

LB552 – THE NEBRASKA CONSTRUCTION PROMPT PAY ACT

LB552, Adopt the Nebraska Construction Prompt Pay Act. LB552 addresses three facets of construction law in Nebraska: (1) prompt pay; (2) presentation of claims to political subdivisions; and (3) voids certain contract provisions.

Prompt Pay. Under the Nebraska Construction Prompt Pay Act, virtually all commercial construction contracts, public and private, are now subject to prompt pay requirements. The Act only applies to residential construction when residence consists of five or more residential units. The Act does not apply to the State of Nebraska, which is already subject to separate prompt pay requirements. Owners are required to pay contractors within thirty days after receipt of payment request. The Act includes a provision which provides that subject to performance of work according to specifications and all conditions precedent to payment, contractors and subcontractors must pay subcontractors and sub-subcontractors within 10 days after it receives payment from upstream owner or contractor.

Payment can only be withheld: (1) For retainage; (2) If allowed in the contract when (a) reasonable evidence shows that the contractual completion date will not be met due to unsatisfactory job progress; (b) third party claims are filed or there is reasonable evidence that such a claim will be filed; or (c) contractor fails to make timely payments; or (3) after substantial completion in amount not to exceed 125% of estimated cost to complete remaining work.

The failure to comply results in accrual of interest on the unpaid balance beginning on the day following the payment due date at 1% per month. Interest is due only after (sub)contractor first notifies the person to be charged of the prompt pay provisions.

The Act applies to contracts and subcontracts entered into on or after October 1, 2010.

Claims Against Political Subdivisions. LB552 standardizes the previously varied claims process for claims against political subdivisions under construction contracts. Claims must be made 180 days after substantial completion and must be filed with the appropriate clerk, or other office designated by the political subdivision in the contract. The political subdivision must make its decision within 90 days or the claim is deemed denied. A claim that is denied in whole or in part can be raised in an original civil action in district court within two years after denial. Either party may appeal the district court's decision.

Void Contract Provisions. LB552 provides that certain contract provisions in contracts for construction work performed within Nebraska against public policy, void and unenforceable, including: (1) provisions that waive, release or extinguish rights to file claims against payment or performance bond, except that waivers or releases for payment received are allowed; (2) provisions making the law of another state applicable to or governing the contract; and (3) provisions purporting to require that venue for court or arbitration hearing be held outside of Nebraska.

LB552 was approved by the Governor on February 11, 2010.