

LEGISLATIVE BILL 1001

Approved by the Governor April 16, 2008

Introduced by White, 8; Howard, 9.

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

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

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

Sec. 2. The Legislature finds and declares that:

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

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

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

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

(1) Department means the Department of Revenue;

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

(3) Eligible energy conservation improvement means a device, a method, equipment, or material that reduces consumption of or increases efficiency in the use of electricity or natural gas for a residence owned by an eligible person, including, but not limited to, insulation and ventilation, storm or thermal doors or windows, awnings, caulking and weatherstripping, furnace efficiency modifications, thermostat or lighting controls, replacement or modification of lighting fixtures or bulbs to increase the energy efficiency of the home's lighting system, and systems to turn off or vary the delivery of energy;

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

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

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

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

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

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

Sec. 5. (1) An eligible entity that has remitted matching funds to the department as provided in section 4 of this act may establish and

administer a program of eligible energy conservation grants.

(2) The program shall provide for an eligible energy conservation grant from the Energy Conservation Improvement Fund to an eligible person for installing an eligible energy conservation improvement upon certification by the eligible entity that it has approved an eligible energy conservation improvement for the residence of the eligible person. The eligible entity shall verify the purchase and installation of the eligible energy conservation improvement at the eligible person's residence.

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

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

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

Sec. 7. Beginning April 1, 2009, and annually on or before April 1 thereafter, each eligible entity administering a program for eligible energy conservation grants under the Low-Income Home Energy Conservation Act shall submit to the department a report describing each eligible energy conservation grant made by the eligible entity during the preceding calendar year and the eligible energy conservation improvement for which each such grant was made.

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

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

77-2753 (1)(a) Every employer and payor maintaining an office or transacting business within this state and making payment of any wages or other payments as defined in subsection ~~(5)~~ ~~(6)~~ of this section which are taxable under the Nebraska Revenue Act of 1967 to any individual shall deduct and withhold from such wages for each payroll period and from such payments a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages and payments to the payee during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee or payee under such act with respect to the amount of such wages and payments included in his or her taxable income during the calendar year. The method of determining the amount to be withheld shall be prescribed by rules and regulations of the Tax Commissioner. Such rules and regulations may allow withholding to be computed at a percentage of the federal withholding or at a comparable flat percentage for gambling winnings or supplemental payments, including bonuses, commissions, overtime pay, and sales awards which are not paid at the same time as other wages, or payments to independent contractors. Any withholding tables prescribed by the Tax Commissioner shall be provided to the budget division of the Department of Administrative Services and the Legislative Fiscal Analyst for review at least sixty days before the tables become effective.

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

(2)(a) Every payor who is either (i) making a payment or payments in excess of five thousand dollars or (ii) maintaining an office or transacting business within this state and making a payment or payments related to such business in excess of six hundred dollars, and such payment or payments are for personal services performed or to be performed substantially within this state, to a nonresident individual, other than an employee, who is not subject to withholding on such payment under the Internal Revenue Code

or a corporation, partnership, or limited liability company described in subdivision (c) of this subsection, shall be deemed an employer, and the individual performing the personal services shall be deemed an employee for the purposes of this section. The payor shall deduct and withhold from such payments the percentage of such payments prescribed in subdivision (b) of this subsection. If the individual performing the personal services provides the payor with a statement of the expenses reasonably related to the personal services, the total payment or payments may be reduced by the total expenses before computing the amount to deduct and withhold, except that such reduction shall not be more than fifty percent of such payment or payments.

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

(c) For any corporation, partnership, or limited liability company that receives compensation for personal services in this state and of which all or substantially all of the shareholders, partners, or members are the individuals performing the personal services, including, but not limited to, individual athletes, entertainers, performers, or public speakers performing such personal services, such compensation shall be deemed wages of the individuals performing the personal services and subject to the income tax imposed on individuals by the Nebraska Revenue Act of 1967.

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

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

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

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

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

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

(f) For purposes of this subsection:

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

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

(3) (4) The Tax Commissioner may enter into agreements with the tax departments of other states, which require income tax to be withheld from the payment of wages, salaries, and such other payments, so as to govern the amounts to be withheld from the wages and salaries of and other payments to residents of such states. Such agreements may provide for recognition of anticipated tax credits in determining the amounts to be withheld and, under rules and regulations adopted and promulgated by the Tax Commissioner, may relieve employers and payors in this state from withholding income tax on wages, salaries, and such other payments paid to nonresident employees and payees. The agreements authorized by this subsection shall be subject to the condition that the tax department of such other states grant similar treatment to residents of this state.

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

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

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

77-3102 (1) In order that the State of Nebraska and the political subdivisions thereof may receive all taxes due in every instance, including contributions due under the Employment Security Law and any withholding required under the Nebraska Revenue Act of 1967, contractors who are nonresidents of this state, desiring to engage in, prosecute, follow, or carry on the business of contracting within this state shall register with the Tax Commissioner.

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

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

77-3104 Every contractor required to register under the provisions of sections 77-3101 to 77-3112 shall, before entering into the performance of any contract or contracts in this state, either (1) execute and file with the Tax Commissioner either (1) a good and valid bond issued by a surety company authorized to do business in this state, or with sufficient sureties to be approved by the Tax Commissioner, conditioned that all taxes, including contributions under the Employment Security Law and any withholding required under the Nebraska Revenue Act of 1967, which may accrue to the State of Nebraska and all taxes which may accrue to the political subdivisions thereof on account of the execution and performance of such contract or contracts, will be paid when due, and the execution and filing of such bond shall be a condition precedent to commencing work on any contract in the State of Nebraska, or (2) such other form of assurance of such performance as shall be acceptable to the Tax Commissioner.

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

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

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

(1) (a) The Tax Commissioner may, at his or her discretion, allow the execution and filing of one bond to be sufficient for commencing performance of all such contracts. Such + PROVIDED, that such bond shall be conditioned as provided in this section with respect to all contracts to be performed during the current calendar year and shall be in the sum of not less than five thousand dollars;

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

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

(4) (d) Any bond or bonds required in this section are in addition

to, separate, and distinct from all bonds required under the provisions of section 77-3104.

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

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

(2) The withholding required by this section shall not apply to any payment made to (a) a person that provides the payor with a statement that the income earned is not subject to income tax because of a treaty obligation of the United States, (b) a contractor when the payor contractor determines that the payee contractor is in the data base required by subsection (3) of section 77-2753, or (c) a contractor when the payor contractor has withheld from the payment under subsection (3) of section 77-2753.

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

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