

AMENDMENTS TO LB 373

Introduced by Business and Labor

1           1. Strike the original sections and insert the following  
2 new sections:

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

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

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

10           45-1202 For purposes of the Nebraska Construction Prompt  
11 Pay Act:

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

1 activities and any person who is providing or arranging for labor  
2 for such activities, either as an employee or as an independent  
3 contractor, for any contractor or person;

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

9 (3) Owner's representative means an architect, an  
10 engineer, or a construction manager in charge of a project for  
11 the owner or such other contract representative or officer as  
12 designated in the contract document as the party representing the  
13 owner's interest regarding administration and oversight of the  
14 project;

15 (4) Real property means real estate that is improved,  
16 including private and public land, and leaseholds, tenements, and  
17 improvements placed on the real property;

18 (5) Receipt means actual receipt of cash or funds by the  
19 contractor or subcontractor; ~~and~~

20 (6) Subcontractor means a person or an entity that has  
21 contracted to furnish labor or materials to, or performed labor or  
22 supplied materials for, a contractor or another subcontractor in  
23 connection with a contract to improve real property. Subcontractor  
24 includes materialmen and suppliers; ~~and-~~

25 (7) Substantially complete means the stage of a  
26 construction project when the project, or a designated portion  
27 thereof, is sufficiently complete in accordance with the contract

1 so that the owner can occupy or utilize the project for its  
2 intended use.

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

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

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

22           (3) The owner or the owner's representative shall release  
23 and pay all retainage for work completed in accordance with  
24 the provisions of the contract within forty-five days after  
25 the project, or a designated portion thereof, is substantially  
26 complete. When a subcontractor has performed work in accordance  
27 with the provisions of a subcontract and all conditions precedent

1 to payment contained in the subcontract have been satisfied, the  
2 contractor shall pay all retainage due such subcontractor within  
3 ten days after receipt of the retainage.

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

6 45-1204 When work has been performed pursuant to a  
7 contract, a party may only withhold payment:

8 ~~(1) For retainage, in an amount not to exceed the~~  
9 ~~amount specified in the contract, if applicable, until the work is~~  
10 ~~substantially complete;~~

11 (1) For retainage by any owner, contractor, or  
12 subcontractor, in an amount not to exceed the amount specified  
13 in the applicable contract, which shall not exceed a rate of ten  
14 percent. If the scope of work for the contractor or subcontractor  
15 from which retainage is withheld is fifty percent complete and if  
16 the contractor or subcontractor has performed work in accordance  
17 with the provisions in the applicable contract, no more than  
18 five percent of any additional progress payment may be withheld  
19 as retainage if the contractor or subcontractor provides or  
20 has provided satisfactory and reasonable assurances of continued  
21 performance and financial responsibility to complete the work;

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

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

27 (b) Third-party claims filed or reasonable evidence that

1 such a claim will be filed with respect to work under the contract;  
2 or

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

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

8 Sec. 5. Any individual, partnership, firm, limited  
9 liability company, corporation, or company may bring an action to  
10 recover any damages caused to such person or entity by a violation  
11 of the Nebraska Construction Prompt Pay Act. In addition to an  
12 award of damages, the court may award a plaintiff reasonable  
13 attorney's fees and costs as the court determines is appropriate.

14 Sec. 6. Original sections 45-1201, 45-1202, 45-1203, and  
15 45-1204, Reissue Revised Statutes of Nebraska, are repealed.