

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 162**

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 and income  
7 tax withholding by contractors; to provide an operative  
8 date; to repeal the original sections; and to outright  
9 repeal sections 77-3101, 77-3103, 77-3107, 77-3108,  
10 77-3109, 77-3110, 77-3111, and 77-3112, Reissue Revised  
11 Statutes of Nebraska, and sections 77-3102, 77-3104,  
12 77-3105, and 77-3106, Revised Statutes Cumulative  
13 Supplement, 2008.

14 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 is not a contractor for  
6 purposes of the Contractor Registration Act.

7 (2) Any person who earns less than five thousand dollars  
8 annually for construction services is exempt from the requirements  
9 under the act.

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

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

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

19 (1) The name and federal employer identification number,  
20 or 7 if the applicant is an individual, the social security number  
21 of the contractor;

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

1 of the contractor's registered agent in Nebraska;

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

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

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

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

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

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

20 ~~(6)~~ (7) Proof of (a) a certificate or policy of insurance  
21 written by an insurance carrier duly authorized to do business  
22 in this state which gives the effective dates of workers'  
23 compensation insurance coverage indicating that it is in force,  
24 (b) a certificate evidencing approval of self-insurance privileges  
25 as provided by the Nebraska Workers' Compensation Court pursuant

1 to section 48-145, or (c) a signed statement indicating that the  
2 contractor is not required to carry workers' compensation insurance  
3 pursuant to the Nebraska Workers' Compensation Act; and

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

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

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

11 48-2107 (1) Each application or renewal under section  
12 48-2105 shall be accompanied by a fee of forty dollars. The fee  
13 shall not be required when an amendment to an application is  
14 submitted. The commissioner shall remit the fees collected under  
15 this subsection to the State Treasurer for credit to the Contractor  
16 Registration Cash Fund.

17 (2) A contractor shall not be required to pay the fee if  
18 the application contains an affidavit which shows the contractor  
19 is self-employed and does not pay more than three thousand dollars  
20 annually to employ other persons in the business. ~~The affidavit~~  
21 ~~shall contain (a) a statement that the contractor is self-employed~~  
22 ~~and (b) a list of all employees employed on the date of the~~  
23 ~~application and in the twelve-month period prior to such date and~~  
24 ~~the dates of employment for each employee.~~ At any time that a  
25 contractor no longer qualifies for exemption from the fee, the fee

1 shall be paid to the department.

2 (3) The commissioner shall charge an additional fee  
3 of twenty-five dollars for the registration of each nonresident  
4 contractor and a fee of twenty-five dollars for the registration  
5 of each contract to which a nonresident contractor is a party if  
6 the total contract price or compensation to be received is more  
7 than ten thousand dollars. The commissioner shall remit the fees  
8 collected under this subsection to the State Treasurer for credit  
9 to the General Fund.

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

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

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

20 48-2115 There is hereby created the Contractor  
21 Registration Cash Fund to be administered by the department and  
22 used to enforce the Contractor Registration Act. The fund shall  
23 consist of such sums as are appropriated to it by the Legislature  
24 and any fees collected in the administration of the act that are to  
25 be credited to the fund. All funds collected shall be remitted to

1 ~~the State Treasurer for credit to the fund.~~ Any money in the fund  
2 available for investment shall be invested by the state investment  
3 officer pursuant to the Nebraska Capital Expansion Act and the  
4 Nebraska State Funds Investment Act.

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

7           77-373.01 (1) The ~~By January 1, 1999,~~ the Department of  
8 Labor and the Department of Revenue shall use the codes under the  
9 North American Industrial Classification System for the compilation  
10 and publication of statistics rather than codes under the Standard  
11 Industrial Classification System.

12           For the sole purpose of determining or updating the  
13 proper code under the appropriate industrial classification system,  
14 the Department of Labor and the Department of Revenue may disclose  
15 to the other department identification information about taxpayers  
16 conducting a business in this state. The information disclosed  
17 shall be strictly limited to the name, address, and federal  
18 employer identification number or numbers of the taxpayer and the  
19 code under the industrial classification system.

20           (2) Notwithstanding sections 77-2711 and 77-27,119  
21 and for the sole purpose of administration of the Contractor  
22 Registration Act and the contractor data base provisions of  
23 section 6 of this act, the Department of Labor and the Department  
24 of Revenue may disclose to the other department identification  
25 information about taxpayers conducting a business in this state.



1 The information disclosed shall be limited to the name, address,  
2 and federal employer identification number or numbers of the  
3 taxpayer.

4         (3) The disclosure disclosures allowed under this section  
5 may be made notwithstanding any other provision of law of this  
6 state regarding disclosure of information by either department.  
7 Any information received by either department under this section  
8 shall be considered confidential by the receiving department,  
9 and any employee who discloses such information other than as  
10 specifically allowed by this section or other laws of this state  
11 shall be subject to the penalties normally imposed on employees who  
12 improperly disclose information.

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

15         77-2753 (1)(a) Every employer and payor maintaining an  
16 office or transacting business within this state and making payment  
17 of any wages or other payments as defined in subsection (6) of this  
18 section which are taxable under the Nebraska Revenue Act of 1967  
19 to any individual shall deduct and withhold from such wages for  
20 each payroll period and from such payments a tax computed in such  
21 manner as to result, so far as practicable, in withholding from  
22 the employee's wages and payments to the payee during each calendar  
23 year an amount substantially equivalent to the tax reasonably  
24 estimated to be due from the employee or payee under such act  
25 with respect to the amount of such wages and payments included in

1 his or her taxable income during the calendar year. The method of  
2 determining the amount to be withheld shall be prescribed by rules  
3 and regulations of the Tax Commissioner. Such rules and regulations  
4 may allow withholding to be computed at a percentage of the  
5 federal withholding or at a comparable flat percentage for gambling  
6 winnings or supplemental payments, including bonuses, commissions,  
7 overtime pay, and sales awards which are not paid at the same  
8 time as other wages, or payments to independent contractors. Any  
9 withholding tables prescribed by the Tax Commissioner shall be  
10 provided to the budget division of the Department of Administrative  
11 Services and the Legislative Fiscal Analyst for review at least  
12 sixty days before the tables become effective.

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

25 (2) (a) Every payor who is either (i) making a payment or

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

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

25 (c) For any corporation, partnership, or limited

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

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

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

24 (b) The withholding required by this subsection shall  
25 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

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

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

21 (6) Wages and other payments subject to withholding shall  
22 mean payments that are subject to withholding under the Internal  
23 Revenue Code of 1986 and are (a) payments made by employers to  
24 employees, except such payments subject to 26 U.S.C. 3406, (b)  
25 payments of gambling winnings, (c) pension or annuity payments

1 when the recipient has requested the payor to withhold from such  
2 payments, or (d) payments to independent contractors.

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

4 Sec. 11. Original sections 48-2101, 48-2105, and  
5 77-373.01, Reissue Revised Statutes of Nebraska, and sections  
6 48-2103, 48-2104, 48-2107, 48-2115, and 77-2753, Revised Statutes  
7 Cumulative Supplement, 2008, are repealed.

8 Sec. 12. The following sections are outright repealed:  
9 Sections 77-3101, 77-3103, 77-3107, 77-3108, 77-3109, 77-3110,  
10 77-3111, and 77-3112, Reissue Revised Statutes of Nebraska, and  
11 sections 77-3102, 77-3104, 77-3105, and 77-3106, Revised Statutes  
12 Cumulative Supplement, 2008.