

Amendment No. 458

Senate Amendment to Senate Bill No. 223	(BDR 53-984)
Proposed by: Senate Committee on Commerce, Labor and Energy	
Amends: Summary: No 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.

DHR/MSM



Date: 4/15/2015

S.B. No. 223—Revises provisions relating to contractors. (BDR 53-984)



SENATE BILL NO. 223—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

MARCH 6, 2015

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to contractors. (BDR 53-984)

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

~

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

AN ACT relating to contractors; revising provisions relating to the liability of a prime contractor for indebtedness incurred by a subcontractor for labor costs; revising provisions governing the statute of limitations to bring an action against a prime contractor for the recovery of wages or benefits due to an employee of a subcontractor; revising provisions relating to mechanics' and materialmen's lien claimants; requiring an administrator of a Taft-Hartley trust that does not receive a benefit payment required to be made to the trust by a contractor or subcontractor to provide notice to the contractor and subcontractor that the benefit payment has not been received; ~~providing for the imposition of an administrative penalty;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law makes an original contractor liable for any indebtedness incurred by a subcontractor for labor costs, including benefits payable to a trust established by a collective bargaining unit. (NRS 608.150) **Sections 1 and 3** of this bill provide that a prime contractor is not liable for the labor costs of a subcontractor to the extent those costs are: (1) interest, liquidated damages, attorney's fees or costs resulting from a subcontractor's failure to pay contributions or other payments to, or on behalf of, an employee; or (2) any amounts for which the prime contractor did not receive adequate notice in the manner that **section 5** of this bill requires. **Section 2** of this bill reduces the statute of limitations period applicable to commencing an action against a prime contractor for the recovery of wages or benefits due to an employee of a subcontractor.

Existing law also provides that a mechanics' or materialmen's lien claimant must provide a notice of right to lien to an owner of property upon which work has been performed unless the claimant is a person who only performed labor on the project. (NRS 108.245) **Section 4** of this bill ~~provides that a mechanics' and materialmen's lien claimant shall not avoid the obligation to provide a notice of lien to a property owner by a claim that the property owner had actual or constructive notice that the lien claimant provided work, equipment, materials or services to the project;~~ **requires a prime contractor or subcontractor who participates in a health or welfare fund, or other plan for the benefit of employees, to provide to the fund or plan notice of the name and location of the project upon the commencement of work on a project.** In addition, **section 4** excludes from the exemption to the notice

provisions of NRS 108.245 an express benefit trust which receives a portion of the compensation paid to a laborer.

Section 5 ~~of this bill~~ requires an administrator of a Taft-Hartley trust that does not receive a benefit payment required to be made to the trust by a general contractor or subcontractor, within ~~45~~ **60** days after the required payment ~~was due,~~ **is deemed delinquent,** to provide notice to the general contractor and subcontractor that the benefit payment has not been received.

~~Existing law requires the Labor Commissioner, in the context of public works, to enforce various provisions relating to labor, wages and employment practices, allows the Labor Commissioner to impose an administrative penalty of not more than \$5,000 for each violation thereof and requires the Labor Commissioner to report each such violation to the Attorney General. (NRS 338.015) Section 6 of this bill adds failure to comply with the notice requirements of section 5 to the impermissible acts within the scope of the enforcement powers of the Labor Commissioner that are set forth in NRS 338.015.~~

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

Section 1. NRS 608.150 is hereby amended to read as follows:

608.150 1. ~~Every original~~ **Except as otherwise provided in subsections 2 and 3, every prime** contractor making or taking any contract in this State for the erection, construction, alteration or repair of any building or structure, or other work ~~of improvement,~~ shall assume and is liable for the indebtedness for labor incurred by any subcontractor or any contractors acting under, by or for the ~~original~~ **prime** contractor in performing any labor, construction or other work included in the subject of the ~~original~~ **prime** contract, for labor, and for the requirements imposed by chapters 616A to 617, inclusive, of NRS.

2. **The provisions of subsection 1 do not require a prime contractor to assume or be liable for any liability of a subcontractor or other contractor for any penalty, including, without limitation, interest, liquidated damages, attorney's fees or costs for the failure of the subcontractor or other contractor to make any contributions or other payments under any other law or agreement, including, without limitation, to a health or welfare fund or any other plan for the benefit of employees in accordance with a collective bargaining agreement.**

3. **The provisions of subsection 1 do not require a prime contractor to assume or be liable for any liability of a subcontractor or other contractor for any amount for which the prime contractor did not receive proper notice in accordance with section 5 of this act.**

4. It is unlawful for any **prime** contractor ~~for any other person~~ to fail to comply with the provisions of subsection 1, or to attempt to evade the responsibility imposed thereby, or to do any other act or thing tending to render nugatory the provisions of this section.

~~3.5.~~ 5. The district attorney of any county wherein the defendant may reside or be found ~~shall have exclusive jurisdiction to~~ institute civil proceedings against any such ~~original~~ **prime** contractor failing to comply with the provisions of this section in a civil action for the amount of all wages and ~~damage~~ **benefits** that may be owing or have accrued as a result of the failure of any subcontractor acting under the ~~original~~ **prime** contractor, and any property of the ~~original~~ **prime** contractor, not exempt by law, is subject to attachment and execution for the payment of any judgment that may be recovered in any action under the provisions of this section.

6. **As used in this section, "prime contractor" has the meaning ascribed to it in NRS 108.22164.**

Sec. 2. NRS 11.209 is hereby amended to read as follows:

(a) ~~Two years, Ninety days,~~ One year if the ~~principal~~ *prime* contractor is located in Nevada; or

→ after the date the employee should have received those wages from or those contributions or premiums should have been made or paid by the subcontractor.

~~(a) Three years, *Ninety days*, if the principal *prime* contractor is located in Nevada; or~~

→ 1 year after the date the employee should have received those benefits from the subcontractor.

Sec. 3. NRS 108.2214 is hereby amended to read as follows:

alteration or repair of any improvement, property or work of improvement. The term includes, without limitation, every artisan, builder, contractor, laborer, lessor or renter of equipment, materialman, miner, subcontractor or other person who provides work, material or equipment, and any person who performs services as an architect, engineer, land surveyor or geologist, in relation to the improvement, property or work of improvement.

Sec. 4. NRS 108.245 is hereby amended to read as follows:

NOTICE OF RIGHT TO LIEN

The undersigned notifies you that he or she has supplied materials or equipment or performed work or services as follows:

(General description of materials, equipment, work or services)

for improvement of property identified as (property description or street address) under contract with (general contractor or subcontractor). This is not a notice that the undersigned has not been or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, record a notice of lien as provided by law against the property if the undersigned is not paid.

.....
(Claimant)

A subcontractor or equipment or material supplier who gives such a notice must also deliver in person or send by certified mail a copy of the notice to the prime contractor for information only. The failure by a subcontractor to deliver the notice to the prime contractor is a ground for disciplinary proceedings against the subcontractor under chapter 624 of NRS but does not invalidate the notice to the owner.

2. Such a notice does not constitute a lien or give actual or constructive notice of a lien for any purpose.

3. No lien for materials or equipment furnished or for work or services performed, except labor, may be perfected or enforced pursuant to NRS 108.221 to 108.246, inclusive, unless the notice has been given.

4. The notice need not be verified, sworn to or acknowledged.

5. A prime contractor or other person who contracts directly with an owner or sells materials directly to an owner is not required to give notice pursuant to this section.

6. A lien claimant who is required by this section to give a notice of right to lien to an owner and who gives such a notice has a right to lien for materials or equipment furnished or for work or services performed in the 31 days before the date the notice of right to lien is given and for the materials or equipment furnished or for work or services performed anytime thereafter until the completion of the work of improvement.

~~7. A lien claimant who is required by this section to give a notice of right to lien to an owner does not avoid the obligation to provide such notice by a claim that the owner had actual or constructive notice that the lien claimant provided materials, equipment, work or services to the project.~~ Upon commencement of work on a project, any prime contractor or subcontractor participating in a health or welfare fund or any other plan for the benefit of employees is required to notify such fund or plan of the name and location of the project so that the fund or plan may protect potential lien rights under NRS 108.221 to 108.146, inclusive.

8. As used in this section, "one who performs only labor" does not include an express trust fund to which any portion of the total compensation of a laborer, including, without limitation, any fringe benefit, must be paid pursuant to an agreement with that laborer or the collective bargaining agent of that laborer.

Sec. 5. Chapter 338 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If an administrator of a Taft-Hartley trust which is formed pursuant to 29 U.S.C. § 186(c)(5) does not receive a benefit payment owed to the trust within ~~30~~ 45 days after the date on which the payment is ~~due~~ deemed delinquent, the administrator shall provide a notice of the delinquency to the general contractor

1 *and, if applicable, the subcontractor, who is responsible for the benefit payment.*
2 *The notice of delinquency must be provided in the manner set forth in*
3 *subsections 2, 3 and 4.*

4 2. *The notice required pursuant to subsection 1 must be given to the general*
5 *contractor and, if applicable, the subcontractor, who is responsible for the*
6 *delinquent benefit payment, within 15 days after the expiration of the ~~30-day~~*
7 *45-day period described in subsection 1.*

8 3. *The notice required pursuant to subsection 1 must be given to the general*
9 *contractor and, if applicable, the subcontractor, who is responsible for the*
10 *delinquent benefit payment, by electronic mail, telephone and:*

11 (a) *Personal delivery; or*

12 (b) *Registered or certified mail, return receipt requested, to the last known*
13 *address of the general contractor and, if applicable, the subcontractor.*

14 4. *The notice required pursuant to subsection 1 must include, without*
15 *limitation:*

16 (a) *The amount owed;*

17 (b) *The name and address of the general contractor and, if applicable, the*
18 *subcontractor, who is responsible for the delinquent benefit payment; and*

19 (c) *A demand for full payment of the amount not paid.*

20 5. *For the purposes of this section, "general contractor" includes a prime*
21 *contractor.*

22 **Sec. 6.** ~~NRS 338.015 is hereby amended to read as follows:~~

23 ~~338.015 1. The Labor Commissioner shall enforce the provisions of NRS~~
24 ~~338.010 to 338.130, inclusive [], and section 5 of this act.~~

25 ~~2. In addition to any other remedy or penalty provided in this chapter, if any~~
26 ~~person, including, without limitation, a public body, violates any provision of NRS~~
27 ~~338.010 to 338.130, inclusive, and section 5 of this act, or any regulation adopted~~
28 ~~pursuant thereto, the Labor Commissioner may, after providing the person with~~
29 ~~notice and an opportunity for a hearing, impose against the person an administrative~~
30 ~~penalty of not more than \$5,000 for each such violation.~~

31 ~~3. The Labor Commissioner may, by regulation, establish a sliding scale~~
32 ~~based on the severity of the violation to determine the amount of the administrative~~
33 ~~penalty to be imposed against the person pursuant to this section.~~

34 ~~4. The Labor Commissioner shall report the violation to the Attorney General,~~
35 ~~and the Attorney General may prosecute the person in accordance with law.]~~

36 **(Deleted by amendment.)**