

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB552

Hearing Date: Monday March 02, 2009
Committee On: Business and Labor
Introducer: White
One Liner: Adopt the Nebraska Construction Prompt Pay Act

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye: 7 Senators Carlson, Council, Lathrop, McGill, Schilz, Wallman, White
Nay:
Absent:
Present Not Voting:

Proponents:

Senator Tom White
James Overcash
Paul Heiman

Representing:

Introducer
AGC Building NECA
HG Electric Inc.

Opponents:

Jeffrey Silver

Representing:

Nebraska Association of Commercial Property Owners

Neutral:

Mary Campbell

Representing:

Lincoln Public Schools

Summary of purpose and/or changes:

Adopts the Construction Prompt Pay Act. LB 552 addresses the problem of delinquent payment to contractors which in turn negatively affects payment to subcontractors. LB 552 requires payment within 30 days of a request for payment. Likewise, subcontractors must be paid within 10 days of receipt of payment.

Section 1 titles the Construction Prompt Pay Act.

Section 2 defines for purposes of the act, contractor, owner, owner's representative, real property, receipt and subcontractor.

Section 3 provides timelines for payment: the owner must pay the contractor within 30 days of receipt of a payment request and requires contractors and subcontractors to make payment to their subcontractors within 10 days of receipt of payment.

Section 4 provides that payment may be withheld for: (1) retainage in an amount not exceed the amount specified in the contract, until the work is substantially complete; (2) a reasonable amount if the completion date will not be met due unsatisfactory job progress, the filing or likely filing of a third-party claim or contractor failure to make timely payments to his/her subcontractors; (3) after substantial completion an amount not to exceed one hundred twenty-five percent of the estimated cost to complete the remaining work.

Section 5 provides for interest penalties of 1% per month or a pro rata fraction thereof on the unpaid balance.

Section 6 clarifies that the act does not modify any existing remedies.

Section 7 exempts from the act, improvements to real property used as residential property with no more than 4 residential units.

Section 8 sets an operative date for contracts entered into after October 1, 2009.

Section 9 makes void and against public policy contractual language that: waives or releases the right to file a claim against a payment or performance bond, choice of law provisions stating a state other than Nebraska as controlling law, venue provisions indicating a venue outside of Nebraska.

Section 10 sets guidelines for filing claims against the state or a political subdivision. Provides that claims must be in writing and filed within 180 days after the date of substantial completion. Directs the state or political subdivision to issue a decision on the claim within 30 days of receipt. Presumes that the claim is denied if no decision is entered. If the claim is denied, the aggrieved party may bring a civil action within 2 years after denial.

Section 11 makes technical changes to Neb. Rev. Stat. 81-2407.

Section 12 sets operative date of October 1, 2009.

Section 13 repealer.

Steve Lathrop, Chairperson