

IN THE SENATE

SENATE BILL NO. 1263

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1
2 RELATING TO LIENS FOR PERFORMANCE OF FUTURE OBLIGATIONS; AMENDING SECTION
3 45-108, IDAHO CODE, TO PROVIDE FOR OBLIGATIONS SECURED BY DEEDS OF TRUST
4 AND TO MAKE TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY AND PRO-
5 VIDING AN EFFECTIVE DATE.

6 Be It Enacted by the Legislature of the State of Idaho:

7 SECTION 1. That Section 45-108, Idaho Code, be, and the same is hereby
8 amended to read as follows:

9 45-108. LIEN FOR PERFORMANCE OF FUTURE OBLIGATIONS -- VALIDITY -- PRI-
10 ORITY. (1) A lien may be created by contract, to take immediate effect, as se-
11 curity for the performance of obligations not then in existence, which lien,
12 if not invalid on other grounds, shall be valid as against all persons.

13 (2) The validity of such contracts and liens as security for any obliga-
14 tion is not affected as against any person by the fact that the contract does
15 not specify, describe or limit the obligations to be secured as to purpose,
16 nature, time, or amount of the obligations to be secured.

17 (3) All such liens, if otherwise valid, are valid against and prior and
18 superior to all rights, liens and claims acquired by other persons in the
19 property subject thereto after the contract creating such liens was made,
20 except in cases where the person in whose favor the obligation secured by
21 such lien was created, had actual notice of the existence of such subsequent
22 right, lien or claim at the time such obligation was created, and are prior
23 and superior to such subsequent rights, liens or claims irrespective of such
24 or any notice in the following cases:

25 ~~1-~~ (a) Where the person, in whose favor the obligation secured thereby
26 was created, was legally bound to make the advance or give the consider-
27 ation resulting in such obligation.

28 ~~2-~~ (b) Where the consideration for such obligation was necessarily and
29 actually applied to the maintenance and/or preservation of the property
30 subject to the lien.

31 (4) Making the advance or giving the consideration to result in an obli-
32 gation not in existence at the time such a contract creating a lien to secure
33 the same is made, is optional with the person making the advance or giving the
34 consideration unless he is bound by an express contract to the contrary which
35 shall not be implied from the fact that the contract to secure such obliga-
36 tion was made.

37 (5) Obligations otherwise within the limits and description of those
38 specified in any contract creating a lien to secure the performance of obli-
39 gations not then in existence, but created in favor of any person to whom the
40 original party to be secured by the lien created by such contract has trans-
41 ferred such contract, and obligations secured by deeds of trust, shall also

1 be secured thereby in like manner as similar obligations between the origi-
2 nal parties thereto.

3 (6) Contracts of mortgage of real property and those secured by deeds of
4 trust are subject to all the provisions of this section as amended.

5 SECTION 2. An emergency existing therefor, which emergency is hereby
6 declared to exist, this act shall be in full force and effect on and after
7 July 1, 2024.