

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 409**

Introduced by Utter, 33.

Read first time January 13, 2011

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to political subdivisions; to provide for the  
2 withholding and deposit of insurance proceeds into a  
3 trust or escrow account maintained by a county, city, or  
4 village for the repair or demolition of real property as  
5 prescribed.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. (1) If insured real property is materially  
2 damaged by a flood, fire, explosion, vandalism, malicious mischief,  
3 act of God, riot, or civil commotion and a claim is made by the  
4 insured to his or her insurer, the insurer shall withhold from  
5 payment of the claim the greater of: Twenty-five percent of the  
6 actual cash value of the insured real property at the time the  
7 material damage occurred; twenty-five percent of the final  
8 settlement; or fifteen thousand dollars. If a final settlement  
9 exceeds thirty-five percent of the insurance coverage on the real  
10 property, such fact is prima facie evidence that the real property  
11 has been materially damaged, violates the health and safety standards  
12 of the county, city, or village in which the real property is  
13 located, and gives the county, city, or village the right to deposit  
14 funds withheld by the insurer under this subsection into a trust or  
15 escrow account pursuant to this section to be used for the repair or  
16 demolition and clearing of the damaged real property.

17           (2) Upon the withholding of the funds under subsection  
18 (1) of this section, the insurer shall give notice of such  
19 withholding by certified mail to the insured, the treasurer of the  
20 county, city, or village in which the real property is located, any  
21 mortgagee that has a lien against the real property if such mortgagee  
22 is named on the insurance policy, and if the real property is  
23 involved in a court action, suit, or proceeding, the court in which  
24 such action, suit, or proceeding is filed. The notice shall include:  
25 The name and address of the insurer; the name and address or

1 forwarding address of the insured, including any mortgagee; the  
2 location of the real property; the date that the material damage  
3 occurred; the policy number of the insurance policy; the claim number  
4 of the insurance claim; the amount of funds withheld pursuant to  
5 subsection (1) of this section; and a provision stating that the  
6 county, city, or village may deposit the funds withheld pursuant to  
7 subsection (1) of this section into a trust or escrow account  
8 established for the purposes of the repair, replacement, or removal  
9 of the damaged real property if, within thirty days after receipt of  
10 such notice, the county, city, or village provides notice to the  
11 insurer that such funds should be deposited into a trust or escrow  
12 account to protect the public health and safety of the citizens of  
13 such county, city, or village. If the insurer does not receive the  
14 notice from the county, city, or village within thirty days after  
15 receipt of the notice given to the county, city, or village, the  
16 funds withheld pursuant to subsection (1) of this section shall be  
17 paid to the insured.

18 (3) If the funds withheld pursuant to subsection (1) of  
19 this section are determined by the county, city, or village to be  
20 paid into a trust or escrow account, an authorized representative of  
21 the county, city, or village shall request that the insurer deposit  
22 such funds into a trust or escrow account maintained by the treasurer  
23 of the county, city, or village. A copy of such request shall be sent  
24 by regular United States mail to the last-known address of the  
25 insured. The request shall contain a notice to the insured that the

1 insured has ten days after the date of mailing of the request to  
2 object to the deposit of the funds into a trust or escrow account.  
3 The notice shall identify the authorized representative of the  
4 county, city, or village that the insured should contact with any  
5 objection and shall state that the insured may seek resolution of the  
6 objection with such authorized representative. The governing body of  
7 the county, city, or village shall make the final determination on  
8 the deposit of the funds into a trust or escrow account and shall  
9 notify the insured of such determination no more than thirty days  
10 after receipt of any objection of the insured. Notice of the final  
11 determination shall inform the insured that if he or she has an  
12 objection to the determination, he or she may file an action in the  
13 district court in the county in which the real property is located.

14 (4) After receipt of the request in subsection (3) of  
15 this section, the insurer shall remit the funds withheld pursuant to  
16 subsection (1) of this section to the treasurer of the county, city,  
17 or village and shall notify the insured and any mortgagee of such  
18 remittance. Upon receipt of the funds by the treasurer, he or she  
19 shall record the amount and date of receipt of the funds and  
20 immediately deposit such funds into a trust or escrow account  
21 established for such purpose and maintained by the treasurer. The  
22 account may be interest-bearing. The funds in the trust or escrow  
23 account shall not be commingled with any other county, city, or  
24 village funds. Any interest earned on the funds deposited in the  
25 trust or escrow account shall be retained by the county, city, or

1 village to defray the expenses incurred under this section.

2 (5) The funds deposited in the trust or escrow account  
3 pursuant to subsection (4) of this section shall be used for the  
4 repair or demolition and clearing of the damaged real property. If  
5 the repair or demolition and clearing is being performed by the  
6 insured or a contractor employed by the insured, the insured shall  
7 not proceed until he or she has received the proper permit issued by  
8 the county, city, or village. The county, city, or village shall not  
9 make payment to the insured until the county, city, or village has  
10 inspected and approved the performance. If any funds remain in the  
11 trust or escrow account upon completion of the repair or demolition  
12 and clearing of the real property, the county, city, or village shall  
13 pay the remaining funds to the insured or to a third party as  
14 authorized by the insured or as ordered by the court.

15 (6) There is no liability on the part of and a cause of  
16 action does not arise against an insurer or an agent or employee of  
17 the insurer for the withholding or remitting of funds pursuant to  
18 this section. If there is a dispute with a mortgagee concerning the  
19 distribution of any amount withheld pursuant to this section, the  
20 insurer may file an action in the district court in the county in  
21 which the real property is located to identify any party that may  
22 have a financial interest in the funds withheld or remitted pursuant  
23 to this section to determine the distribution of the funds.