

SENATE BILL NO. 273—SENATORS SCHEIBLE
AND CANNIZZARO

MARCH 13, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to liens. (BDR 9-1075)

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; making various changes to the provisions related to mechanics' and materialmen's liens; revising provisions requiring a lessee to record a notice of security before beginning a work of improvement; providing alternative security for the release of certain liens; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides the circumstances and manner in which a lien claimant may claim a lien for work, material or equipment used in or for the construction, alteration or repair of any improvement, property or work of improvement. (NRS 108.221-108.246) **Sections 1-4 and 6** of this bill revise provisions governing the period of time in which a lien claimant with such a claim must provide certain notices to an owner of property.

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 5** of this bill provides that a lessee may obtain alternative security, such as a line of credit or construction loan in addition to either establishing a construction disbursement account or recording a surety bond.

Existing law authorizes the release of certain lien rights upon the posting of a surety bond. (NRS 108.2413) **Section 7** of this bill additionally authorizes obtaining alternative security, such as a line of credit or construction loan to release such lien rights.



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

Section 1. NRS 108.227 is hereby amended to read as follows:
108.227 1. In addition to the requirements of NRS 108.226, a
copy of the notice of lien must be served upon the owner of the
property within ~~30~~ 15 days after recording the notice of lien, in
one of the following ways:

(a) By personally delivering a copy of the notice of lien to the
owner or registered agent of the owner;

(b) By mailing a copy of the notice of lien by certified mail,
return receipt requested, to the owner at the owner's place of
residence or the owner's usual place of business or to the registered
agent of the owner at the address of the registered agent; or

(c) If the place of residence or business of the owner and the
address of the registered agent of the owner, if applicable, cannot be
determined, by:

(1) Fixing a copy of the notice of lien in a conspicuous place
on the property;

(2) Delivering a copy of the notice of lien to a person there
residing, if such a person can be found; and

(3) Mailing a copy of the notice of lien addressed to the
owner at:

(I) The place where the property is located;

(II) The address of the owner as identified in the deed;

(III) The address identified in the records of the office of
the county assessor; or

(IV) The address identified in the records of the county
recorder of the county in which the property is located.

2. If there is more than one owner, failure to serve a copy of
the notice of lien upon a particular owner does not invalidate a
notice of lien if properly served upon another owner.

3. Each subcontractor who participates in the construction,
improvement, alteration or repair of a work of improvement shall
deliver a copy of each notice of lien required by NRS 108.226 to the
prime contractor. The failure of a subcontractor to deliver the notice
to the prime contractor is a ground for disciplinary proceedings
pursuant to chapter 624 of NRS.

Sec. 2. NRS 108.228 is hereby amended to read as follows:

108.228 1. The owner may record a notice of completion
after the completion of the work of improvement.

2. The notice of completion must be recorded in the office of
the county recorder of the county where the property is located and
must set forth:

(a) The date of completion of the work of improvement.



(b) The owner's name or owners' names, as the case may be, the address of the owner or addresses of the owners, as the case may be, and the nature of the title, if any, of the person signing the notice.

(c) A description of the property sufficient for identification.

(d) The name of the prime contractor or names of the prime contractors, if any.

3. The notice must be verified by the owner or by some other person on the owner's behalf. The notice need not be acknowledged to be recorded.

4. Upon recording the notice pursuant to this section, the owner shall, within ~~10~~ 15 days after the notice is recorded, deliver a copy of the notice by certified mail, to:

(a) Each prime contractor with whom the owner contracted for all or part of the work of improvement.

(b) Each potential lien claimant who, before the notice was recorded pursuant to this section, either submitted a request to the owner to receive the notice or delivered a preliminary notice of right to lien pursuant to NRS 108.245.

5. The failure of the owner to deliver a copy of the notice of completion in the time and manner provided in this section renders the notice of completion ineffective with respect to each prime contractor and lien claimant to whom a copy was required to be delivered pursuant to subsection 4.

Sec. 3. NRS 108.229 is hereby amended to read as follows:

108.229 1. At any time before or during the trial of any action to foreclose a lien, a lien claimant may record an amended notice of lien to correct or clarify the lien claimant's notice of lien. The lien claimant shall serve the owner of the property with an amended notice of lien in the same manner as required for serving a notice of lien pursuant to NRS 108.227 and within ~~30~~ 15 days after recording the amended notice of lien. A variance between a notice of lien and an amended notice of lien does not defeat the lien and shall not be deemed material unless the variance:

(a) Results from fraud or is made intentionally; or

(b) Misleads an adverse party to the party's prejudice, but then only with respect to the adverse party who was prejudiced.

2. Upon the trial of any action or suit to foreclose a lien, a variance between the lien and the proof does not defeat the lien and shall not be deemed material unless the variance:

(a) Results from fraud or is made intentionally; or

(b) Misleads the adverse party to the party's prejudice, but then only with respect to the adverse party who was prejudiced.

➡ In all cases of immaterial variance the notice of lien may be amended, by amendment duly recorded, to conform to the proof.



3. An error or mistake in the name of the owner contained in any notice of lien does not defeat the lien, unless a correction of the notice of lien in a particular instance would prejudice the rights of an innocent bona fide purchaser or encumbrancer for value, but then only with respect to the bona fide purchaser or encumbrancer for value who was prejudiced.

4. Upon the trial, if it appears that an error or mistake has been made in the name of the owner or that the wrong person has been named as owner in any notice of lien, the court shall order an amended notice of lien to be recorded with the county recorder where the original notice of lien was recorded and shall issue to the person who is so made to appear to be the original owner a notice directing the person or persons to be and appear before the court within the same time as is provided by Nevada Rules of Civil Procedure for the appearance in other actions after the service of summons, which notice must be served in all respects as a summons is required to be served, and to show cause why:

(a) That person or persons should not be substituted as the correct owner in the notice of lien and in the suit, in lieu of the person so made defendant and alleged to be owner by mistake.

(b) That person or persons should not be bound by the judgment or decree of the court. Such proceedings must be had therein as though the party so cited to appear had been an original party defendant in the action or suit, and originally named in the notice of lien as owner, and the rights of all parties must thereupon be fully adjudicated.

5. A notice of lien which contains therein the description of the property supplied by and set forth in the notice of completion recorded pursuant to NRS 108.228 must, for all purposes, be sufficient as a description of the actual property upon which the work was performed or materials or equipment were supplied, and amendment of the notice of lien or amendment of the pleading filed by the lien claimant in a foreclosure action, or both, may be made to state the correct description, and the corrected description relates back to the time of recording the notice of lien, unless a correction of the notice of lien in a particular instance would prejudice the rights of an innocent bona fide purchaser or encumbrancer for value, but then only with respect to the bona fide purchaser or encumbrancer for value who was prejudiced.

Sec. 4. NRS 108.234 is hereby amended to read as follows:

108.234 1. Except as otherwise provided in subsection 2, every improvement constructed, altered or repaired upon property shall be deemed to have been constructed, altered or repaired at the instance of each owner having or claiming any interest therein, and the interest owned or claimed must be subject to each notice of lien



1 recorded in accordance with the provisions of NRS 108.221 to
2 108.246, inclusive.

3 2. The interest of a disinterested owner in any improvement
4 and the property upon which an improvement is constructed, altered
5 or repaired is not subject to a notice of lien if the disinterested
6 owner, within ~~10~~ 15 days after he or she first obtains knowledge of
7 the construction, alteration or repair, or the intended construction,
8 alteration or repair, gives notice that he or she will not be
9 responsible for the improvement by recording a notice in writing to
10 that effect with the county recorder of the county where the property
11 is located and, in the instance of a disinterested owner who is:

12 (a) A lessor, the notice of nonresponsibility shall be deemed
13 timely recorded if the notice is recorded within ~~10~~ 15 days
14 immediately following the effective date of the lease or by the time
15 of the execution of the lease by all parties, whichever occurs first; or

16 (b) An optionor, the notice of nonresponsibility shall be deemed
17 timely recorded if the notice is recorded within 3 days immediately
18 following the date on which the option is exercised in writing.

19 3. To be effective and valid, each notice of nonresponsibility
20 recorded pursuant to this section must identify:

21 (a) The names and addresses of the disinterested owner and the
22 person who is causing the work of improvement to be constructed,
23 altered or repaired;

24 (b) The location of the improvement and the address and legal
25 description of the property upon which the improvement is or will
26 be constructed, altered or repaired;

27 (c) The nature and extent of the disinterested owner's interest in
28 the improvement and the property upon which the improvement is
29 or will be constructed, altered or repaired;

30 (d) The date on which the disinterested owner first learned of the
31 construction, alteration or repair of the improvement that is the
32 subject of the notice of nonresponsibility; and

33 (e) Whether the disinterested owner has notified the lessee in
34 writing that the lessee must comply with the requirements of
35 NRS 108.2403.

36 4. To be effective and valid, each notice of nonresponsibility
37 that is recorded by a lessor pursuant to this section must be served
38 by personal delivery or by certified mail, return receipt requested:

39 (a) Upon the lessee within ~~10~~ 15 days after the date on which
40 the notice of nonresponsibility is recorded pursuant to subsection 2;
41 and

42 (b) Upon the prime contractor for the work of improvement
43 within 10 days after the date on which the lessee contracts with the
44 prime contractor for the construction, alteration or repair of the work
45 of improvement.



5. If the prime contractor for the work of improvement receives a notice of nonresponsibility pursuant to paragraph (b) of subsection 4, the prime contractor shall:

(a) Post a copy of the notice of nonresponsibility in an open and conspicuous place on the property within 3 days after receipt of the notice of nonresponsibility; and

(b) Serve a copy of the notice of nonresponsibility by personal delivery, facsimile or by certified mail, return receipt requested, upon each lien claimant from whom a notice of right to lien was received, within 10 days after receipt of the notice of nonresponsibility or a notice of right to lien, whichever occurs later.

6. An owner who does not comply with the provisions of this section may not assert any claim that the owner's interest in any improvement and the property upon which an improvement is constructed, altered or repaired is not subject to or is immune from the attachment of a lien pursuant to NRS 108.221 to 108.246, inclusive.

7. As used in this section, "disinterested owner" means an owner who:

(a) Does not record a notice of waiver as provided in NRS 108.2405; and

(b) Does not personally or through an agent or representative, directly or indirectly, contract for or cause a work of improvement, or any portion thereof, to be constructed, altered or repaired upon the property or an improvement of the owner.

➤ The term does not include an owner who is a lessor if the lessee fails to satisfy the requirements set forth in NRS 108.2403 and 108.2407.

Sec. 5. NRS 108.2403 is hereby amended to read as follows:

108.2403 1. Except as otherwise provided in NRS 108.2405, before a lessee may cause a work of improvement to be constructed, altered or repaired upon property that the lessee is leasing, the lessee 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 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 ~~1(f)~~ (g) of subsection 2; ~~for~~

(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 ~~1(f)~~ (g) of subsection 2 ~~1(f)~~; or

(3) Obtain alternative security such as a line of credit or a construction loan in an amount equal to the total cost of the work of improvement.

2. 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) If the lessee records alternative security pursuant to subsection 1, provide a letter of credit or proof of an approved construction loan; and



(g) 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. 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. 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. 6. NRS 108.2405 is hereby amended to read as follows:

108.2405 1. The provisions of NRS 108.2403 and 108.2407 do not apply:

(a) In a county with a population of 700,000 or more with respect to a ground lessee who enters into a ground lease for real property which is designated for use or development by the county for commercial purposes which are compatible with the operation of the international airport for the county.

(b) If all owners of the property, individually or collectively, record a written notice of waiver of the owners' rights set forth in NRS 108.234 with the county recorder of the county where the property is located before the commencement of construction of the work of improvement.

2. Each owner who records a notice of waiver pursuant to paragraph (b) of subsection 1 must serve such notice by certified mail, return receipt requested, upon the prime contractor of the work of improvement and all other lien claimants who may give the owner a notice of right to lien pursuant to NRS 108.245, within ~~10~~ 15 days after the owner's receipt of a notice of right to lien or ~~10~~ 15 days after the date on which the notice of waiver is recorded pursuant to this subsection.

3. As used in this section:

(a) "Ground lease" means a written agreement:

(1) To lease real property which, on the date on which the agreement is signed, does not include any existing buildings or improvements that may be occupied on the land; and

(2) That is entered into for a period of not less than 10 years, excluding any options to renew that may be included in any such lease.

(b) "Ground lessee" means a person who enters into a ground lease as a lessee with the county as record owner of the real property as the lessor.

Sec. 7. NRS 108.2413 is hereby amended to read as follows:

108.2413 A lien claimant's lien rights or notice of lien may be released upon the posting of ~~1a~~ :

1. A surety bond in the manner provided in NRS 108.2415 to 108.2425, inclusive ~~1a~~ ; or

2. *Alternative security, such as a letter of credit or proof of an approved construction loan.*

Sec. 8. 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~~ may 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:



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

(Legal Description)

.....
(Signature of Principal)

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

State of Nevada }
County of } ss.

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}~~ *may* execute and cause to be recorded a surety bond in an amount equal to 1.5 times the amount of the prime contract, 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 all prospective and existing lien rights and notices of liens arising from materials, equipment or work 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 under the prime contract, from which sum the principal and surety will pay



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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 }
County of } ss.

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:



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

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

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

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

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

25 (a) Subsection 1 releases the property described in the surety
26 bond from the lien and the surety bond shall be deemed to replace
27 the property as security for the lien.

28 (b) Subsection 2 releases the property described in the surety
29 bond from any liens and prospective liens for work, materials or
30 equipment related to the prime contract and the surety bond shall be
31 deemed to replace the property as security for the lien.

