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SENATE BILL NO. 206

SUMMARY OF REVISIONS TO NEVADA'S MECHANIC'S LIEN STATUTE
(NRS 108.221 to 108.246)

Submitted by Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter, 150 North Durango Drive, Las Vegas, Nevada 89145.

Purpose. The following changes are intended to prohibit the prospective waiver of a lien claimant's rights and to confirm, clarify, standardize and thereby expedite: (1) the procedures and forms required for a waiver and release upon payment; (2) the procedures for recording a notice of lien and a surety bond to release a lien; and, (3) the proceedings to adjudicate a lien.

Section 2-24, pages 1-5: Consolidate, clarify and add important definitions and terms. Note: The definitions for agent of the owner, commencement of construction, completion of work of improvement, improvement, lien claimant, owner, property and work of improvement were already set forth elsewhere in NRS 108.221 to 108.246, inclusive.

Section 25, pages 5-6: Voids conditions, stipulations or provisions of a contract that: (1) require a lien claimant to waive lien rights, except as provided in statute; (2) make the contract subject to the laws of another state; (3) require any litigation or arbitration to occur in another state; or (4) require a lien claimant to waive delay damages which were not contemplated. Note: 36 states prohibit the prospective waiver of lien rights either by statute or case law.

Section 26, pages 6-11: Allows the waiver and release of lien rights upon payment and provides standard waiver and release forms to be used to receive progress and final payments.

Section 27, page 11: Deletes the definitions for "work of improvement" and "improvement" which are now included in Sections 2-24. (Re: NRS 108.221)

Section 28, page 11-12: Confirms that any work, material or equipment furnished at the request of the owner or his agent whether in writing or verbally is lienable. Note: Whether the request was made will be a matter of proof. Also deletes language that is now incorporated into the definitions set forth in Sections 2-24. (Re: NRS 108.222)

Section 29, pages 12-13: Clarifies the priority of liens and deletes language that is now incorporated into the definitions set forth in Sections 2-24. (Re: NRS 108.225)

Section 30, pages 13-16: Makes certain that the time for recording liens does not begin to run for 90 days until after the work of improvement is complete, or for 40 days until after a notice of completion is timely recorded and served. Also: (1) establishes a standard form to be used to record a lien, (2) allows liens to be served by certified mail; and, (3) deletes language that is now incorporated into the definitions set forth in Sections 2-24. Finally, requires that the lien claimant provide the owner with a 15-day notice of intent to lien if the work of improvement is a multiple or single family residence or residences. (Re: NRS 108.226)

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Section 31, pages 17-18: Allows liens to be served by certified mail and deletes language that is now incorporated into the definitions set forth in Sections 2-24. (Re: NRS 108.227)

Section 32, pages 18-19: Clarifies the requirements for a hearing on a frivolous or excessive lien. (Re: NRS 108.2275)

Section 33, pages 19-20: Clarifies the content and delivery requirements for a notice of completion and invalidates a notice of completion for failure to deliver. (Re: NRS 108.228)

Section 34, pages 20-21: Confirms that lien claimants may amend their liens at any time prior to trial and requires the lien claimant to serve the owner with any amended lien. (Re: NRS 108.229)

Section 35, pages 21-22: Clarifies how a lien against two or more pieces of property will be apportioned. (Re: NRS 108.231)

Section 36, page 22: Confirms that a notice of lien must be recorded in the county in which the property that is subject to the lien is located. (Re: NRS 108.232)

Section 37, pages 22-23: Confirms that a lien may not bind the subject property longer than six months unless an extension is granted by the court and that an extension may not be granted for more than one year. (Re: NRS 108.233)

Section 38, pages 23-25: Establishes the content to be included in a notice of non-responsibility and further defines a "disinterested owner." (Re: NRS 108.234)

Section 39, pages 25-26: Clarifies the lienable amount that may be recovered by a prime contractor and the prime contractor's obligation to only defend the owner after receipt of payment. (Re: NRS 108.235)

Section 40, page 26: Clarifies the rank of lien claimants and the distribution of proceeds from a judgment. Also deletes language that is now incorporated in the definitions set forth in Sections 2-24. (Re: NRS 108.236)

Section 41, pages 26: Confirms that a prevailing lien claimant shall be awarded attorney's fees, court costs, and interest and that a prevailing owner or owner's agent may be awarded court costs and reasonable attorney's fees. (Re: NRS 108.237)

Section 42, pages 27-28: Confirms that filing a notice of lien does not preclude a lien claimant from pursuing other remedies. (Re: NRS 108.238)

Section 43, pages 28-30: Establishes the time period for filing a statement of facts in an on-going foreclosure action and establishes the procedures to be followed in a complex foreclosure action involving numerous lien claimants. (Re: NRS 108.239)

Section 44, page 30: Clarifies by conforming language allowing for the release of a lien upon the posting of a surety bond. (Re: NRS 108.2413)

Section 45, pages 30-32: Requires a debtor to a lien claimant to record a surety bond, if any, in the office of the county recorder in which the notice of lien was recorded. Also requires the debtor to mail a copy of the surety bond to the lien claimant. (Re: NRS 108.2415)

Section 46, pages 32-34: Extends the time period for the court to conduct preferential trials and establishes the procedures for such trials. (Re: NRS 108.2421)

Section 47, page 34: Subjects the principal and surety to the jurisdiction of the court in which any action or suit is pending on a notice of lien on the property described in the surety bond. (Re: NRS 108.2423)

Section 48, pages 34-35: Addresses the sufficiency of a surety bond by: (1) allowing the filing of a petition excepting to the sufficiency at anytime after the recording of a surety bond; (2) requiring the surety to remain on the U.S. Treasury's list of approved sureties; (3) allowing any party to petition the court for good cause to require additional security, or to change, substitute or add securities; (4) requires the court to increase the surety bond if it finds it insufficient to pay the total amount that may be awarded by the court; and, (5) requires the surety to remain fully liable on the surety bond once recorded regardless of the payment or nonpayment of any surety bond premium. (Re: NRS 108.2425)

Section 49, pages 35-36: Clarifies by conforming language on assignment of liens. No significant changes. (Re: NRS 108.243)

Section 50, pages 36: Clarifies by conforming language on the discharge of liens. No significant changes. (Re: NRS 108.2433)

Section 51, pages 36-37: Clarifies by conforming language on the discharge of liens. No significant changes. (Re: NRS 108.2437)

Section 52, page 37: Clarifies by conforming language regarding the time limit for filing a foreclosure action. No significant changes. (Re: NRS 108.244)

Section 53, pages 38-39: Clarifies by conforming language regarding the Notice of Right to Lien; allows the Notice of Right to Lien to be filed at anytime after the commencement of work and, provides that the right to lien upon delivery of a Notice of Right to Lien is for the thirty-one days prior to delivery and anytime after delivery until the completion of the work of improvement. Also deletes language that is now incorporated into the definitions set forth in Sections 2-24. (Re: NRS 108.245)

Section 54, pages 39-40: Clarifies by conforming language regarding the prime contractor's notice to the owner and subcontractors regarding the Notice Right to Lien. No significant changes.

Section 55, page 40: Conforms NRS 116.4111. (Re: NRS 116.4111)

Section 56, page 40-41: Conforms NRS 624.3016. (Re: NRS 624.3016)

Section 57, pages 41-43: Conforms NRS 624.620. (Re: NRS 624.620)

Section 58, page 43: Repeals NRS 108.223, 108.2231, 108.224, 108.2417 and 108.2419 which are now incorporated into the definitions set forth in sections 2-24. (Re: NRS 108.223, 108.2231, 108.224, 108.2417 and 108.2419)

Section 59, page 43: Provides that this act will apply only to agreements entered into on or after October 1, 2003.

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TESTIMONY IN FAVOR OF ASSEMBLY BILL NO. 206

Submitted by Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter, 150 North Durango Drive, Las Vegas, Nevada 89145 on behalf of the Associated General Contractors, Framing Contractors Association, National Association of Minority Contractors and National Association of Women in Construction.

Senate Bill No. 206 is a compromise. It has been four years in the making and I believe now has the support of all affected parties. It most assuredly has the support of all construction industry associations and unions throughout the state.

SB 206 first prohibits the prospective waiver of a lien claimant's rights. Doing so is good public policy. There are 36 states that have already done so either by statute or case law.

Secondly, SB 206 clarifies and thereby expedites the procedures and proceedings for filing and adjudicating a lien.

Unfortunately, SB 206 which unanimously passed the Senate is too late for many contractors and subcontractors throughout Nevada. These contractors and subcontractors have built the Venetian, Aladdin, Regency and numerous smaller projects throughout the state at their expense. Because of the many inequities in Nevada's current mechanic's lien law, many of these contractors have been forced to settle their lien claims for 30 cents on the dollar. Many have been forced into bankruptcy. The rest are still litigating their lien claims.

Yes. After six years, those who built the Venetian, as a case in point, are still litigating their lien claims and it will be another six to ten years before the Venetian is forced to pay those claims that have already been awarded by a district court.

Nearly every contractor in the state is prepared to tell you why SB 206 is needed. In order not to belabor the point, only a few are, however, scheduled to testify here, today.

Nevada deservedly has the reputation in the construction industry as being the worst state in the Western United States in which to do business. Passage of SB 206 will do much to negate that reputation. It is worthy of your support.

Thank you.

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SENATE BILL NO. 206

AMENDMENT

Submitted by Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter, 150 North Durango Drive, Las Vegas, Nevada 89145.

Purpose: The change to Section 38 is intended to ensure that longstanding case law is not inadvertently overturned. The remaining changes simply further clarify and thereby expedite the proceedings for filing and adjudicating a lien.

1. Section 18, page 4, line 8: Add the words "or an owner with a general contractors license functioning as the prime contractor" after the word "property" and before the word "to" on line 8.

2. Section 26, page 7, lines 29-33: Amend paragraph (a), subsection 4, to read as follows:

This release covers a progress payment for ~~[all]~~ the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, [for] but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and....

3. Section 26, page 8, lines 30-34: Amend paragraph (b), subsection 4, to read as follows:

This release covers a progress payment for ~~[all]~~ the work, materials or equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, [for] but only to the extent of the Payment Amount or such portion of the Payment Amount as the undersigned is actually paid, and...

4. Section 28, pages 11-12, lines 30-45 and lines 1-9: Amend subsection 1 to read as follows:

108.222 1. Except as otherwise provided in subsection 2, a lien claimant has a lien upon the property and any improvements for which the work, ~~[and]~~ materials or equipment were furnished for the following lienable amount:

(a) If the parties ~~[entered into a contract,]~~ agreed upon a specific price or method for determining a specific price for some or all of the work, material or equipment furnished by or through the lien claimant, then the unpaid balance of the price agreed upon for ~~[the work performed and the material and equipment furnished or rented]~~ such work, material and equipment, as the case may be, whether performed or furnished at the instance of the owner or his agent; or

(b) If the parties did not agree upon a specific price for some or all the work, material or equipment [is not set forth in a contract] furnished by or through the lien claimant, then an amount equal to the fair market value of ~~[, the]~~ such work, [performed and the] material and equipment [furnished or rented], as the case may be, ~~[by the lien~~

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~~claimant,~~] including a reasonable allowance for overhead and a profit, whether performed or furnished at the instance of the owner or at the instance of his agent.

5. Section 31, page 17, line 14: Replace the word "resident" with the word "residence" following the word "of" and before the word "or" on line 14.

6. Section 38, page 25, lines 16-21: Amend paragraphs (a) and (b), subsection 4, to read as follows:

- (a) The disinterested owner is a lessor or an optionor under a lease [~~that~~] and does not request[s], require[s], authorize[s] or consent[s] to [the] his lessee causing the work or improvement to be constructed, altered or repaired upon the property; and
- (b) The lessee personally or through his agent or representative enters into a contract [~~for~~] and caused the improvements to be constructed, altered or repaired upon the property.

7. Section 46, page 34, line 10-11: After line 10 and before line 11, add a new subsection 6 which should read as follows:

"6. A prevailing lien claimant on a claim against a surety bond pursuant to a preferential trial under subsection 3 above, shall be entitled to an immediately enforceable judgment, and an appeal may be taken from such judgment by either party even though all claims asserted or consolidated lawsuits brought in the underlying lawsuit may not be finally resolved by the judgment."

8. Section 48, page 35, line 1: Add the words "or petition" after the word "motion" and before the "comma" on line 1.

9. Section 48, page 35, line 3: Add the words "or petition" after the word "motion" and before the word "and" on line 3.