

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:

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

7 Under existing law, before a lessee may cause a work of improvement to be
8 constructed, altered or repaired upon property that the lessee is leasing, the lessee
9 must record a notice of posted security and either establish a construction
10 disbursement account or record a surety bond. (NRS 108.2403) **Section 5** of this
11 bill provides that a lessee may obtain alternative security, such as a line of credit or
12 construction loan in addition to either establishing a construction disbursement
13 account or recording a surety bond.

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



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

1 **Section 1.** NRS 108.227 is hereby amended to read as follows:

2 108.227 1. In addition to the requirements of NRS 108.226, a
3 copy of the notice of lien must be served upon the owner of the
4 property within ~~30~~ 15 days after recording the notice of lien, in
5 one of the following ways:

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

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

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

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

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

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

21 (I) The place where the property is located;

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

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

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

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

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

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

37 108.228 1. The owner may record a notice of completion
38 after the completion of the work of improvement.

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

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



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

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

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

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

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

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

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

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

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

25 108.229 1. At any time before or during the trial of any
26 action to foreclose a lien, a lien claimant may record an amended
27 notice of lien to correct or clarify the lien claimant's notice of lien.
28 The lien claimant shall serve the owner of the property with an
29 amended notice of lien in the same manner as required for serving a
30 notice of lien pursuant to NRS 108.227 and within ~~30~~ 15 days
31 after recording the amended notice of lien. A variance between a
32 notice of lien and an amended notice of lien does not defeat the lien
33 and shall not be deemed material unless the variance:

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

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

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

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

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

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



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

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

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

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

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

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

41 108.234 1. Except as otherwise provided in subsection 2,
42 every improvement constructed, altered or repaired upon property
43 shall be deemed to have been constructed, altered or repaired at the
44 instance of each owner having or claiming any interest therein, and
45 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 ~~31~~ 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 ~~31~~ 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.



1 5. If the prime contractor for the work of improvement receives
2 a notice of nonresponsibility pursuant to paragraph (b) of subsection
3 4, the prime contractor shall:

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

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

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

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

20 (a) Does not record a notice of waiver as provided in NRS
21 108.2405; and

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

26 ↪ The term does not include an owner who is a lessor if the lessee
27 fails to satisfy the requirements set forth in NRS 108.2403 and
28 108.2407.

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

30 108.2403 1. Except as otherwise provided in NRS 108.2405,
31 before a lessee may cause a work of improvement to be constructed,
32 altered or repaired upon property that the lessee is leasing, the lessee
33 shall:

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

37 (b) Either:

38 (1) Establish a construction disbursement account and:

39 (I) Fund the account in an amount equal to the total cost
40 of the work of improvement, but in no event less than the total
41 amount of the prime contract;

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



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

4 (2) Record a surety bond for the prime contract that meets
5 the requirements of subsection 2 of NRS 108.2415 and notify each
6 person who gives the lessee a notice of right to lien of the recording
7 of the surety bond as provided in paragraph ~~(f)~~ (g) of subsection 2
8 ~~;~~; *or*

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

12 2. The notice of posted security required pursuant to subsection
13 1 must:

14 (a) Identify the name and address of the lessee;

15 (b) Identify the location of the improvement and the address,
16 legal description and assessor's parcel number of the property upon
17 which the improvement is or will be constructed, altered or repaired;

18 (c) Describe the nature of the lessee's interest in:

19 (1) The property upon which the improvement is or will be
20 constructed, altered or repaired; and

21 (2) The improvement on such property;

22 (d) If the lessee establishes a construction disbursement account
23 pursuant to subsection 1, include:

24 (1) The name and address of the construction control;

25 (2) The date that the lessee obtained the services of the
26 construction control and the total amount of funds in the
27 construction disbursement account; and

28 (3) The number of the construction disbursement account, if
29 any;

30 (e) If the lessee records a surety bond pursuant to subsection 1,
31 include:

32 (1) The name and address of the surety;

33 (2) The surety bond number;

34 (3) The date that the surety bond was recorded in the office
35 of the county recorder of the county where the property is located
36 upon which the improvement is or will be constructed, altered or
37 repaired;

38 (4) The book and the instrument or document number of the
39 recorded surety bond; and

40 (5) A copy of the recorded surety bond with the notice of
41 posted security; ~~and~~

42 *(f) If the lessee records alternative security pursuant to*
43 *subsection 1, provide a letter of credit or proof of an approved*
44 *construction loan; and*



1 (g) Be served upon each person who gives a notice of right to
2 lien within 10 days after receipt of the notice of right to lien, in one
3 of the following ways:

4 (1) By personally delivering a copy of the notice of posted
5 security to the person who gives a notice of right to lien at the
6 address identified in the notice of right to lien; or

7 (2) By mailing a copy of the notice of posted security by
8 certified mail, return receipt requested, to the person who gives a
9 notice of right to lien at the address identified in the notice of right
10 to lien.

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

15 (a) Satisfies the requirements of subsection 1 of this section or
16 subsection 2 of NRS 108.2407 within 25 days after any work
17 stoppage, the prime contractor who stopped work shall resume work
18 and the prime contractor and the prime contractor's lower-tiered
19 subcontractors and suppliers are entitled to compensation for any
20 reasonable costs and expenses that any of them have incurred
21 because of the delay and remobilization; or

22 (b) Does not satisfy the requirements of subsection 1 of this
23 section or subsection 2 of NRS 108.2407 within 25 days after the
24 work stoppage, the prime contractor who stopped work may
25 terminate the contract relating to the work of improvement and the
26 prime contractor and the prime contractor's lower-tiered
27 subcontractors and suppliers are entitled to recover:

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

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

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

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

41 4. The rights and remedies provided pursuant to this section are
42 in addition to any other rights and remedies that may exist at law or
43 in equity, including, without limitation, the rights and remedies
44 provided pursuant to NRS 624.606 to 624.630, inclusive.



1 **Sec. 6.** NRS 108.2405 is hereby amended to read as follows:
2 108.2405 1. The provisions of NRS 108.2403 and 108.2407
3 do not apply:

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

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

14 2. Each owner who records a notice of waiver pursuant to
15 paragraph (b) of subsection 1 must serve such notice by certified
16 mail, return receipt requested, upon the prime contractor of the work
17 of improvement and all other lien claimants who may give the
18 owner a notice of right to lien pursuant to NRS 108.245, within ~~10~~
19 **15** days after the owner's receipt of a notice of right to lien or ~~10~~
20 **15** days after the date on which the notice of waiver is recorded
21 pursuant to this subsection.

22 3. As used in this section:

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

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

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

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

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

34 108.2413 A lien claimant's lien rights or notice of lien may be
35 released upon the posting of ~~an~~ :

36 **1.** A surety bond in the manner provided in NRS 108.2415 to
37 108.2425, inclusive ~~of~~ ; **or**

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

40 **Sec. 8.** NRS 108.2415 is hereby amended to read as follows:

41 108.2415 1. To obtain the release of a lien for which notice
42 of lien has been recorded against the property, the principal and a
43 surety ~~must~~ **may** execute a surety bond in an amount equal to 1.5
44 times the lienable amount in the notice of lien, which must be in the
45 following form:



1 appeared known (or satisfactorily
2 proved) to me to be the attorney in fact of the surety that
3 executed the foregoing instrument, known to me to be the
4 person who executed that instrument on behalf of the surety
5 therein named, and he or she acknowledged to me that the
6 surety executed the foregoing instrument.
7

8
9 (Notary Public in and for
10 the County and State)
11

12 2. To obtain the release of all prospective and existing lien
13 rights of lien claimants related to a work of improvement, the
14 principal and a surety ~~must~~ may execute and cause to be recorded
15 a surety bond in an amount equal to 1.5 times the amount of the
16 prime contract, which must be in the following form:
17

18 (Assessor’s Parcel Numbers)

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

22 WHEREAS, (name of principal), located at
23 (address of principal), desires to
24 give a bond for releasing the following described property
25 owned by (name of owners) from
26 all prospective and existing lien rights and notices of liens
27 arising from materials, equipment or work provided or to be
28 provided under the prime contract described as follows:
29

30 (Parties to the Prime Contract)
31 (Amount of the Prime Contract)
32 (Date of the Prime Contract)
33 (Summary of Terms of the Prime Contract)
34

35 WHEREAS, the property that is the subject of the surety
36 bond is described as follows:
37

38 (Legal Description)
39

40 NOW, THEREFORE, the undersigned principal and surety
41 do hereby obligate themselves in the sum of \$..... (1
42 1/2 x amount of prime contract) to all prospective and
43 existing lien claimants who have provided or hereafter
44 provide materials, equipment or work under the prime
45 contract, from which sum the principal and surety will pay



1 the lien claimants the lienable amount that a court of
2 competent jurisdiction may determine is owed to each lien
3 claimant, and such additional amounts as may be awarded
4 pursuant to NRS 108.237, but the liability of the surety may
5 not exceed the penal sum of the surety bond.

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

9
10
11 (Signature of Principal)

12
13 (Surety Corporation)

14 By.....
15 (Its Attorney in Fact)

16
17 State of Nevada }
18 } ss.
19 County of }

20
21 On (month) (day), (year), before me, the
22 undersigned, a notary public of this County and State,
23 personally appeared who acknowledged
24 that he or she executed the foregoing instrument as principal
25 for the purposes therein mentioned and also personally
26 appeared known (or satisfactorily
27 proved) to me to be the attorney in fact of the surety that
28 executed the foregoing instrument, known to me to be the
29 person who executed that instrument on behalf of the surety
30 therein named, and he or she acknowledged to me that the
31 surety executed the foregoing instrument.

32
33
34 (Notary Public in and for
35 the County and State)
36

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

42 4. Upon the recording of the surety bond, the principal must
43 serve a file-stamped copy of the recorded surety bond in the
44 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.



