
ASSEMBLY BILL NO. 316—ASSEMBLYMEN CLABORN,
OHRENSCHALL, COLLINS, MANENDO, KOIVISTO,
ANDERSON, ARBERRY, ATKINSON, CARPENTER,
CHOWNING, CONKLIN, GEDDES, GIBBONS, GIUNCHIGLIANI,
GOICOECHEA, GOLDWATER, GRADY, HORNE, LESLIE,
MABEY, MARVEL, MCCLAIN, MCCLEARY, MORTENSON,
OCEGUERA, PARKS, PERKINS, PIERCE AND SHERER

MARCH 14, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Requires owner of real property to provide security
for certain works of improvement to real property.
(BDR 54-646)

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 construction; requiring an owner of real
property to provide security for certain works of
improvement for the construction, alteration, addition to
or repair of real property; and providing other matters
properly relating thereto.

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

- 1 **Section 1.** Chapter 624 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 14, inclusive, of this
3 act.
4 **Sec. 2.** *As used in sections 2 to 14, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3, 4 and 5 of this act have the meanings ascribed to*
7 *them in those sections.*
8 **Sec. 3.** *“Construction contract” means a contract entered*
9 *into by an owner and a prime contractor for a work of*



* A B 3 1 6 *

1 *improvement for the construction, alteration, addition to or repair*
2 *of real property.*

3 **Sec. 4. 1. "Owner"** means an owner of real property who
4 *enters into a construction contract and has:*

5 *(a) A fee simple absolute interest in the real property upon*
6 *which the work of improvement will be made and the amount of*
7 *the construction contract is more than \$5,000,000; or*

8 *(b) An interest in the real property upon which the work of*
9 *improvement will be made which is less than a fee simple absolute*
10 *interest, including a leasehold interest, and the amount of the*
11 *construction contract is more than \$1,000,000.*

12 **2. For the purposes of this section:**

13 *(a) A lessee of real property shall be deemed to be the owner of*
14 *a fee simple absolute interest in that real property if:*

15 *(1) The initial term of the lease is at least 35 years; and*

16 *(2) The lease applies to one or more parcels of real*
17 *property.*

18 *(b) The owner of a fee simple absolute interest shall be deemed*
19 *not to be the owner of less than a fee simple absolute interest*
20 *because of any mortgage, deed of trust, ground lease, or other*
21 *lien, encumbrance or right of occupancy which may encumber the*
22 *fee simple absolute interest.*

23 **Sec. 5. "Prime contractor"** has the meaning ascribed to it in
24 *NRS 338.010.*

25 **Sec. 6. The provisions of sections 2 to 14, inclusive, of this**
26 *act do not apply to:*

27 **1. A construction contract for a single-family residence.**

28 **2. A public work as defined in NRS 338.010.**

29 **3. A construction contract if the owner is a qualified publicly**
30 *traded company or a wholly owned subsidiary of a qualified*
31 *publicly traded company and the obligations of the subsidiary*
32 *under the construction contract are guaranteed by the parent*
33 *company which is a qualified publicly traded company.*

34 **4. A construction contract if the owner is a qualified private**
35 *company or a wholly owned subsidiary of a qualified private*
36 *company and the obligations of the subsidiary under the*
37 *construction contract are guaranteed by the parent company*
38 *which is a qualified private company.*

39 **5. As used in this section:**

40 *(a) "Qualified private company" means any company that does*
41 *not have any equity securities listed for trading on the New York*
42 *Stock Exchange, the American Stock Exchange or the National*
43 *Market System of the National Association of Securities Dealers*
44 *Automated Quotation System, and has a net worth determined in*



1 *accordance with generally accepted accounting principles of more*
2 *than \$50,000,000.*

3 (b) *“Qualified publicly traded company” means any company*
4 *which has a class of equity securities listed for trading on the New*
5 *York Stock Exchange, the American Stock Exchange or the*
6 *National Market System of the National Association of Securities*
7 *Dealers Automated Quotation System, and its nonsubordinated*
8 *debt securities are rated as “investment grade” by Fitch ICBA,*
9 *Inc., Moody’s Investor Services, Inc., Standard and Poor’s*
10 *Ratings Services or any other nationally recognized rating*
11 *organization of publicly traded companies.*

12 **Sec. 7.** *Each owner who enters into a construction contract*
13 *pursuant to the provisions of sections 2 to 14, inclusive, of this act*
14 *shall:*

15 1. *Provide security in the manner prescribed in section 8 of*
16 *this act before any work of improvement for the construction,*
17 *alteration, addition to or repair of real property is commenced;*
18 *and*

19 2. *If the owner obtains a loan for that work of improvement*
20 *from a financial institution, provide to the prime contractor a copy*
21 *of the construction mortgage or deed of trust which is certified by*
22 *the county recorder of the county where the real property is*
23 *located. The construction mortgage or deed of trust must include*
24 *the amount of the loan.*

25 **Sec. 8.** 1. *The security required by section 7 of this act may*
26 *be used only if an owner defaults on the construction contract*
27 *entered into with a prime contractor.*

28 2. *An owner who is required to provide such security shall:*

29 (a) *Obtain a payment bond from a surety licensed to do*
30 *business in this state in an amount equal to not less than 100*
31 *percent of the total amount of the construction contract, which is*
32 *payable upon default by the owner of any undisputed amount*
33 *pursuant to the construction contract that is due and payable to*
34 *the prime contractor for more than 30 days;*

35 (b) *Obtain an irrevocable letter of credit from a financial*
36 *institution for the benefit of the prime contractor in an amount*
37 *equal to not less than 100 percent of the total amount of the*
38 *construction contract. The maturity date of the letter of credit and*
39 *any other terms of the letter of credit must be determined pursuant*
40 *to an agreement among the owner, the prime contractor and the*
41 *financial institution issuing the letter of credit. The owner shall*
42 *maintain the letter of credit in full force until the owner has*
43 *satisfied the obligations for payment to the prime contractor*
44 *pursuant to the letter of credit; or*



1 (c) *Establish and maintain, pursuant to sections 9 and 10 of*
2 *this act, an escrow account with an escrow agent who is licensed*
3 *pursuant to chapter 645A of NRS and is doing business in this*
4 *state.*

5 **Sec. 9.** *If an owner provides security pursuant to section 8 of*
6 *this act using an escrow account:*

7 1. *Before commencement of any work of improvement for the*
8 *construction, alteration, addition to or repair of real property*
9 *pursuant to the construction contract, the owner must deposit in*
10 *the escrow account an amount equal to 90 percent of the total*
11 *amount of the construction contract.*

12 2. *The owner, if the construction contract provides for a*
13 *payment to be withheld from periodic payments to the prime*
14 *contractor, shall deposit the money withheld as retainage in the*
15 *escrow account when the owner makes the corresponding payment*
16 *to the prime contractor from whom the retainage is withheld. The*
17 *amount which is required to be maintained in the escrow account*
18 *may not exceed the total amount of remaining payments owed to*
19 *the prime contractor pursuant to the construction contract, except*
20 *that the remaining payments may be adjusted pursuant to an*
21 *agreement between the owner and the prime contractor.*

22 3. *The owner and the prime contractor, if the money*
23 *deposited in the escrow account is equal to or greater than the*
24 *total amount of the remaining payments owed to the prime*
25 *contractor, shall authorize the disbursement to the prime*
26 *contractor of the money deposited in the escrow account to pay*
27 *progress payments owed to the prime contractor pursuant to the*
28 *construction contract. The owner or the prime contractor is not*
29 *required to authorize the disbursement of any money if the*
30 *disbursement will cause the amount remaining in the escrow*
31 *account after that disbursement to be less than the total amount of*
32 *remaining payments owed to the prime contractor after the*
33 *application of any money disbursed to the prime contractor.*

34 4. *The owner and the prime contractor shall authorize:*

35 (a) *The disbursement to the owner of any money remaining in*
36 *the escrow account after the prime contractor has been paid all*
37 *the money owed to him pursuant to the construction contract.*

38 (b) *The disbursement of money in the escrow account*
39 *pursuant to an order of a court of competent jurisdiction.*

40 5. *The owner and the prime contractor may include in the*
41 *construction contract any other conditions for the disbursement of*
42 *money in the escrow account if the conditions do not cause the*
43 *amount remaining in the escrow account to be less than the*
44 *amount required pursuant to subsection 3.*



1 **Sec. 10. 1.** *A prime contractor is not required to accept an*
2 *escrow account as security pursuant to section 8 of this act unless*
3 *the owner establishes to the satisfaction of the prime contractor*
4 *that the owner has provided to the prime contractor a fully*
5 *perfected, first priority security interest in the escrow account and*
6 *any money deposited in that account by the owner.*

7 **2.** *The money deposited in any escrow account established*
8 *pursuant to section 8 of this act is the sole property of the owner,*
9 *subject to the security interest in favor of the prime contractor.*
10 *The owner and the prime contractor shall direct the escrow holder*
11 *to hold the money deposited in the escrow account for the purpose*
12 *of perfecting the security interest of the prime contractor in that*
13 *account and to disburse the money only upon the authorization of*
14 *the owner and the prime contractor or in accordance with an*
15 *order of a court of competent jurisdiction.*

16 **3.** *This section and section 9 of this act do not require a*
17 *financial institution which provides a loan to an owner for a work*
18 *of improvement for the construction, alteration, addition to or*
19 *repair of real property to deposit the proceeds of the loan in an*
20 *escrow account.*

21 **Sec. 11.** *If the amount set forth in a construction contract is*
22 *not a fixed amount, the amount of security required pursuant to*
23 *section 8 of this act must be determined by using:*

24 **1.** *The guaranteed maximum amount, if such an amount has*
25 *been established; or*

26 **2.** *If a guaranteed maximum amount has not been*
27 *established, the estimate of the total anticipated amount of the*
28 *construction contract as determined by the owner and the prime*
29 *contractor.*

30 **Sec. 12.** *If an owner who is required to provide security*
31 *pursuant to section 7 of this act fails to provide or maintain that*
32 *security, the prime contractor may make a written demand on the*
33 *owner to do so, and if the owner fails to provide and maintain that*
34 *security within 10 days after the prime contractor makes a written*
35 *demand on the owner, the prime contractor may suspend work on*
36 *the improvement until the security is provided and maintained in*
37 *accordance with the provisions of sections 2 to 14, inclusive, of*
38 *this act.*

39 **Sec. 13.** *The rights and remedies provided for in sections 2 to*
40 *14, inclusive, of this act are cumulative and in addition to any*
41 *other rights or remedies provided by law.*

42 **Sec. 14. 1.** *A person may not waive or modify a right,*
43 *obligation or liability set forth in the provisions of sections 2 to 14,*
44 *inclusive, of this act.*



1 **2. A condition, stipulation or provision in a construction**
2 **contract or other agreement that:**

3 **(a) Requires a person to waive a right set forth in the**
4 **provisions of sections 2 to 14, inclusive, of this act; or**

5 **(b) Relieves a person of an obligation or liability imposed by**
6 **the provisions of sections 2 to 14, inclusive, of this act,**
7 **is void.**

8 **Sec. 15.** The provisions of this act apply to a construction
9 contract for a work of improvement for the construction, alteration,
10 addition to or repair of real property which is entered into on or after
11 October 1, 2003.

