

E AND R AMENDMENTS TO LB 162

Introduced by Enrollment and Review Committee: Nordquist, 7,  
Chairperson

1           1. Strike the original sections and all amendments  
2 thereto and insert the following new sections:

3           Section 1. Section 48-2101, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           48-2101 Sections 48-2101 to 48-2116 and section 6 of this  
6 act shall be known and may be cited as the Contractor Registration  
7 Act.

8           Sec. 2. Section 48-2103, Revised Statutes Cumulative  
9 Supplement, 2008, is amended to read:

10          48-2103 For purposes of the Contractor Registration Act:

11          (1) Commissioner means the Commissioner of Labor;

12          (2) Construction means work on real property and  
13 annexations, including new work, additions, alterations,  
14 reconstruction, installations, and repairs performed at one or more  
15 different sites which may be dispersed geographically; ~~but does~~  
16 ~~not include the construction of water wells or installation of~~  
17 ~~septic systems;~~

18          ~~(3) Contractor means a person who engages in the business~~  
19 ~~of construction and includes a subcontractor, a general contractor,~~  
20 ~~and any other person arranging for the performance of construction.~~  
21 ~~A person who earns less than five thousand dollars annually or who~~  
22 ~~performs work or has work performed on his or her own property is~~  
23 ~~not a contractor;~~

1           (3) Contractor means an individual, firm, partnership,  
2 limited liability company, corporation, or other association of  
3 persons engaged in the business of the construction, alteration,  
4 repairing, dismantling, or demolition of buildings, roads, bridges,  
5 viaducts, sewers, water and gas mains, streets, disposal plants,  
6 water filters, tanks and towers, airports, dams, levees and  
7 canals, water wells, pipelines, transmission and power lines,  
8 and every other type of structure, project, development, or  
9 improvement within the definition of real property and personal  
10 property, including such construction, repairing, or alteration of  
11 such property to be held either for sale or rental. Contractor  
12 also includes any subcontractor engaged in the business of such  
13 activities and any person who is providing or arranging for labor  
14 for such activities, either as an employee or as an independent  
15 contractor, for any contractor or person;

16           (4) Department means the Department of Labor; and

17           (5) Nonresident contractor means a contractor who neither  
18 is domiciled in nor maintains a permanent place of business in  
19 this state or who, being so domiciled or maintaining such permanent  
20 place of residence, spends in the aggregate less than six months of  
21 the year in this state; and

22           ~~(5)~~ (6) Working days means Mondays through Fridays but  
23 does not include Saturdays, Sundays, or federal or state holidays.  
24 In computing fifteen working days, the day of receipt of any notice  
25 is not included and the last day of the fifteen working days is  
26 included.

27           Sec. 3. Section 48-2104, Revised Statutes Cumulative

1 Supplement, 2008, is amended to read:

2           48-2104 (1) Before performing any construction work in  
3 Nebraska, a contractor shall be registered with the department. If  
4 a contractor does business under more than one name, the contractor  
5 shall obtain a registration number for each name under which the  
6 contractor is doing business. Any person who performs work or has  
7 work performed on his or her own property or any person who earns  
8 less than five thousand dollars annually for construction services  
9 is not a contractor for purposes of the Contractor Registration  
10 Act.

11           (2) An exemption from the requirements under subsection  
12 (1) of this section does not exempt a contractor from withholding  
13 requirements under the Nebraska Revenue Act of 1967.

14           Sec. 4. Section 48-2105, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16           48-2105 Each contractor shall apply to the department  
17 for a registration number on an application form provided by  
18 the department. The application shall contain the following  
19 information:

20           (1) The name and federal employer identification number  
21 or, if the applicant is an individual, the social security number  
22 of the contractor;

23           (2) The principal place of business of the contractor  
24 in Nebraska. If the contractor's principal place of business is  
25 outside Nebraska, the application shall state the address of the  
26 contractor's principal place of business and the name and address  
27 of the contractor's registered agent in Nebraska;

1           (3) The telephone number of the contractor in the State  
2 of Nebraska. If the contractor's principal place of business is  
3 outside Nebraska, the application shall state the telephone number  
4 of the contractor's principal place of business and the telephone  
5 number of the contractor's registered agent in Nebraska;

6           (4) The type of business entity of the contractor  
7 such as corporation, partnership, limited liability company, sole  
8 proprietorship, or trust;

9           (5) The contractor option election to collect and remit  
10 sales and use tax on purchases of building materials and fixtures  
11 annexed to real property;

12           ~~(5)~~ (6) The following information about the business  
13 entity:

14           (a) If the contractor is a corporation, the name,  
15 address, telephone number, and position of each officer of the  
16 corporation; and

17           (b) If the contractor is other than a corporation, the  
18 name, address, and telephone number of each owner;

19           ~~(6)~~ (7) Proof of (a) a certificate or policy of insurance  
20 written by an insurance carrier duly authorized to do business  
21 in this state which gives the effective dates of workers'  
22 compensation insurance coverage indicating that it is in force,

23 (b) a certificate evidencing approval of self-insurance privileges  
24 as provided by the Nebraska Workers' Compensation Court pursuant  
25 to section 48-145, or (c) a signed statement indicating that the  
26 contractor is not required to carry workers' compensation insurance  
27 pursuant to the Nebraska Workers' Compensation Act; and

1           ~~(7)~~ (8) A description of the business which includes the  
2 employer's standard industrial classification code or the principal  
3 products and services provided.

4           Each application shall be renewed annually upon payment  
5 of the fee prescribed in section 48-2107.

6           Sec. 5. Section 48-2107, Revised Statutes Cumulative  
7 Supplement, 2008, is amended to read:

8           48-2107 (1) Each application or renewal under section  
9 48-2105 shall be signed by the applicant and accompanied by a  
10 fee of forty dollars. The commissioner may adopt and promulgate  
11 rules and regulations to establish the criteria for acceptability  
12 of filing documents and making payments electronically. The  
13 criteria may include requirements for electronic signatures. The  
14 commissioner may refuse to accept any electronic filings or  
15 payments that do not meet the criteria established. The fee  
16 shall not be required when an amendment to an application is  
17 submitted. The commissioner shall remit the fees collected under  
18 this subsection to the State Treasurer for credit to the Contractor  
19 Registration Cash Fund.

20           ~~(2)~~ A contractor shall not be required to pay the fee if  
21 the application contains an affidavit which shows the contractor  
22 is self-employed and does not pay more than three thousand dollars  
23 annually to employ other persons in the business. The affidavit  
24 shall contain ~~(a)~~ a statement that the contractor is self-employed  
25 and ~~(b)~~ a list of all employees employed on the date of the  
26 application and in the twelve-month period prior to such date and  
27 the dates of employment for each employee. At any time that a

1 ~~contractor no longer qualifies for exemption from the fee, the fee~~  
2 ~~shall be paid to the department.~~

3 (2) A contractor shall not be required to pay the  
4 fee under subsection (1) of this section if (a) the contractor  
5 is self-employed and does not pay more than three thousand  
6 dollars annually to employ other persons in the business and  
7 the application contains a statement made under oath or equivalent  
8 affirmation setting forth such information or (b) the contractor  
9 only engages in the construction of water wells or installation  
10 of septic systems. At any time that a contractor no longer  
11 qualifies for exemption from the fee, the fee shall be paid to the  
12 department. Any false statement made under subdivision (2)(a) of  
13 this section shall be a violation of section 28-915.01.

14 (3) The commissioner shall charge an additional fee  
15 of twenty-five dollars for the registration of each nonresident  
16 contractor and a fee of twenty-five dollars for the registration  
17 of each contract to which a nonresident contractor is a party if  
18 the total contract price or compensation to be received is more  
19 than ten thousand dollars. The commissioner shall remit the fees  
20 collected under this subsection to the State Treasurer for credit  
21 to the General Fund.

22 Sec. 6. (1) The Department of Labor, in conjunction with  
23 the Department of Revenue, shall create a data base of contractors  
24 who are registered under the Contractor Registration Act and the  
25 Nebraska Revenue Act of 1967. The data base shall be accessible on  
26 the web site of the Department of Labor.

27 (2) Any contractor that fails to comply with the

1 requirements of the Contractor Registration Act or Nebraska Revenue  
2 Act of 1967 shall be removed from the data base.

3           Sec. 7. Section 48-2115, Revised Statutes Cumulative  
4 Supplement, 2008, is amended to read:

5           48-2115 There is hereby created the Contractor  
6 Registration Cash Fund to be administered by the department and  
7 used to enforce the Contractor Registration Act. The fund shall  
8 consist of such sums as are appropriated to it by the Legislature  
9 and any fees collected in the administration of the act that are to  
10 be credited to the fund. ~~All funds collected shall be remitted to~~  
11 ~~the State Treasurer for credit to the fund.~~ Any money in the fund  
12 available for investment shall be invested by the state investment  
13 officer pursuant to the Nebraska Capital Expansion Act and the  
14 Nebraska State Funds Investment Act.

15           Sec. 8. Section 77-373.01, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           77-373.01 (1) The ~~By January 1, 1999,~~ the Department of  
18 Labor and the Department of Revenue shall use the codes under the  
19 North American ~~Industrial~~ Industry Classification System for the  
20 compilation and publication of statistics rather than codes under  
21 the Standard Industrial Classification System.

22           For the sole purpose of determining or updating the  
23 proper code under the appropriate industrial classification system,  
24 the Department of Labor and the Department of Revenue may disclose  
25 to the other department identification information about taxpayers  
26 conducting a business in this state. The information disclosed  
27 shall be strictly limited to the name, address, and federal

1 employer identification number or numbers of the taxpayer and the  
2 code under the industrial classification system.

3 (2) Notwithstanding sections 77-2711 and 77-27,119  
4 and for the sole purpose of administration of the Contractor  
5 Registration Act and the contractor data base provisions of  
6 section 6 of this act, the Department of Labor and the Department  
7 of Revenue may disclose to the other department identification  
8 information about taxpayers conducting a business in this state.  
9 The information disclosed shall be limited to the name, address,  
10 and federal employer identification number or numbers of the  
11 taxpayer.

12 (3) The disclosure disclosures allowed under this section  
13 may be made notwithstanding any other provision of law of this  
14 state regarding disclosure of information by either department.  
15 Any information received by either department under this section  
16 shall be considered confidential by the receiving department,  
17 and any employee who discloses such information other than as  
18 specifically allowed by this section or other laws of this state  
19 shall be subject to the penalties normally imposed on employees who  
20 improperly disclose information.

21 Sec. 9. Section 77-2753, Revised Statutes Cumulative  
22 Supplement, 2008, is amended to read:

23 77-2753 (1)(a) Every employer and payor maintaining an  
24 office or transacting business within this state and making payment  
25 of any wages or other payments as defined in subsection (6) of this  
26 section which are taxable under the Nebraska Revenue Act of 1967  
27 to any individual shall deduct and withhold from such wages for



1 each payroll period and from such payments a tax computed in such  
2 manner as to result, so far as practicable, in withholding from  
3 the employee's wages and payments to the payee during each calendar  
4 year an amount substantially equivalent to the tax reasonably  
5 estimated to be due from the employee or payee under such act  
6 with respect to the amount of such wages and payments included in  
7 his or her taxable income during the calendar year. The method of  
8 determining the amount to be withheld shall be prescribed by rules  
9 and regulations of the Tax Commissioner. Such rules and regulations  
10 may allow withholding to be computed at a percentage of the  
11 federal withholding or at a comparable flat percentage for gambling  
12 winnings or supplemental payments, including bonuses, commissions,  
13 overtime pay, and sales awards which are not paid at the same  
14 time as other wages, or payments to independent contractors. Any  
15 withholding tables prescribed by the Tax Commissioner shall be  
16 provided to the budget division of the Department of Administrative  
17 Services and the Legislative Fiscal Analyst for review at least  
18 sixty days before the tables become effective.

19 (b) Notwithstanding the amount of federal withholding or  
20 the rules and regulations of the Department of Revenue determining  
21 the amount of withholding, every employer and payor employing  
22 twenty-five or more employees shall withhold at least one and  
23 one-half percent of the gross wages minus tax qualified deductions  
24 of each employee unless the employee provides satisfactory evidence  
25 that a lesser amount of withholding is justified in the employee's  
26 particular circumstances. Such satisfactory evidence may include  
27 birth certificates or social security information for dependents

1 or other evidence that reasonably assures the employer that the  
2 employee is not improperly or fraudulently evading or defeating the  
3 income tax by reducing or eliminating withholding.

4 (2) (a) Every payor who is either (i) making a payment or  
5 payments in excess of five thousand dollars or (ii) maintaining  
6 an office or transacting business within this state and making  
7 a payment or payments related to such business in excess of six  
8 hundred dollars, and such payment or payments are for personal  
9 services performed or to be performed substantially within this  
10 state, to a nonresident individual, other than an employee, who  
11 is not subject to withholding on such payment under the Internal  
12 Revenue Code or a corporation, partnership, or limited liability  
13 company described in subdivision (c) of this subsection, shall  
14 be deemed an employer, and the individual performing the personal  
15 services shall be deemed an employee for the purposes of this  
16 section. The payor shall deduct and withhold from such payments  
17 the percentage of such payments prescribed in subdivision (b) of  
18 this subsection. If the individual performing the personal services  
19 provides the payor with a statement of the expenses reasonably  
20 related to the personal services, the total payment or payments may  
21 be reduced by the total expenses before computing the amount to  
22 deduct and withhold, except that such reduction shall not be more  
23 than fifty percent of such payment or payments.

24 (b) For any payment or payments for the same service,  
25 award, or purse that totals less than twenty-eight thousand  
26 dollars, the percentage deducted from such payment or payments  
27 pursuant to this subsection shall be four percent, and for all

1 other payments, the percentage shall be six percent.

2 (c) For any corporation, partnership, or limited  
3 liability company that receives compensation for personal services  
4 in this state and of which all or substantially all of the  
5 shareholders, partners, or members are the individuals performing  
6 the personal services, including, but not limited to, individual  
7 athletes, entertainers, performers, or public speakers performing  
8 such personal services, such compensation shall be deemed wages of  
9 the individuals performing the personal services and subject to  
10 the income tax imposed on individuals by the Nebraska Revenue Act  
11 of 1967.

12 (d) The withholding required by this subsection shall  
13 not apply to any payment to a nonresident alien, corporation,  
14 partnership, or limited liability company if such individual,  
15 shareholder, partner, or member provides the payor with a statement  
16 that the income earned is not subject to tax because of a treaty  
17 obligation of the United States or if such payment is subject to  
18 withholding under subsection (3) of this section.

19 (3)(a) Every contractor who is maintaining an office  
20 or transacting business within this state and making a payment  
21 or payments ~~related to such business in excess of six hundred~~  
22 ~~dollars, and such payment or payments are for construction services~~  
23 ~~performed within this state,~~ to any contractor or any person that  
24 is not an employee for construction services performed within this  
25 state shall deduct and withhold five percent of such payments.

26 (b) The withholding required by this subsection shall  
27 not apply to any payment made to (i) a person that provides the

1 payor with a statement that the income earned is not subject to  
2 tax because of a treaty obligation of the United States, (ii)  
3 a contractor if such a payment or payments does not exceed six  
4 hundred dollars, or (iii) or ~~(ii)~~ a contractor when the payor  
5 contractor determines that the payee contractor is in the data base  
6 required by ~~this subsection~~ section 6 of this act.

7 ~~(c) The Department of Revenue shall create a data base of~~  
8 ~~contractors who are licensed, granted a permit, or registered under~~  
9 ~~the Nebraska Revenue Act of 1967 or under section 77-3102. The data~~  
10 ~~base shall be accessible on the web site of the department.~~

11 ~~(d) (c) Any contractor who determines that a contractor~~  
12 ~~is in the data base is relieved from liability for withholding~~  
13 ~~under either this subsection or section 77-3106 for any future~~  
14 ~~payments on a contract in existence at the time the determination~~  
15 ~~is made or made during the same calendar year as such determination~~  
16 ~~is made.~~

17 ~~(e) (d) Withholding required by this subsection shall be~~  
18 ~~considered to be withholding of income tax for purposes of the~~  
19 ~~Nebraska Revenue Act of 1967.~~

20 ~~(f) (e) For purposes of this subsection:~~

21 (i) Construction services means services that are  
22 provided as a contractor; and

23 (ii) Contractor has the same meaning as in section  
24 ~~77-3101. 48-2103.~~

25 (4) The Tax Commissioner may enter into agreements with  
26 the tax departments of other states, which require income tax to  
27 be withheld from the payment of wages, salaries, and such other

1 payments, so as to govern the amounts to be withheld from the wages  
2 and salaries of and other payments to residents of such states.  
3 Such agreements may provide for recognition of anticipated tax  
4 credits in determining the amounts to be withheld and, under rules  
5 and regulations adopted and promulgated by the Tax Commissioner,  
6 may relieve employers and payors in this state from withholding  
7 income tax on wages, salaries, and such other payments paid  
8 to nonresident employees and payees. The agreements authorized  
9 by this subsection shall be subject to the condition that the  
10 tax department of such other states grant similar treatment to  
11 residents of this state.

12 (5) The Tax Commissioner shall enter into an agreement  
13 with the United States Office of Personnel Management for the  
14 withholding of income tax imposed on individuals by the Nebraska  
15 Revenue Act of 1967 on civil service annuity payments for those  
16 recipients who voluntarily request withholding. The agreement shall  
17 be pursuant to 5 U.S.C. 8345 and the rules and regulations adopted  
18 and promulgated by the Tax Commissioner.

19 (6) Wages and other payments subject to withholding shall  
20 mean payments that are subject to withholding under the Internal  
21 Revenue Code of 1986 and are (a) payments made by employers to  
22 employees, except such payments subject to 26 U.S.C. 3406, (b)  
23 payments of gambling winnings, (c) pension or annuity payments  
24 when the recipient has requested the payor to withhold from such  
25 payments, or (d) payments to independent contractors.

26 Sec. 10. This act becomes operative on January 1, 2010.

27 Sec. 11. Original sections 48-2101, 48-2105, and

1 77-373.01, Reissue Revised Statutes of Nebraska, and sections  
2 48-2103, 48-2104, 48-2107, 48-2115, and 77-2753, Revised Statutes  
3 Cumulative Supplement, 2008, are repealed.

4           Sec. 12. The following sections are outright repealed:  
5 Sections 77-3103, 77-3107, 77-3108, 77-3109, 77-3110, 77-3111,  
6 and 77-3112, Reissue Revised Statutes of Nebraska, and sections  
7 77-3101, 77-3102, 77-3104, 77-3105, and 77-3106, Revised Statutes  
8 Cumulative Supplement, 2008.

9           2. On page 1, line 9, strike "77-3101,"; and in line 11  
10 after "sections" insert "77-3101,".