

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 373

Introduced by Mello, 5; Lathrop, 12.

Read first time January 18, 2013

Committee:

A BILL

1 FOR AN ACT relating to contractors; to amend sections 45-1201,
2 45-1202, 45-1203, and 45-1204, Reissue Revised Statutes
3 of Nebraska; to change and eliminate provisions of the
4 Nebraska Construction Prompt Pay Act; to repeal the
5 original sections; and to outright repeal section
6 45-1207, Reissue Revised Statutes of Nebraska.

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

1 Section 1. Section 45-1201, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 45-1201 Sections 45-1201 to 45-1210 and section 5 of this
4 act shall be known and may be cited as the Nebraska Construction
5 Prompt Pay Act.

6 Sec. 2. Section 45-1202, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 45-1202 For purposes of the Nebraska Construction Prompt
9 Pay Act:

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

25 (2) Owner means a person (a) who has an interest in any

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

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

20 (7) Substantially complete means the state of a
21 construction project when the project, or a designated portion
22 thereof, is sufficiently complete in accordance with the contract to
23 be used for its intended purpose.

24 Sec. 3. Section 45-1203, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 45-1203 (1) When a contractor has performed work in
2 accordance with the provisions of a contract with an owner, the owner
3 shall pay the contractor within thirty days after receipt by the
4 owner or the owner's representative of a payment request made
5 pursuant to the contract.

6 (2) When a subcontractor has performed work in accordance
7 with the provisions of a subcontract and all conditions precedent to
8 payment contained in the subcontract have been satisfied, the
9 contractor shall pay the subcontractor and the subcontractor shall
10 pay his, her, or its subcontractor, within ten days after receipt by
11 the contractor or subcontractor of each periodic or final payment,
12 the full amount received for the subcontractor's work and materials
13 based on work completed or service provided under the subcontract for
14 which the subcontractor has properly requested payment, if the
15 subcontractor provides or has provided satisfactory and reasonable
16 assurances of continued performance and financial responsibility to
17 complete the work.

18 (3) A contractor shall place any proceeds intended for
19 the payment of subcontractors in a separate trust account. Failure to
20 place such proceeds in a trust account or failure to pay
21 subcontractors with such proceeds in accordance with subsection (2)
22 of this section shall be deemed a violation of section 52-123,
23 punishable under section 52-124.

24 Sec. 4. Section 45-1204, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 45-1204 When work has been performed pursuant to a
2 contract, a party may only withhold payment:

3 (1) For retainage, in an amount not to exceed the amount
4 specified in the contract, if applicable, until the work is
5 substantially complete. The retainage amount specified in the
6 contract cannot be greater than five percent of the total contracted
7 improvement cost;

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

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

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

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

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

21 Sec. 5. A contractor, owner, or subcontractor may bring
22 an action to recover any damages caused to such person by a violation
23 of the act. The court shall award the prevailing party the amount of
24 any pecuniary loss, together with reasonable attorney's fees and
25 costs, and any equitable relief that the court determines is

1 appropriate.

2 Sec. 6. Original sections 45-1201, 45-1202, 45-1203, and
3 45-1204, Reissue Revised Statutes of Nebraska, are repealed.

4 Sec. 7. The following section is outright repealed:
5 Section 45-1207, Reissue Revised Statutes of Nebraska.