

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 162

FINAL READING

Introduced by Cornett, 45.

Read first time January 12, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to contractors; to amend sections 48-2101,
2 48-2105, and 77-373.01, Reissue Revised Statutes of
3 Nebraska, and sections 48-2103, 48-2104, 48-2107,
4 48-2115, and 77-2753, Revised Statutes Cumulative
5 Supplement, 2008; to change and eliminate provisions
6 relating to the Contractor Registration Act, registration
7 by nonresident contractors, and income tax withholding
8 by contractors; to provide an operative date; to repeal
9 the original sections; and to outright repeal sections
10 77-3103, 77-3107, 77-3108, 77-3109, 77-3110, 77-3111,
11 and 77-3112, Reissue Revised Statutes of Nebraska, and
12 sections 77-3101, 77-3102, 77-3104, 77-3105, and 77-3106,
13 Revised Statutes Cumulative Supplement, 2008.

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1 Be it enacted by the people of the State of Nebraska,

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

3 48-2101 Sections 48-2101 to 48-2116 and section 6 of this
4 act shall be known and may be cited as the Contractor Registration
5 Act.

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

8 48-2103 For purposes of the Contractor Registration Act:

9 (1) Commissioner means the Commissioner of Labor;

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

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

22 (3) Contractor means an individual, firm, partnership,
23 limited liability company, corporation, or other association of
24 persons engaged in the business of the construction, alteration,
25 repairing, dismantling, or demolition of buildings, roads, bridges,

1 viaducts, sewers, water and gas mains, streets, disposal plants,
2 water filters, tanks and towers, airports, dams, levees and
3 canals, water wells, pipelines, transmission and power lines,
4 and every other type of structure, project, development, or
5 improvement within the definition of real property and personal
6 property, including such construction, repairing, or alteration of
7 such property to be held either for sale or rental. Contractor
8 also includes any subcontractor engaged in the business of such
9 activities and any person who is providing or arranging for labor
10 for such activities, either as an employee or as an independent
11 contractor, for any contractor or person;

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

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

18 ~~(5)~~ (6) Working days means Mondays through Fridays but
19 does not include Saturdays, Sundays, or federal or state holidays.
20 In computing fifteen working days, the day of receipt of any notice
21 is not included and the last day of the fifteen working days is
22 included.

23 Sec. 3. Section 48-2104, Revised Statutes Cumulative
24 Supplement, 2008, is amended to read:

25 48-2104 (1) Before performing any construction work in

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

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

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

14 48-2105 Each contractor shall apply to the department
15 for a registration number on an application form provided by
16 the department. The application shall contain the following
17 information:

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

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

1 contractor is not required to carry workers' compensation insurance
2 pursuant to the Nebraska Workers' Compensation Act; and

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

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

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

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

22 ~~(2)~~ A contractor shall not be required to pay the fee if
23 the application contains an affidavit which shows the contractor
24 is self-employed and does not pay more than three thousand dollars
25 annually to employ other persons in the business. The affidavit

1 shall contain ~~(a)~~ a statement that the contractor is self-employed
2 and ~~(b)~~ a list of all employees employed on the date of the
3 application and in the twelve-month period prior to such date and
4 the dates of employment for each employee. At any time that a
5 contractor no longer qualifies for exemption from the fee, the fee
6 shall be paid to the department.

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

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

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

6 (2) Any contractor that fails to comply with the
7 requirements of the Contractor Registration Act or Nebraska Revenue
8 Act of 1967 shall be removed from the data base.

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

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

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

23 77-373.01 (1) The ~~By January 1, 1999,~~ the Department of
24 Labor and the Department of Revenue shall use the codes under the
25 North American ~~Industrial~~ Industry Classification System for the

1 compilation and publication of statistics rather than codes under
2 the Standard Industrial Classification System.

3 For the sole purpose of determining or updating the
4 proper code under the appropriate industrial classification system,
5 the Department of Labor and the Department of Revenue may disclose
6 to the other department identification information about taxpayers
7 conducting a business in this state. The information disclosed
8 shall be strictly limited to the name, address, and federal
9 employer identification number or numbers of the taxpayer and the
10 code under the industrial classification system.

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

20 (3) The disclosure disclosures allowed under this section
21 may be made notwithstanding any other provision of law of this
22 state regarding disclosure of information by either department.
23 Any information received by either department under this section
24 shall be considered confidential by the receiving department,
25 and any employee who discloses such information other than as

1 specifically allowed by this section or other laws of this state
2 shall be subject to the penalties normally imposed on employees who
3 improperly disclose information.

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

6 77-2753 (1)(a) Every employer and payor maintaining an
7 office or transacting business within this state and making payment
8 of any wages or other payments as defined in subsection (6) of this
9 section which are taxable under the Nebraska Revenue Act of 1967
10 to any individual shall deduct and withhold from such wages for
11 each payroll period and from such payments a tax computed in such
12 manner as to result, so far as practicable, in withholding from
13 the employee's wages and payments to the payee during each calendar
14 year an amount substantially equivalent to the tax reasonably
15 estimated to be due from the employee or payee under such act
16 with respect to the amount of such wages and payments included in
17 his or her taxable income during the calendar year. The method of
18 determining the amount to be withheld shall be prescribed by rules
19 and regulations of the Tax Commissioner. Such rules and regulations
20 may allow withholding to be computed at a percentage of the
21 federal withholding or at a comparable flat percentage for gambling
22 winnings or supplemental payments, including bonuses, commissions,
23 overtime pay, and sales awards which are not paid at the same
24 time as other wages, or payments to independent contractors. Any
25 withholding tables prescribed by the Tax Commissioner shall be

1 provided to the budget division of the Department of Administrative
2 Services and the Legislative Fiscal Analyst for review at least
3 sixty days before the tables become effective.

4 (b) Notwithstanding the amount of federal withholding or
5 the rules and regulations of the Department of Revenue determining
6 the amount of withholding, every employer and payor employing
7 twenty-five or more employees shall withhold at least one and
8 one-half percent of the gross wages minus tax qualified deductions
9 of each employee unless the employee provides satisfactory evidence
10 that a lesser amount of withholding is justified in the employee's
11 particular circumstances. Such satisfactory evidence may include
12 birth certificates or social security information for dependents
13 or other evidence that reasonably assures the employer that the
14 employee is not improperly or fraudulently evading or defeating the
15 income tax by reducing or eliminating withholding.

16 (2) (a) Every payor who is either (i) making a payment or
17 payments in excess of five thousand dollars or (ii) maintaining
18 an office or transacting business within this state and making
19 a payment or payments related to such business in excess of six
20 hundred dollars, and such payment or payments are for personal
21 services performed or to be performed substantially within this
22 state, to a nonresident individual, other than an employee, who
23 is not subject to withholding on such payment under the Internal
24 Revenue Code or a corporation, partnership, or limited liability
25 company described in subdivision (c) of this subsection, shall

1 be deemed an employer, and the individual performing the personal
2 services shall be deemed an employee for the purposes of this
3 section. The payor shall deduct and withhold from such payments
4 the percentage of such payments prescribed in subdivision (b) of
5 this subsection. If the individual performing the personal services
6 provides the payor with a statement of the expenses reasonably
7 related to the personal services, the total payment or payments may
8 be reduced by the total expenses before computing the amount to
9 deduct and withhold, except that such reduction shall not be more
10 than fifty percent of such payment or payments.

11 (b) For any payment or payments for the same service,
12 award, or purse that totals less than twenty-eight thousand
13 dollars, the percentage deducted from such payment or payments
14 pursuant to this subsection shall be four percent, and for all
15 other payments, the percentage shall be six percent.

16 (c) For any corporation, partnership, or limited
17 liability company that receives compensation for personal services
18 in this state and of which all or substantially all of the
19 shareholders, partners, or members are the individuals performing
20 the personal services, including, but not limited to, individual
21 athletes, entertainers, performers, or public speakers performing
22 such personal services, such compensation shall be deemed wages of
23 the individuals performing the personal services and subject to
24 the income tax imposed on individuals by the Nebraska Revenue Act
25 of 1967.

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

8 (3)(a) Every contractor who is maintaining an office
9 or transacting business within this state and making a payment
10 or payments related to such business in excess of six hundred
11 dollars, and such payment or payments are for construction services
12 performed within this state, to any contractor or any person that
13 is not an employee for construction services performed within this
14 state shall deduct and withhold five percent of such payments.

15 (b) The withholding required by this subsection shall
16 not apply to any payment made to (i) a person that provides the
17 payor with a statement that the income earned is not subject to
18 tax because of a treaty obligation of the United States, (ii)
19 a contractor if such a payment or payments does not exceed six
20 hundred dollars, or (iii) ~~or~~ (ii) a contractor when the payor
21 contractor determines that the payee contractor is in the data base
22 required by ~~this subsection.~~ section 6 of this act.

23 ~~(c) The Department of Revenue shall create a data base of~~
24 ~~contractors who are licensed, granted a permit, or registered under~~
25 ~~the Nebraska Revenue Act of 1967 or under section 77-3102. The data~~

1 ~~base shall be accessible on the web site of the department.~~

2 ~~(d)~~ (c) Any contractor who determines that a contractor
3 is in the data base is relieved from liability for withholding
4 under ~~either~~ this subsection ~~or section 77-3106~~ for any future
5 payments on a contract in existence at the time the determination
6 is made or made during the same calendar year as such determination
7 is made.

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

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

12 (i) Construction services means services that are
13 provided as a contractor; and

14 (ii) Contractor has the same meaning as in section
15 ~~77-3101.~~ 48-2103.

16 (4) The Tax Commissioner may enter into agreements with
17 the tax departments of other states, which require income tax to
18 be withheld from the payment of wages, salaries, and such other
19 payments, so as to govern the amounts to be withheld from the wages
20 and salaries of and other payments to residents of such states.
21 Such agreements may provide for recognition of anticipated tax
22 credits in determining the amounts to be withheld and, under rules
23 and regulations adopted and promulgated by the Tax Commissioner,
24 may relieve employers and payors in this state from withholding
25 income tax on wages, salaries, and such other payments paid

1 to nonresident employees and payees. The agreements authorized
2 by this subsection shall be subject to the condition that the
3 tax department of such other states grant similar treatment to
4 residents of this state.

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

12 (6) Wages and other payments subject to withholding shall
13 mean payments that are subject to withholding under the Internal
14 Revenue Code of 1986 and are (a) payments made by employers to
15 employees, except such payments subject to 26 U.S.C. 3406, (b)
16 payments of gambling winnings, (c) pension or annuity payments
17 when the recipient has requested the payor to withhold from such
18 payments, or (d) payments to independent contractors.

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

20 Sec. 11. Original sections 48-2101, 48-2105, and
21 77-373.01, Reissue Revised Statutes of Nebraska, and sections
22 48-2103, 48-2104, 48-2107, 48-2115, and 77-2753, Revised Statutes
23 Cumulative Supplement, 2008, are repealed.

24 Sec. 12. The following sections are outright repealed:
25 Sections 77-3103, 77-3107, 77-3108, 77-3109, 77-3110, 77-3111,

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1 and 77-3112, Reissue Revised Statutes of Nebraska, and sections
2 77-3101, 77-3102, 77-3104, 77-3105, and 77-3106, Revised Statutes
3 Cumulative Supplement, 2008.