

ONE HUNDRED THIRD LEGISLATURE - FIRST SESSION - 2013
COMMITTEE STATEMENT
LB373

Hearing Date: Monday February 11, 2013
Committee On: Business and Labor
Introducer: Mello
One Liner: Change Nebraska Construction Prompt Pay Act provisions

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 6 Senators Ashford, Hansen, Harr, McGill, Wallman, Lathrop
Nay:
Absent: 1 Senator Chambers
Present Not Voting:

Proponents:

Heath Mello
Chris Callahan
Bob Phillips
Brian Allison
Marsha Babcock
Paul Scheel

Representing:

Introducer
Lincoln Electrical Standards Group
Commonwealth Electric
Sentry Electric
Mechanical Contractors Association of Omaha
Hy Electric

Opponents:

James Overcash
Justin Brady

Jim Christo
Curtis Smith
Fred Hoppe
Mike Binker
Matthew Schaefer

Representing:

Association of General Contractors
Home Builders Association of Lincoln and Metro Omaha
Home Builders
Christo Design Build
Association for Contractors, Nebraska Chapter
Metro Omaha and Lincoln Home Builders
Home Builders Association of Lincoln
Eastern Nebraska Development Council

Neutral:

Representing:

Summary of purpose and/or changes:

LB 373 amends the Nebraska Construction Prompt Pay Act. The Act was passed in 2010 and addressed the problem of delinquent payments to contractors, which in turn negatively affects payment to subcontractors. The Act requires payment within 30 days of a request for payment. Likewise, subcontractors must be paid within 10 days of receipt of payment. Nonpayment or untimely payment results in a 1% per month penalty. The Act also provides that money may be withheld for retainage as specified in the contract and after substantial completion, an amount not to exceed 125% of the estimated cost to complete the work.

LB 373 defines substantially complete. LB 373 directs that proceeds intended for subcontractor payment be placed in a trust account and that failure to pay the subcontractors results in violation of §52-123 (Class II Misdemeanor for failure to apply proceeds for lawful claims). LB 373 limits retainage amounts to 5% of the contract price. LB 373 also allows for

attorney fees and costs to the prevailing party in a lawsuit and outright repeals §45-1207 which exempted residential units with 4 or less units.

Explanation of amendments:

AM 1550 reinstates the residential unit exemption. AM 1550 additionally removes the trust account and penalty provisions. The definition of 'substantially complete' is amended to reflect the definition used by the American Institute of Architects. Retainage is capped at 10% and once the project is 50% complete, retainage is capped at 5%. The owner or owner's representative must pay the retainage to the contractor within 45 days of substantial completion; the contractor must then pay the subcontractor(s) within 10 days of receipt. As to attorney fees, the plaintiff may receive attorney fees and costs if awarded damages.

Steve Lathrop, Chairperson