

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1001

FINAL READING

(SECOND)

Introduced by White, 8; Howard, 9.

Read first time January 16, 2008

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
2 77-3104, 77-3105, and 77-3106, Reissue Revised Statutes
3 of Nebraska, and sections 77-2753 and 77-3102, Revised
4 Statutes Supplement, 2007; to adopt the Low-Income Home
5 Energy Conservation Act; to change provisions relating
6 to income tax withholding; to harmonize provisions; to
7 provide an operative date; and to repeal the original
8 sections.

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

1 Section 1. Sections 1 to 8 of this act shall be known and
2 may be cited as the Low-Income Home Energy Conservation Act.

3 Sec. 2. The Legislature finds and declares that:

4 (1) Many residents of this state find it difficult to pay
5 for the cost of heating, cooling, and lighting their homes;

6 (2) Energy conservation helps to maintain affordable
7 energy bills, reduces the amount of money spent on imported energy
8 sources, lessens the need for new power plants and other energy
9 infrastructure, and helps mitigate the impact of energy generation
10 on the environment; and

11 (3) It serves a public purpose to provide funding to
12 eligible persons for eligible energy conservation improvements in
13 accordance with the Low-Income Home Energy Conservation Act.

14 Sec. 3. For purposes of the Low-Income Home Energy
15 Conservation Act:

16 (1) Department means the Department of Revenue;

17 (2) Eligible energy conservation grant means a grant
18 paid to an eligible person for an eligible energy conservation
19 improvement;

20 (3) Eligible energy conservation improvement means a
21 device, a method, equipment, or material that reduces consumption
22 of or increases efficiency in the use of electricity or natural gas
23 for a residence owned by an eligible person, including, but not
24 limited to, insulation and ventilation, storm or thermal doors or
25 windows, awnings, caulking and weatherstripping, furnace efficiency

1 modifications, thermostat or lighting controls, replacement or
2 modification of lighting fixtures or bulbs to increase the energy
3 efficiency of the home's lighting system, and systems to turn off
4 or vary the delivery of energy;

5 (4) Eligible entity means an entity providing matching
6 funds pursuant to section 4 of this act and which is a public power
7 district organized under Chapter 70, article 6, a rural public
8 power district organized under Chapter 70, article 8, an electric
9 cooperative corporation organized under the Electric Cooperative
10 Corporation Act, a nonprofit corporation organized for the purpose
11 of furnishing electric service, a joint entity organized under the
12 Interlocal Cooperation Act, or a municipality; and

13 (5) Eligible person means any resident of Nebraska who
14 owns his or her residence and whose household income is at or
15 below one hundred fifty percent of the federal poverty level,
16 as determined in accordance with the Low-Income Home Energy
17 Conservation Act.

18 Sec. 4. (1) The Energy Conservation Improvement Fund is
19 created. There shall be a separate subaccount within the fund for
20 each eligible entity remitting matching funds and administering
21 a program of eligible energy conservation improvements. The fund
22 shall be administered by the department. Funds shall be remitted
23 by the department to the State Treasurer for deposit in the proper
24 subaccount of the fund from state sales taxes and matching funds
25 remitted by the eligible entity as provided in subsection (2) of

1 this section.

2 (2) Commencing July 1, 2009, any eligible entity may
3 designate state sales taxes collected from customers for deposit
4 in the subaccount of the fund for that eligible entity. Any such
5 designation shall be accompanied by an equal amount of matching
6 funds from the eligible entity. The total amount designated in any
7 calendar year shall not exceed five percent of the total state
8 sales tax collected in the prior calendar year.

9 (3) The department shall adopt a form to (a) designate
10 part of the state sales tax to be remitted for administering a
11 program of eligible energy conservation improvements and (b) remit
12 the matching funds.

13 (4) Any money in the fund available for investment
14 shall be invested by the state investment officer pursuant to
15 the Nebraska Capital Expansion Act and the Nebraska State Funds
16 Investment Act.

17 Sec. 5. (1) An eligible entity that has remitted matching
18 funds to the department as provided in section 4 of this act may
19 establish and administer a program of eligible energy conservation
20 grants.

21 (2) The program shall provide for an eligible energy
22 conservation grant from the Energy Conservation Improvement Fund to
23 an eligible person for installing an eligible energy conservation
24 improvement upon certification by the eligible entity that it
25 has approved an eligible energy conservation improvement for the

1 residence of the eligible person. The eligible entity shall verify
2 the purchase and installation of the eligible energy conservation
3 improvement at the eligible person's residence.

4 (3) The eligible entity may require the eligible person
5 to pay for a share of the cost of the eligible energy conservation
6 improvement, not to exceed twenty percent of the total cost. The
7 share of the cost to be paid by the eligible person may be
8 recovered by the eligible entity in monthly installments after
9 completion of the eligible energy conservation improvement by
10 adding an amount to the eligible person's electrical bill.

11 (4) The eligible entity shall certify to the department
12 the amount of money to be distributed from the applicable
13 subaccount of the Energy Conservation Improvement Fund for payments
14 of the energy conservation grants approved in subsection (2) of
15 this section. Requests for distribution may be filed no more
16 frequently than monthly. The department shall distribute money only
17 to the eligible entity.

18 Sec. 6. An eligible entity may contract with any
19 qualified person, agency, or business entity to administer
20 a program for eligible energy conservation grants under the
21 Low-Income Home Energy Conservation Act or to make eligibility
22 determinations for eligible energy conservation grants.

23 Sec. 7. Beginning April 1, 2009, and annually on or
24 before April 1 thereafter, each eligible entity administering
25 a program for eligible energy conservation grants under the

1 Low-Income Home Energy Conservation Act shall submit to the
2 department a report describing each eligible energy conservation
3 grant made by the eligible entity during the preceding calendar
4 year and the eligible energy conservation improvement for which
5 each such grant was made.

6 Sec. 8. The department may adopt and promulgate rules
7 and regulations to carry out its duties under the Low-Income Home
8 Energy Conservation Act.

9 Sec. 9. Section 77-2753, Revised Statutes Supplement,
10 2007, is amended to read:

11 77-2753 (1)(a) Every employer and payor maintaining an
12 office or transacting business within this state and making payment
13 of any wages or other payments as defined in subsection ~~(5)~~ (6)
14 of this section which are taxable under the Nebraska Revenue
15 Act of 1967 to any individual shall deduct and withhold from
16 such wages for each payroll period and from such payments a tax
17 computed in such manner as to result, so far as practicable, in
18 withholding from the employee's wages and payments to the payee
19 during each calendar year an amount substantially equivalent to
20 the tax reasonably estimated to be due from the employee or payee
21 under such act with respect to the amount of such wages and
22 payments included in his or her taxable income during the calendar
23 year. The method of determining the amount to be withheld shall
24 be prescribed by rules and regulations of the Tax Commissioner.
25 Such rules and regulations may allow withholding to be computed

1 at a percentage of the federal withholding or at a comparable
2 flat percentage for gambling winnings or supplemental payments,
3 including bonuses, commissions, overtime pay, and sales awards
4 which are not paid at the same time as other wages, or payments to
5 independent contractors. Any withholding tables prescribed by the
6 Tax Commissioner shall be provided to the budget division of the
7 Department of Administrative Services and the Legislative Fiscal
8 Analyst for review at least sixty days before the tables become
9 effective.

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

22 (2) (a) Every payor who is either (i) making a payment or
23 payments in excess of five thousand dollars or (ii) maintaining
24 an office or transacting business within this state and making
25 a payment or payments related to such business in excess of six

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

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

22 (c) For any corporation, partnership, or limited
23 liability company that receives compensation for personal services
24 in this state and of which all or substantially all of the
25 shareholders, partners, or members are the individuals performing

1 the personal services, including, but not limited to, individual
2 athletes, entertainers, performers, or public speakers performing
3 such personal services, such compensation shall be deemed wages of
4 the individuals performing the personal services and subject to
5 the income tax imposed on individuals by the Nebraska Revenue Act
6 of 1967.

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

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

21 (b) The withholding required by this subsection shall
22 not apply to any payment made to (i) a person that provides the
23 payor with a statement that the income earned is not subject to
24 tax because of a treaty obligation of the United States or (ii)
25 a contractor when the payor contractor determines that the payee

1 contractor is in the data base required by this subsection.

2 (c) The Department of Revenue shall create a data base of
3 contractors who are licensed, granted a permit, or registered under
4 the Nebraska Revenue Act of 1967 or under section 77-3102. The data
5 base shall be accessible on the web site of the department.

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

11 (e) Withholding required by this subsection shall be
12 considered to be withholding of income tax for purposes of the
13 Nebraska Revenue Act of 1967.

14 (f) For purposes of this subsection:

15 (i) Construction services means services that are
16 provided as a contractor; and

17 (ii) Contractor has the same meaning as in section
18 77-3101.

19 ~~(3)~~ (4) The Tax Commissioner may enter into agreements
20 with the tax departments of other states, which require income
21 tax to be withheld from the payment of wages, salaries, and
22 such other payments, so as to govern the amounts to be withheld
23 from the wages and salaries of and other payments to residents
24 of such states. Such agreements may provide for recognition of
25 anticipated tax credits in determining the amounts to be withheld

1 and, under rules and regulations adopted and promulgated by the Tax
2 Commissioner, may relieve employers and payors in this state from
3 withholding income tax on wages, salaries, and such other payments
4 paid to nonresident employees and payees. The agreements authorized
5 by this subsection shall be subject to the condition that the
6 tax department of such other states grant similar treatment to
7 residents of this state.

8 ~~(4)~~ (5) The Tax Commissioner shall enter into an
9 agreement with the United States Office of Personnel Management
10 for the withholding of income tax imposed on individuals by the
11 Nebraska Revenue Act of 1967 on civil service annuity payments for
12 those recipients who voluntarily request withholding. The agreement
13 shall be pursuant to 5 U.S.C. 8345 and the rules and regulations
14 adopted and promulgated by the Tax Commissioner.

15 ~~(5)~~ (6) Wages and other payments subject to withholding
16 shall mean payments that are subject to withholding under the
17 Internal Revenue Code of 1986 and are (a) payments made by
18 employers to employees, except such payments subject to 26 U.S.C.
19 3406, (b) payments of gambling winnings, ~~or~~ (c) pension or annuity
20 payments when the recipient has requested the payor to withhold
21 from such payments, or (d) payments to independent contractors.

22 Sec. 10. Section 77-3102, Revised Statutes Supplement,
23 2007, is amended to read:

24 77-3102 (1) In order that the State of Nebraska and
25 the political subdivisions thereof may receive all taxes due in

1 every instance, including contributions due under the Employment
2 Security Law and any withholding required under the Nebraska
3 Revenue Act of 1967, contractors who are nonresidents of this
4 state, desiring to engage in, prosecute, follow, or carry on the
5 business of contracting within this state shall register with the
6 Tax Commissioner.

7 (2) Each contract to which a nonresident contractor is a
8 party shall be registered with the Tax Commissioner, except that
9 if the total contract price or compensation to be received is
10 less than ten thousand dollars, the Tax Commissioner may waive the
11 requirements of this subsection.

12 Sec. 11. Section 77-3104, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-3104 Every contractor required to register under the
15 provisions of sections 77-3101 to 77-3112 shall, before entering
16 into the performance of any contract or contracts in this state,
17 ~~either~~ (1) execute and file with the Tax Commissioner either (1)
18 a good and valid bond issued by a surety company authorized to do
19 business in this state, or with sufficient sureties to be approved
20 by the Tax Commissioner, conditioned that all taxes, including
21 contributions under the Employment Security Law and any withholding
22 required under the Nebraska Revenue Act of 1967, which may accrue
23 to the State of Nebraska and all taxes which may accrue to the
24 political subdivisions thereof on account of the execution and
25 performance of such contract or contracts, will be paid when due,

1 and the execution and filing of such bond shall be a condition
2 precedent to commencing work on any contract in the State of
3 Nebraska, or (2) such other form of assurance of such performance
4 as shall be acceptable to the Tax Commissioner.

5 Sec. 12. Section 77-3105, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 77-3105 (1) Every contractor required to register any
8 contract or contracts~~7~~ under the provisions of sections 77-3101 to
9 77-3112~~7~~ shall, for each such contract and before entering into the
10 performance of such contract or contracts, execute and file with
11 the Tax Commissioner either ~~(1)~~ (a) a good and valid bond issued
12 by a surety company authorized to do business in this state, or
13 with sufficient sureties to be approved by the Tax Commissioner,
14 conditioned that all taxes, including contributions due under the
15 Employment Security Law and any withholding required under the
16 Nebraska Revenue Act of 1967, which may accrue to the State of
17 Nebraska and the political subdivisions thereof on account of the
18 execution and performance of such contract or contracts, will be
19 paid when due, and the execution and filing of such bond shall be
20 a condition precedent to commencing work on any contract in the
21 State of Nebraska, or ~~(2)~~ (b) such other form of assurance of such
22 performance as shall be acceptable to the Tax Commissioner.

23 (2) Bonds filed pursuant to this section shall be subject
24 to the following conditions:

25 ~~(1)~~ (a) The Tax Commissioner may, at his or her

1 discretion, allow the execution and filing of one bond to be
2 sufficient for commencing performance of all such contracts. Such ~~+~~
3 ~~PROVIDED, that such~~ bond shall be conditioned as provided in this
4 section with respect to all contracts to be performed during the
5 current calendar year and shall be in the sum of not less than five
6 thousand dollars;

7 ~~(2)~~ (b) If at any time the Tax Commissioner shall
8 determine that the amount of any bond is not sufficient to cover
9 the tax liabilities accruing to the State of Nebraska or the
10 political subdivisions thereof for the current calendar year, the
11 Tax Commissioner shall require such bond to be increased in such
12 sum as the Tax Commissioner may determine to be proper;

13 ~~(3)~~ (c) When any nonresident contractor shall have fully
14 performed the contracts registered by him or her and shall have
15 made payments of all taxes, including contributions due under
16 the Employment Security Law and any withholding required under
17 the Nebraska Revenue Act of 1967, which accrued to the State of
18 Nebraska and the political subdivisions thereof on account of the
19 execution and performance of such contracts, the bond or bonds may
20 be released by the Tax Commissioner; and

21 ~~(4)~~ (d) Any bond or bonds required in this section are in
22 addition to, separate, and distinct from all bonds required under
23 the provisions of section 77-3104.

24 Sec. 13. Section 77-3106, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 77-3106 (1) Any contractor, who contracts with any
2 subcontractor who is or shall become subject to the provisions
3 of sections 77-3101 to 77-3112, shall withhold sufficient money on
4 such contract or contracts to guarantee that all taxes, including
5 contributions due under the Employment Security Law and any
6 withholding required under the Nebraska Revenue Act of 1967, which
7 may accrue to the State of Nebraska and all taxes which may accrue
8 to the political subdivisions thereof on account of the execution
9 and performance of such contract or contracts, will be paid
10 when due. Failure to comply with the provisions of this section
11 or to obtain a clearance from the Department of Revenue prior
12 to releasing such withholding to the subcontractor shall render
13 such contractor directly liable ~~for such taxes, contributions,~~
14 ~~penalties, and interest due from such subcontractors,~~ for the
15 amount of bond that the subcontractor was required to provide
16 under section 77-3104, and the Tax Commissioner shall have all the
17 remedies of collection against such contractor under the provisions
18 of sections 77-3101 to 77-3112 as though the services in question
19 were performed directly by such contractor.

20 (2) The withholding required by this section shall not
21 apply to any payment made to (a) a person that provides the
22 payor with a statement that the income earned is not subject to
23 income tax because of a treaty obligation of the United States,
24 (b) a contractor when the payor contractor determines that the
25 payee contractor is in the data base required by subsection (3) of

1 section 77-2753, or (c) a contractor when the payor contractor has
2 withheld from the payment under subsection (3) of section 77-2753.

3 Sec. 14. This act becomes operative on January 1, 2009.

4 Sec. 15. Original sections 77-3104, 77-3105, and 77-3106,
5 Reissue Revised Statutes of Nebraska, and sections 77-2753 and
6 77-3102, Revised Statutes Supplement, 2007, are repealed.