount), from which sum they will pay the lien claimant that amount as a court of competent jurisdiction may adjudge to have been secured by the lien, including the total amount awarded pursuant to NRS 108.237, but the liability of the surety may not exceed the penal sum of the surety bond.~~

~~IN TESTIMONY WHEREOF, the principal and surety have executed this bond at, Nevada, on the day of the month of of the year~~

~~.....
(Signature of Principal)~~

~~(Surety Corporation)~~

~~By
(Its Attorney in Fact)~~

~~State of Nevada
..... ss.
County of }~~

~~On (month) (day), (year), before me, the undersigned, a notary public of this County and State, personally appeared who acknowledged that he or she executed the foregoing instrument as principal for the purposes therein mentioned and also personally appeared known (or satisfactorily proved) to me to be the attorney in fact of the surety that executed the foregoing instrument, known to me to be the person who executed that~~

~~instrument on behalf of the surety therein named, and he or she
acknowledged to me that the surety executed the foregoing instrument.~~

~~.....
(Notary Public in and for
the County and State)~~

~~2. To obtain the release of all prospective and existing lien rights of lien
claimants related to a work of improvement, the principal and a surety must execute
and cause to be recorded a surety bond in an amount equal to 1.5 times the amount
of the prime contract [, which] or, if the prime contract relates to a work of
improvement that is a renewable energy project that generates electricity greater
than 18 megawatts, a surety bond in an amount equal to 1.5 times the amount of
the total cost for the performance of work as indicated in the prime contract. The
surety bond must be in the following form:~~

~~(Assessor's Parcel Numbers)~~

~~(Title of court and cause, if action has been commenced)~~

~~WHEREAS, (name of principal), located at
..... (address of principal), desires to give a bond for
releasing the following described property owned by
..... (name of owners) from all prospective and
existing lien rights and notices of liens arising from materials, equipment or
work, as applicable, provided or to be provided under the prime contract
described as follows:~~

~~(Parties to the Prime Contract)~~

~~(Amount of the Prime Contract)~~

~~(Date of the Prime Contract)~~

~~(Summary of Terms of the Prime Contract)~~

~~WHEREAS, the property that is the subject of the surety bond is described
as follows:~~

~~(Legal Description)~~

~~NOW, THEREFORE, the undersigned principal and surety do hereby
obligate themselves in the sum of \$..... (1 1/2 x amount of prime
contract) to all prospective and existing lien claimants who have provided
or hereafter provide materials, equipment or work, as applicable, under the
prime contract, from which sum the principal and surety will pay the lien
claimants the lienable amount that a court of competent jurisdiction may
determine is owed to each lien claimant, and such additional amounts as
may be awarded pursuant to NRS 108.237, but the liability of the surety
may not exceed the penal sum of the surety bond.~~

~~IN TESTIMONY WHEREOF, the principal and surety have executed this
bond at, Nevada, on the day of the month of
of the year~~

~~.....
(Signature of Principal)~~

(Surety Corporation)
By.....
(Its Attorney in Fact)

State of Nevada }
..... } ss.
County of }

On (month) (day), (year), before me, the undersigned, a notary public of this County and State, personally appeared who acknowledged that he or she executed the foregoing instrument as principal for the purposes therein mentioned and also personally appeared known (or satisfactorily proved) to me to be the attorney in fact of the surety that executed the foregoing instrument, known to me to be the person who executed that instrument on behalf of the surety therein named, and he or she acknowledged to me that the surety executed the foregoing instrument.

.....
(Notary Public in and for
the County and State)

~~3. The principal must record the surety bond in the office of the county recorder in the county in which the property upon which the improvement is located, either before or after the commencement of an action to enforce the lien. A certified copy of the recorded surety bond shall be deemed an original for purposes of this section.~~

~~4. Upon the recording of the surety bond, the principal must serve a file stamped copy of the recorded surety bond in the following manner:~~

~~(a) If a lien claimant has appeared in an action that is pending to enforce the notice of lien, service must be made by certified or registered mail, return receipt requested, upon the lien claimant at the address set forth in the lien and the lien claimant's counsel of record at his or her place of business;~~

~~(b) If a notice of lien is recorded at the time the surety bond is recorded and no action is pending to enforce the notice of lien, personal service must be made upon each lien claimant pursuant to Rule 4 of the Nevada Rules of Civil Procedure; or~~

~~(c) If no notice of lien is recorded at the time the surety bond is recorded, service must be made by personal service or certified mail, return receipt requested, upon each lien claimant and prospective lien claimant that has provided or thereafter provides the owner or lessee with a notice of a right to lien. Such service must be within 10 days after the recording of the surety bond, or the service of notice of the right to lien upon the owner by a lien claimant, whichever is later.~~

~~5. Failure to serve the surety bond as provided in subsection 4 does not affect the validity of the surety bond, but the statute of limitations on any action on the surety bond, including a motion excepting to the sufficiency of the surety pursuant to NRS 108.2425, is tolled until notice is given.~~

~~6. Subject to the provisions of NRS 108.2425, the recording and service of the surety bond pursuant to:~~

~~(a) Subsection 1 releases the property described in the surety bond from the lien and the surety bond shall be deemed to replace the property as security for the lien;~~

~~(b) Subsection 2 releases the property described in the surety bond from any liens and prospective liens for work, materials or equipment related to the prime~~

1 ~~contract and the surety bond shall be deemed to replace the property as security for~~
2 ~~the lien.~~ **(Deleted by amendment.)**