

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1073

Introduced by Pahls, 31.

Read first time January 22, 2008

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to construction; to amend section 81-2407,
2 Reissue Revised Statutes of Nebraska; to adopt the
3 Nebraska Construction Prompt Pay Act; to harmonize
4 provisions; to provide an operative date; and to repeal
5 the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and
2 may be cited as the Nebraska Construction Prompt Pay Act.

3 Sec. 2. For purposes of the Nebraska Construction Prompt
4 Pay Act:

5 (1) Contractor means a person who contracts with an owner
6 to improve real property or to perform construction services or
7 construction management services for the owner;

8 (2) Improve means to: (a) Build, effect, alter, repair,
9 or demolish any improvement upon, connected with, or on or beneath
10 the surface of any real property; (b) excavate, clear, grade,
11 fill, or landscape any real property; (c) construct driveways and
12 roadways; (d) furnish materials, including trees and shrubbery,
13 for any of such purposes; or (e) perform any labor upon any
14 improvements;

15 (3) Improvement means all or any part of any building,
16 structure, erection, alteration, demolition, excavation, clearing,
17 grading, filling, driveway, roadway, or landscaping, including
18 trees and shrubbery, on real property;

19 (4) Owner means a person (a) who has an interest in
20 any real property improved, (b) for whom an improvement is made,
21 or (c) who ordered an improvement to be made. Owner includes
22 private persons and entities and state, county, or local agencies,
23 instrumentalities, or entities;

24 (5) Owner's representative means an architect, engineer,
25 or construction manager in charge of a project for the owner or

1 such other contract representative or officer as designated in the
2 contract document as the party representing the owner's interest
3 regarding administration and oversight of the project;

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

7 (7) Receipt means actual receipt of cash or funds in the
8 bank account of the contractor or subcontractor; and

9 (8) Subcontractor means a person who has contracted to
10 furnish labor or materials to, or performed labor or supplied
11 materials for, a contractor or another subcontractor in connection
12 with a contract to improve real property. Subcontractor includes
13 materialmen.

14 Sec. 3. (1) When a contractor has performed work in
15 accordance with the provisions of a contract with an owner, the
16 owner shall pay the contractor within thirty days after receipt
17 by the owner or the owner's representative of a payment request
18 pursuant to the contract.

19 (2) When a subcontractor has performed work in accordance
20 with the provisions of a subcontract and the conditions precedent
21 to payment contained in the subcontract have been satisfied, the
22 contractor shall pay the subcontractor and the subcontractor shall
23 pay his, her, or its subcontractor, within ten days after receipt
24 by the contractor or subcontractor of each periodic or final
25 payment, the full amount received for the subcontractor's work

1 and materials based on work completed or service provided under
2 the subcontract, if the subcontractor provides or has provided
3 satisfactory and reasonable assurances of continued performance and
4 financial responsibility to complete the work.

5 Sec. 4. (1) Nothing in the Nebraska Construction Prompt
6 Pay Act shall prevent an owner or owner's representative from
7 withholding payment to a contractor for any of the following
8 reasons:

9 (a) Unsatisfactory job progress;

10 (b) Defective construction which has not been remedied;

11 (c) Disputed work;

12 (d) Third-party claims filed or reasonable evidence that
13 a claim will be filed with respect to work pursuant to the
14 contract;

15 (e) Failure of the contractor or his, her, or its
16 subcontractor to make timely payments for labor, equipment, and
17 materials;

18 (f) Damage caused by the contractor to the owner, the
19 owner's representative, another contractor, or a subcontractor; or

20 (g) Reasonable evidence that the contract cannot be
21 completed for the unpaid balance of the contract sum.

22 In addition to subdivisions (a) through (g) of this
23 subsection, an owner or owner's representative may withhold a
24 reasonable amount of payment for retainage. Retainage shall not
25 exceed the percentage set forth in the contract between the parties

1 and such percentage shall not exceed one hundred twenty-five
2 percent of the estimated costs to complete the work remaining on
3 the contract.

4 (2) Nothing in the act shall prevent a contractor or a
5 subcontractor from withholding payment to a subcontractor for any
6 of the following reasons:

7 (a) Unsatisfactory job progress;

8 (b) Defective construction which has not been remedied;

9 (c) Disputed work;

10 (d) Third-party claims filed or reasonable evidence that
11 a claim will be filed with respect to work pursuant to the
12 subcontract;

13 (e) Failure of the subcontractor to make timely payments
14 for labor, equipment, and materials;

15 (f) Damage caused by the subcontractor to the owner, the
16 owner's representative, the contractor, or another contractor or
17 subcontractor; or

18 (g) Reasonable evidence that the subcontract cannot be
19 completed for the unpaid balance of the subcontract sum.

20 In addition to subdivisions (a) through (g) of this
21 subsection, a contractor or subcontractor may withhold a reasonable
22 amount of payment for retainage. Retainage shall not exceed the
23 percentage retained from the contractor by the owner or owner's
24 representative due to the subcontractor's work.

25 Sec. 5. A contractor shall, within ten days after receipt

1 of a retainage from the owner, pass through payments to any
2 subcontractor and shall reduce each subcontractor's retainage in
3 the same manner as the contractor's retainage was reduced by the
4 owner: (1) If the value of the subcontractor's work completed
5 and in place is at least fifty percent of the subcontract
6 value, including approved change orders and other additions to
7 the subcontract value; (2) if the work of the subcontractor is
8 proceeding satisfactorily; and (3) if the subcontractor provides or
9 has provided satisfactory and reasonable assurances of continued
10 performance and financial responsibility to complete the work
11 pursuant to the contract.

12 Sec. 6. Except as provided in section 4 of this section,
13 if a periodic or final payment to (1) a contractor is delayed by
14 more than thirty days after receipt of a periodic or final payment
15 by the contractor or (2) a subcontractor is delayed by more than
16 ten days after receipt of a periodic or final payment by the
17 subcontractor, then the owner, owner's representative, contractor,
18 or subcontractor shall pay any contractor or subcontractor interest
19 due, beginning on the day following the payment due date at the
20 rate of one percent per month or a pro rata fraction thereof on the
21 unpaid balance. No interest is due under this section unless the
22 person charged the interest has been notified of the provisions of
23 this section at the time request for payment is made. Acceptance of
24 progress payments or a final payment shall release all claims for
25 interest on such payments.

1 Sec. 7. The Nebraska Construction Prompt Pay Act shall
2 not modify the remedies available to any person under the terms of
3 a contract in existence prior to the operative date of this act or
4 by any other statute.

5 Sec. 8. The Nebraska Construction Prompt Pay Act does not
6 apply to improvements to real property intended for residential
7 purposes when the residence consists of no more than four
8 residential units.

9 Sec. 9. The Nebraska Construction Prompt Pay Act applies
10 to contracts or subcontracts entered into on or after October 1,
11 2008.

12 Sec. 10. Section 81-2407, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 81-2407 The Prompt Payment Act shall not apply to the
15 following:

16 (1) Claims subject to a good faith dispute if notice of
17 the dispute is conveyed to the creditor in writing before the time
18 required for payment, except that the Prompt Payment Act shall take
19 effect on the date that the dispute is resolved;

20 (2) Contracts related to ~~highway or road~~ construction,
21 reconstruction, or maintenance, including that of a highway or
22 road; and

23 (3) Claims, contracts, or projects which are to be paid
24 for exclusively with federal funds.

25 Sec. 11. This act becomes operative on October 1, 2008.

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1 Sec. 12. Original section 81-2407, Reissue Revised
2 Statutes of Nebraska, is repealed.