

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.

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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 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:

1 Existing law makes an original contractor liable for any indebtedness incurred
2 by a subcontractor for labor costs, including benefits payable to a trust established
3 by a collective bargaining unit. (NRS 608.150) **Sections 1 and 3** of this bill provide
4 that a prime contractor is not liable for the labor costs of a subcontractor to the
5 extent those costs are: (1) interest, liquidated damages, attorney's fees or costs
6 resulting from a subcontractor's failure to pay contributions or other payments to,
7 or on behalf of, an employee; or (2) any amounts for which the prime contractor did
8 not receive adequate notice in the manner that **section 5** of this bill requires.
9 **Section 2** of this bill reduces the statute of limitations period applicable to
10 commencing an action against a prime contractor for the recovery of wages or
11 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. 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 days after the required payment was due, 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. The district attorney of any county wherein the defendant may reside or be found ~~{shall}~~ *has 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:

11.209 1. No action against a ~~{principal}~~ *prime* contractor for the recovery of wages due an employee of a subcontractor or contributions or premiums required to be made or paid on account of the employee may be commenced more than:

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

(b) ~~{Three years,}~~ *One hundred eighty days*, if the ~~{principal}~~ *prime* contractor is located outside this state,

↳ 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.

2. No action against a ~~{principal}~~ *prime* contractor for the recovery of benefits due an employee of a subcontractor may be commenced more than:

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

(b) ~~{Four years,}~~ *One hundred eighty days*, if the ~~{principal}~~ *prime* contractor is located outside this state,

↳ after the date the employee should have received those benefits from the subcontractor.

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



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

108.2214 1. "Lien claimant" means any person who provides work, material or equipment with a value of \$500 or more to be used in or for the construction, 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.

2. As used in this section, "laborer" includes, without limitation, 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. *For the purposes of this subsection, "fringe benefit" does not include any interest, liquidated damages, attorney's fees, costs or other penalties that may be incurred by the employer of the laborer for failure to pay any such compensation under any law or contract.*

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

108.245 1. Except as otherwise provided in subsection 5, every lien claimant, other than one who performs only labor, who claims the benefit of NRS 108.221 to 108.246, inclusive, shall, at any time after the first delivery of material or performance of work or services under a contract, deliver in person or by certified mail to the owner of the property a notice of right to lien in substantially the following form:

NOTICE OF RIGHT TO LIEN

To:
(Owner's name and address)

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.

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



1 *payment owed to the trust within 30 days after the date on which*
2 *the payment is due, the administrator shall provide a notice of the*
3 *delinquency to the general contractor and, if applicable, the*
4 *subcontractor, who is responsible for the benefit payment. The*
5 *notice of delinquency must be provided in the manner set forth in*
6 *subsections 2, 3 and 4.*

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

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

16 (a) *Personal delivery; or*

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

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

22 (a) *The amount owed;*

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

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

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

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

30 338.015 1. The Labor Commissioner shall enforce the
31 provisions of NRS 338.010 to 338.130, inclusive ~~H~~, *and section 5*
32 *of this act.*

33 2. In addition to any other remedy or penalty provided in this
34 chapter, if any person, including, without limitation, a public body,
35 violates any provision of NRS 338.010 to 338.130, inclusive, *and*
36 *section 5 of this act*, or any regulation adopted pursuant thereto, the
37 Labor Commissioner may, after providing the person with notice
38 and an opportunity for a hearing, impose against the person an
39 administrative penalty of not more than \$5,000 for each such
40 violation.

41 3. The Labor Commissioner may, by regulation, establish a
42 sliding scale based on the severity of the violation to determine the
43 amount of the administrative penalty to be imposed against the
44 person pursuant to this section.



1 4. The Labor Commissioner shall report the violation to the
2 Attorney General, and the Attorney General may prosecute the
3 person in accordance with law.

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