

E AND R AMENDMENTS TO LB 552

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. Sections 1 to 10 of this act shall be known
4 and may be cited as the Nebraska Construction Prompt Pay Act.

5 Sec. 2. For purposes of the Nebraska Construction Prompt
6 Pay Act:

7 (1) Contractor includes individuals, firms, partnerships,
8 limited liability companies, corporations, or other associations of
9 persons engaged in the business of the construction, alteration,
10 repairing, dismantling, or demolition of buildings, roads, bridges,
11 viaducts, sewers, water and gas mains, streets, disposal plants,
12 water filters, tanks and towers, airports, dams, levees and canals,
13 water wells, pipelines, transmission and power lines, and every
14 other type of structure, project, development, or improvement
15 coming within the definition of real property and personal
16 property, including such construction, repairing, or alteration
17 of such property to be held either for sale or rental. Contractor
18 also includes any subcontractor engaged in the business of such
19 activities and any person who is providing or arranging for labor
20 for such activities, either as an employee or as an independent
21 contractor, for any contractor or person;

22 (2) Owner means a person (a) who has an interest in any
23 real property improved, (b) for whom an improvement is made, or

1 (c) who contracted for an improvement to be made. Owner includes
2 a person, an entity, or any political subdivision of this state.
3 Owner does not include the State of Nebraska;

4 (3) Owner's representative means an architect, an
5 engineer, or a construction manager in charge of a project for
6 the owner or such other contract representative or officer as
7 designated in the contract document as the party representing the
8 owner's interest regarding administration and oversight of the
9 project;

10 (4) Real property means real estate that is improved,
11 including private and public land, and leaseholds, tenements, and
12 improvements placed on the real property;

13 (5) Receipt means actual receipt of cash or funds by the
14 contractor or subcontractor; and

15 (6) Subcontractor means a person or an entity that has
16 contracted to furnish labor or materials to, or performed labor or
17 supplied materials for, a contractor or another subcontractor in
18 connection with a contract to improve real property. Subcontractor
19 includes materialmen and suppliers.

20 Sec. 3. (1) When a contractor has performed work in
21 accordance with the provisions of a contract with an owner, the
22 owner shall pay the contractor within forty-five days after receipt
23 by the owner or the owner's representative of a payment request
24 made pursuant to the contract.

25 (2) When a subcontractor has performed work in accordance
26 with the provisions of a subcontract and all conditions precedent
27 to payment contained in the subcontract have been satisfied, the

1 contractor shall pay the subcontractor and the subcontractor shall
2 pay his, her, or its subcontractor, within ten days after receipt
3 by the contractor or subcontractor of each periodic or final
4 payment, the full amount received for the subcontractor's work
5 and materials based on work completed or service provided under
6 the subcontract for which the subcontractor has properly requested
7 payment, if the subcontractor provides or has provided satisfactory
8 and reasonable assurances of continued performance and financial
9 responsibility to complete the work.

10 Sec. 4. When work has been performed pursuant to a
11 contract, a party may only withhold payment:

12 (1) For retainage, in an amount not to exceed the
13 amount specified in the contract, if applicable, until the work is
14 substantially complete;

15 (2) Of a reasonable amount, to the extent that such
16 withholding is allowed in the contract, for any of the following
17 reasons:

18 (a) Reasonable evidence showing that the contractual
19 completion date will not be met due to unsatisfactory job progress;

20 (b) Third-party claims filed or reasonable evidence that
21 such a claim will be filed with respect to work under the contract;
22 or

23 (c) Failure of the contractor to make timely payments for
24 labor, equipment, subcontractors, or materials; or

25 (3) After substantial completion, in an amount not to
26 exceed one hundred twenty-five percent of the estimated cost to
27 complete the work remaining on the contract.

1 Sec. 5. Except as provided in section 4 of this act, if
2 a periodic or final payment to (1) a contractor is delayed by more
3 than forty-five days after receipt of a properly submitted periodic
4 or final payment request by the owner or owner's representative
5 or (2) a subcontractor is delayed by more than ten days after
6 receipt of a periodic or final payment by the contractor or
7 subcontractor, then the remitting party shall pay the contractor or
8 subcontractor interest due until such amount is paid, beginning on
9 the day following the payment due date at the rate of one percent
10 per month or a pro rata fraction thereof on the unpaid balance.
11 Interest is due under this section only after the person charged
12 the interest has been notified of the provisions of this section
13 by the contractor or subcontractor. Acceptance of progress payments
14 or a final payment shall release all claims for interest on such
15 payments.

16 Sec. 6. The Nebraska Construction Prompt Pay Act shall
17 not modify the remedies available to any person under the terms of
18 a contract in existence prior to the operative date of this act or
19 by any other statute.

20 Sec. 7. The Nebraska Construction Prompt Pay Act does not
21 apply to improvements to real property intended for residential
22 purposes when the residence consists of no more than four
23 residential units.

24 Sec. 8. The Nebraska Construction Prompt Pay Act applies
25 to contracts or subcontracts entered into on or after October 1,
26 2010.

27 Sec. 9. The following provisions in any contract or

1 subcontract for construction work performed within the State of
2 Nebraska shall be against public policy and shall be void and
3 unenforceable:

4 (1) A provision that purports to waive, release, or
5 extinguish rights to file a claim against a payment or performance
6 bond, except that a contract or subcontract may require a
7 contractor or subcontractor to provide a waiver or release of
8 such rights as a condition for payment, but only to the extent of
9 the amount of the payment received;

10 (2) A provision that purports to make any state law other
11 than that of Nebraska applicable to or governing any contract for
12 construction within the state; or

13 (3) A provision that purports to require that the venue
14 for a court or arbitration hearing be held at any location outside
15 of the state.

16 Sec. 10. (1) Any liquidated or unliquidated claim against
17 any political subdivision of this state arising from construction
18 performed for such political subdivision shall: (a) Be presented
19 in writing to the individual or officer as set forth in subsection
20 (2) of this section; (b) state the name of the claimant and the
21 amount of the claim; and (c) identify the item or service for which
22 payment is claimed or the time, place, nature, and circumstance
23 giving rise to the claim. All claims shall be filed within one
24 hundred eighty days after the date of substantial completion of the
25 construction project.

26 (2) A construction contract entered into by any political
27 subdivision of this state may provide the name and location of

1 the office in which a claim under this section may be filed. In
2 the absence of such provision, a written claim shall be filed as
3 follows:

4 (a) Claims against a city of the metropolitan, primary,
5 first, or second class shall be filed with the appropriate city
6 clerk;

7 (b) Claims against a village shall be filed with the
8 village clerk;

9 (c) Claims against a county shall be filed with the
10 county clerk; and

11 (d) Claims against any other political subdivision shall
12 be filed with the person who executed the contract on behalf of the
13 political subdivision or that person's successor in office.

14 (3) The applicable political subdivision shall issue a
15 decision on the claim within ninety days after receipt thereof.
16 If no decision has been issued after such period, the claim shall
17 be deemed to be denied in whole and the claimant may commence an
18 action in accordance with subsection (4) of this section.

19 (4) If a claim is denied in whole or in part, a claimant
20 may bring a civil action on the claim. An action under this
21 subsection may only be brought within two years after the denial of
22 the claim or the date upon which the claim is deemed to be denied.
23 Any such action shall be in the nature of an original action and
24 not an appeal and shall be commenced in the district court of
25 the county in which the construction project at issue was located.
26 Either party may appeal from the decision of the district court.

27 (5) Notwithstanding any other provision of law in

1 Chapters 13, 14, 15, 16, 17, 23, and 81, claims against a political
2 subdivision of this state arising from construction performed for
3 such political subdivision shall be governed by this section.

4 Sec. 11. This act becomes operative on October 1, 2010.

5 2. On page 1, strike beginning with "amend" in line 1
6 through line 5 and insert "adopt the Nebraska Construction Prompt
7 Pay Act; and to provide an operative date."