

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2026

2005 SENATE POLITICAL SUBDIVISIONS

SB 2026

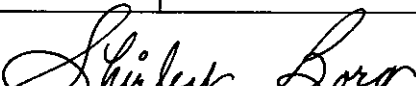
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2026

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date January 14, 2005

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|------------|
| 1 | X | | 3965 - End |
| | | X | 0 - 2780 |
| Committee Clerk Signature  | | | |

Minutes:

Senator Cook opened the hearing on SB 2026 relating to licensure and regulation of contractors; and to provide a penalty. All committee members (6) in attendance.

Jay Buringrud, Assistant Director of Legislative Council, appeared to describe what the Commerce Committee received as testimony in respect to the interim study in respect to contractors. (Attachment #1) This bill is a result of the study by the commerce committee of consumer protection in regard to contractor competency and out of state contractors license in the state. The testimony that the interim committee received on this study which led to this bill. The committee received reports from the Secretary of State and a representative of the Attorney Generals Office that they handled a substantial number of complaints against contractors. Although the Secretary of State, Attorney Generals Office and Work Force Safety Insurance conduct spot checks for contractors to make sure that they are appropriately licensed and are paying their taxes and have their sales tax license, payroll taxes and have work force safety

insurance. They also encourage consumers to check the back grounds of contractors before they hire them. There is a small number of contractors that are responsible for the complaints received by the attorney general and the secretary of state. The committee received testimony suggesting that some out of state contractors that have done work in the state after recent storms or disaster have performed poor work and quickly left the state with no intention of fulfilling any warranties. Because the consumers express that treating out of state contractors differently from resident contractors could be found to be unlawfully discriminatory by the courts. Committee members were generally reluctant to impose additional regulatory burdens in respect to the licensing process. However the secretary of state presented proposals to the committee to enhance the authority of the secretary of state and the attorney general. The committee recommended those proposals in SB 2026 to the committee. What this bill does is authorizes the secretary of state to request criminal history record information regarding an applicant for a contractors license. The bill authorizes the attorney general to bring a complaint against the contractor with a consumer fraud laws. The bill specifies additional grounds upon which the secretary of state may deny an application for a contractors license, refuse to renew a license or revoke a license. Sections of the bill have been amended to do this. There is an area he wants to point out to the committee. This is somewhat related but applies to all bills that are drafted. Look on page 3, lines 21 and 22. It looks like the requirement for the name and address of the corporation and limited liability company is taken out and that is not the case. In the law in North Dakota we have a general definition of person. A person is not a human being normally under the purposes of the law. It defines person in the century code 10149 chapter 101 & 102 . If talking about a human being individual will be used.

Senator Hacker: Is this going to be only criminal history information that only pertains to getting the job done and getting it done right?

Jay Buringrud: The way the bill is written there is no limit as to what this criminal history can go towards.

Al Jaeger, Secretary of State and Secretary to Emergency Commission appeared to testify on SB2026. (See Attachment #2)

Ron Huff, Bismark ND, appeared as a citizen in support of SB 2026 (See attachment # 3) He would like to have civil records check included as a requirement in the bill.

Doreen Riedman, Executive Officer, ND Association of Builders, testified in support of SB 2026 with proposed amendments (See attachment #4A and 4B proposed amendments)

Senator Cook: Regarding the letter of credit. Should that letter be from a North Dakota Bank?

Doreen Riedman: That certainly would be an option that could be considered.

Marvin Miller, Vice President of Twin City Roofing, Mandan ND, testified in Support of most parts of SB 2026. On page 5, Section 4 there are a couple of things there. The existing law is that this action can be started if we fail to commence work within sixty days of a date agreed upon in writing. The amended proposed language stipulates a ninety day start date if none agreed upon in writing and then also on line 13 through 15 completion date with in one hundred eighty days of the contract date if no completion time is agreed upon in writing. This presents some problems for us and a lot of contractors in our type of business. We specifically in our proposals do not put in starting or completion dates. We feel that we know our customers well enough that if they have specific requirements that at those times and for those customers this issue can be expressed. To put in a blanket statement in the law stating that we are in violation if we don't

commence with in sixty days or complete within one hundred eighty days puts us at a extreme handicap. If you were to have these types of time requirements within the law you are asking for more out of state contractors to come in rather than give the consumer the option of dealing with people they know in a fashion that is suitable to them. Not having the time forced upon the contractor.

Senator Cook: The customers that you had work agreements with that strung you out two years. Did you have contracts with everyone of them?

Marvin Miller: Yes we did.

Senator Cook: During that two year period if one of these customers found someone else to do the job quicker did you allow that customer out of his contract?

Marvin Miller: Yes we did. We had approximately six to ten customers that could not wait any longer. Sometimes it was due to insurance companies not being able to wait and pressured them into this. Other contractors do this also.

No further testimony for or against bill.

Senator Cook closed the hearing on SB 2026.

The meeting was adjourned.

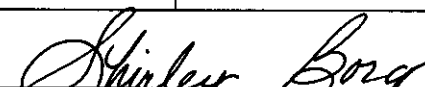
2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2026

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date January 27, 2005

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|------------|
| 1 | | X | 3177 - End |
| 2 | X | | 0 - 799 |
| | | | |
| Committee Clerk Signature  | | | |

Minutes:

Chairman Cook opened the discussion on SB 2026. All committee member (6) present.

Chairman Cook stated that they had two sets of amendments to SB 2026. One is a proposed amendments as agreed to by the North Dakota Association of Builders and Secretary of State's Office and one by the Secretary of State's Office. Chairman Cook would want both of the amendments combined and put into the correct council form and then the committee would look at them one more time just to make sure the amendment reflects what they want the bill to do.

Senator Triplett moved the proposed amendments presented by the Secretary of State's Office.

Senator Gary Lee seconded the motion.

Roll call vote: 6 Yes 0 No 0 Absent

Amendment passed.

Chairman Cook stated that the committee had the amendments presented by the North Dakota Association of Builders and Secretary of State's Office before them.

Page 2

Senate Political Subdivisions Committee

Bill/Resolution Number SB 2026

Hearing Date January 27, 2005

Senator Triplett moved the proposed amendments presented by the North Dakota Builders

Association and the Secretary of State's Office.

Senator Dever seconded the motion.

Discussion (Tape 2, # 55-936)

Roll call vote: 4 Yes 2 No 0 Absent

Amendment passed.

Senator Triplett asked to added one more amendment which would correct the grammar in the bill.

Senator Triplett moved to pass the amendment correcting the grammar in the bill.

Senator Fairfield seconded the motion

Roll call vote: 6 Yes 0 No and 0 Absent

Amendment passed.

The amendments were combined and sent to legislative council to be put into the correct council form.

Action will then be taken on the bill after amendments are reviewed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2026

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date January 28, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|-------------|
| 1 | | X | 2824 - 4897 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Shirley Borg</i> | | | |

Minutes:

Chairman Cook opened the discussion on SB 2026. All members (6) present.

Chairman Cook stated that the committee passed two sets of amendments and they have been encompassed into one. He ask the committee to review amendments to make sure they are as they want them to read. This bill is the result of an interim study. The intent of this bill was to discourage shady out of state contractors from coming in.

Discussion: (Tape 1, Side B, Meter #2980 - 4480)

Senator Triplett moved a Do Pass as Amended.

Senator Hacker seconded the motion.

Roll call vote: Yes 6 No 0 Absent 0

Carrier: Senator Cook

Proposed Amendments to Senate Bill 2026

Page 1, line 21, after "insurance" insert "bond, or letter of credit,"

Page 2, line 6, after "state" insert "if the registrar deems it appropriate or necessary to do so"

Page 2, after line 8, insert: "If a bond or letter of credit is provided in lieu of liability insurance, it must be payable to the registrar, with a cancellation notice provided to the registrar. A letter of credit must be irrevocable. Amounts of bonds or letters of credit are based upon the contractor licensing class: Class A license is \$500,000; Class B license is \$400,000; Class C license is \$300,000; Class D license is \$200,000."

Page 2, line 12, replace "12-1-33-02.1" with "12.1-33-02.1"

Page 2, line 22, after "coverage" insert ", bond, or letter of credit"

Page 3, line 26, after "file" insert ", bond, or letter of credit"

Page 5, line 7, after "upon" insert ", unless the failure is due to circumstances beyond the control of the contractor"

Proposed Amendments to Senate Bill 2026

Page 1, line 21, after the comma, insert “ bond, or letter of credit,”

Page 2, line 6, after “state” insert “if the registrar deems it appropriate or necessary to do so”

Page 2, after line 8, insert: “If a bond or letter of credit is provided in lieu of liability insurance, it must be payable to the registrar, with a cancellation notice provided to the registrar. A letter of credit must be irrevocable. Amounts of bonds or letters of credit are based upon the contractor licensing class: Class A license is \$500,000; Class B license is \$400,000; Class C license is \$300,000; Class D license is \$200,000.”

Page 2, line 12, replace “12-1-33-02.1” with “12.1-33-02.1”

Page 2, line 16, remove “to”, after “not” insert “to”

Page 2, line 22, after “coverage” insert “, bond, or letter of credit”

Page 3, line 26, after “file” insert “, bond, or letter of credit”

Page 4, line 6, after “registrar” insert “not”, after “to” remove “not”

Page 5, line 7, after “fails” insert “substantially”, after “to” remove “substantially”, after “upon” insert “, unless the failure is due to circumstances beyond the control of the contractor”

Page 6, line 1, overstrike “fully”, after “refund” insert “fully”

Renumber accordingly

Date: 1-27-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2026

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendments from Secretary of State

Motion Made By Senator Triplett Seconded By Senator Gary Lee

| Senators | Yes | No | Senators | Yes | No |
|--------------------------------|-----|----|----------|-----|----|
| Senator Dwight Cook, Chairman | X | | | | |
| | | | | | |
| Senator Nicholas P. Hacker, VC | X | | | | |
| | | | | | |
| Senator Dick Dever | X | | | | |
| | | | | | |
| Senator Gary A. Lee | X | | | | |
| | | | | | |
| Senator April Fairfield | X | | | | |
| | | | | | |
| Senator Constance Triplett | X | | | | |
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Total Yes 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent: Amendment passed.

PROPOSED AMENDMENTS TO SENATE BILL 2026

(As agreed to by North Dakota Association of Builders
and the Secretary of State's Office)

Page 1, Lines 21, following the word "insurance," add or bond, or
letter of credit

Page 2, after Line 8, add a subsection "a. If a bond or letter of
credit is provided in lieu of liability insurance, it must be payable
to the registrar, with a cancellation notice provided to the
registrar. A letter of credit must be irrevocable. Amounts of bonds
or letters of credit are based upon the contractor licensing class:
Class A license is \$500,000; Class B license is \$400,000; Class C
license is \$300,000, and Class D license is \$200,000.

Page 2, Line 22, following the word "coverage" add , or bond, or
letter of credit

Page 3, Line 26, following the word "file," add or bond, or letter of
credit

Page 5, Line 7, following the word "upon" add , unless the failure
is due to circumstances beyond the control of the contractor

Date: 1-27-05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2026

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion on Amendments presented by ND Builders Association and Secretary of states office

Motion Made By _____ Seconded By _____

| Senators | Yes | No | Senators | Yes | No |
|--------------------------------|-----|----|----------|-----|----|
| Senator Dwight Cook, Chairman | X | | | | |
| | | | | | |
| Senator Nicholas P. Hacker, VC | X | | | | |
| | | | | | |
| Senator Dick Dever | X | | | | |
| | | | | | |
| Senator Gary A. Lee | | X | | | |
| | | | | | |
| Senator April Fairfield | | X | | | |
| | | | | | |
| Senator Constance Triplett | X | | | | |
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Total Yes 4 No 2

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1-27-05
Roll Call Vote #: 3 Amendment

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2026

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50190.0202 Title .0300

Action Taken Moved Amendment #3 language correction

Motion Made By Senator Triplett Seconded By Senator Fair Field

| Senators | Yes | No | Senators | Yes | No |
|-------------------------------|-----|----|----------|-----|----|
| Senator Dwight Cook, Chairman | X | | | | |
| | | | | | |
| Senator Nicholas P. Hacker VC | X | | | | |
| | | | | | |
| Senator Dick Dever | X | | | | |
| | | | | | |
| Senator Gary A. Lee | X | | | | |
| | | | | | |
| Senator April Fairfield | X | | | | |
| | | | | | |
| Senator Constance Triplett | X | | | | |
| | | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Amendment Passed to
Correct language

Date: 1-28-05
Roll Call Vote #: 4

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2026

Senate Political Subdivisions

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50190.0202 Title .0300

Action Taken Do Pass as Amended

Motion Made By Senator Triplett Seconded By Senator Hacker

| Senators | Yes | No | Senators | Yes | No |
|--------------------------------|-----|----|----------|-----|----|
| Senator Dwight Cook, Chairman | X | | | | |
| | | | | | |
| Senator Nicholas P. Hacker, VC | X | | | | |
| | | | | | |
| Senator Dick Dever | X | | | | |
| | | | | | |
| Senator Gary A. Lee | X | | | | |
| | | | | | |
| Senator April Fairfield | X | | | | |
| | | | | | |
| Senator Constance Triplett | X | | | | |
| | | | | | |
| | | | | | |
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Total Yes 6 No 0

Absent 0

Floor Assignment Senator Cook

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2026: Political Subdivisions Committee (Sen. Cook, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2026 was placed on the Sixth order on the calendar.

Page 1, line 21, after the comma insert "a bond, or a letter of credit"

Page 2, line 1, replace "The" with "If a bond or letter of credit is provided in lieu of liability insurance, the bond or letter of credit must be payable to the registrar, with a cancellation notice provided to the registrar. A letter of credit must be irrevocable. The amount of a bond or letter of credit must be five hundred thousand dollars for a class A license, four hundred thousand dollars for a class B license, three hundred thousand dollars for a class C license, and two hundred thousand dollars for a class D license. If the registrar deems it appropriate or necessary, the"

Page 2, line 2, remove "necessary"

Page 2, line 12, replace "12-1-33-02.1" with "12.1-33-02.1"

Page 2, line 16, remove "to" and after "not" insert "to"

Page 2, line 22, after "coverage" insert ", a bond, or a letter of credit"

Page 3, line 26, after "file" insert ", a bond, or a letter of credit"

Page 4, line 6, remove "to" and after "not" insert "to"

Page 5, line 7, after "fails" insert "substantially" and remove "substantially"

Page 5, line 8, after "~~within~~" insert ", unless the failure is due to circumstances beyond the control of the contractor"

Page 6, line 1, overstrike "fully" and after "refund" insert "fully"

Renumber accordingly

2005 HOUSE POLITICAL SUBDIVISIONS

SB 2026

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2026

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 25, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|-------------|
| 1 | x | | 24.8 to end |
| 1 | | x | 3.0 to end |
| 2 | x | | 0.2 to 11.3 |
| Committee Clerk Signature <i>Van Zink</i> | | | |

Minutes: **Rep. Devlin, Chairman** opened the hearing on SB 2026, A Bill for an Act to amend and reenact sections 43-07-02, 43-07-04, 43-07-10, 43-07-14, and 43-07-18 of the North Dakota Century Code, relating to licensing and regulation of contractors; and to provide a penalty.

John Bjornson, staff Counsel for the Legislative Council appeared on behalf of the Interim Commerce Committee to explain the bill. His appearance was not to be interpreted as being for or against the bill but merely to outline the bill for the Committee. The bill grew out of the situation where following the large area wide hail storm in the Bismarck area when a lot of out of state contractors flocked into assist getting the needed work done. Unfortunately a lot of them did some shoddy work and left the state. The people were left with no way to do anything about it. The committee was asked to look at out of state contractors but there is no way that we can treat them any different than in-state contractors. Therefore the decision was made to look at strengthening the law without undue hardship on all contractors but still better protect the people in cases where shoddy work is done. Using the bill John Bjornson then explained the changes on

the current law and the additions. Ramifications and implications of the law would be covered under other testimony. His presentation ended at (44.8).

Al Jaeger, Secretary of State testified about each section of the bill and a copy of his remarks is attached. He followed them very closely in his presentation which continues to the end of side A of Tape 1.

Side B Tape 1

Al Jaeger, Secretary of State continued to (4.0) . The Department's budget was up before the appropriations committee therefore Rep. Herbal, Vice Chairman asked that question in regards to the contractor's licenses be directed to his staff or Doreen Riedman for the Association of Builders would also be testifying and could answer questions.

Parnell Grossman from the Attorney General's office appeared to testify in support of the bill. A copy of his remarks is attached. This bill strengthens the Attorney General's ability to revoke a license when that is necessary -- especially for misleading or deceptive practices.

Rep. N. Johnson (9.5) Help me clear this up -- to be a contractor you need to have no criminal background and some kind of liability insurance or bond or letter of credit --?

Parnell Grossman that is essentially correct -- when you say not to have criminal background --- you could have a criminal background -- say if you wrote an NSF check that probably is not going -- to have anything to do with your ability as a contractor but if say you had a gross sexual imposition and have been convicted of that you probably don't belong in doing plumbing in someone's home where people are vulnerable -- this gives the Secretary of State the ability to consider each application on its merits and determine whether that individual should or should

not be licensed. That individual always has the right to an administrative hearing regarding his decision or even go to court if he believes strongly that the license should be granted.

Rep. Ekstrom (10.7) I am sure in the code we have defined contractor -- could you broaden that for -- does a construction manager -- people who merely oversee -- or make contact with other contractors who perform the work -- it the broadest terms who do you define as a contractor?

Parnell Grossman -- not sure -- I have always that it was fairly broad and someone who provides repair services and makes improvements on real property.

Rep. Kaldor (12.1) Does the amount of money constitute a requirement for licenser?

Parnell Grossman -- I am looking to the Secretary of State for the answer --- [answer in the background] that is pretty standard -- the \$2000 amount or above --it used to be \$500 and then went up..

Rep. Kaldor (12.7) If I hired somebody locally to do may roof -- it wouldn't take very long to reach that \$2000 limit -- I assume that Rep. Herbal, Vice Chairman would have to be licensed -- is that based on his exposure?

Parnell Grossman There are a number of reasons to license individuals -- again they have to meet that minimum threshold - - so if they do ten contracts for \$1999 and don't have one that reaches the two thousand -- he wouldn't have to be licensed. If they reach that \$2000 limit there are a number of reasons for licensing -- for the protection of the home owner -- insurance -- .Transient Merchants are common who rip off people and we do license them as transient merchants. The potential to do harm is there and I don't have a good answer.

Rep. Koppelman (15.3) Your office would have the authority whether it was a transient merchant whether under consumer fraud or not it met the threshold of a contractor wouldn't you?

Parnell Grossman Yes that is true --- to a certain extent if they were not licensed as a transient merchant that is a criminal violation --Class B misdemeanor -- so they could be prosecute and if they were licensed then we have the ability to require a bond.

Rep. Koppelman (16.4) I know that some of this was the result of a large number of claims around Bismarck as the result of a hail storm -- has there been a rash of these or was that a blimp on the radar screen.

Parnell Grossman -- a blimp on the radar screen. We don't want to pick just on roofers -- there was an individual here in Bismarck who was doing all types of mobile home repairs -- it was a fiasco because he was not a licensed plumber and did shoddy work No there has been no rash of complaint but we continue to receive complaints on quality of work.

Rep. Wrangham (19.3) Is there any licensing procedure in place for Directors of State agencies and -- as far as that goes legislators? There are a lot of things in this world that are illegal besides doing shoddy drive ways -- at what point do we take out of the realm of just criminal or civil wrongs and putting into a licensing frame to license people to do it?

Parnell Grossman You make an excellent point -- no there aren't licensing requirements for many professions -- the difference is here is the exposure to potential harm to the public -- consumer -- often times these are people who are least able to provide restitution to victims. And to sue them for recovery of \$10 - 15,000 is financially impractical.

Doreen Riedman, Executive Director for the North Dakota Association of Builders spoke in support of SB 2026. A copy of her prepared remarks is attached.

Rep. Maragos (26.3) Are bonds cheaper to acquired than liability insurance? -- per thousand dollars?

Doreen Riedman Surety bonds are about 2% of the amount of the bond. -- the highest level that we are talking about here is the Class A license -- would be 1/2 million dollar bond would be \$10,000 -- would be required. The cost would be annually.

Rep. Maragos Is that per project?

Doreen Riedman -- A performance bond would be per project -- this would be a surety bond and would be per project or to protect individuals.

Rep. Herbal, Vice Chairman Would you explain the letter of credit?

Doreen Riedman -- A letter of credit is a claim from a bank shown as a liability on your portfolio -- it has a 1 - 2% origination fee -- each year -- it is not something everybody is going to qualify for -- it is tuff to get and you have to be of pretty good means -- a letter of credit is going to offer more protection because its going to cover everything whereas liability insurance doesn't

Rep. Herbal, Vice Chairman (28.8) Do they have to have assets to cover that?

Doren Riedman -- Absolutely.

Rep. Koppelman (28.9) About the liability insurance that you were referring to -- is that a national phenomenon -- that it is so high -- it can't be that the North Dakota contractors are that --have you talked to the insurance commissioner about trying to stabilize that commodity?

Doreen Riedman Yes we have been working with the State Insurance Department; but its a nationwide problem because there are a lot of lawsuits brought. North Dakota is not at the national level.

Rep. Kretschmar (31.6) If I but liability insurance I am insured the negligence I might do in my work -- If I but the bond does that cover that too?

Doreen Riedman - We see that the bond is put in place for any coverage that the liability insurance policy would and a lot more.

Rep. Kretschmar (32.3) It may work -- the bond and the letter of credit may be insurance in a different form -- do banks and bonding companies comply with all the laws required of insurance companies -- I think there are two different animals here -- if I were a contractor I would want liability insurance.

Doreen Riedman the contractor, too would want that insurance but there are some who prefer to self insure -- I know one who based on his 54 year track record the would prefer to self insure.

Rep. Zaiser (33.5) What is the minimum sum in which you can get liability insurance? There are those contractors who try to low-ball everybody and get by on a minimum of insurance?

Doreen Riedman as far as we are concerned that amount could be lowered -- are folks are licensed contractors and anybody out there who -- if they can get buy with less

Rep. Zaiser would you prefer to leave it where it is?

Doreen Riedman I would assume that having it lower would be much of a problem.

Marvin Miller Vice President of Twin city Roofing, Inc. Spoke in support of SB 2026. A copy of his prepared remarks is attached. Mr. Miller would opposed any changes in the limits the present bill.

Rep. Ekstrom (40.5) I was on the Interim commerce Committee and we struggled with precisely this--- to find a balance between the consumer and the contractor -- if we inserted some

language to say ' that unless an alternative completion date has been agreed to by the owner and the contractor' -- would that take some of your 'headaches' away.

Mr. Miller It may ease it some but it wouldn't relieve out concern. The fact being that we are pricing work -- you tell us that you want that work done within 60 days -- it is up to us to determine if we can do that work in sixty days-- if we can't -- may be we shouldn't be giving you a price on that project or even bidding it -- at the same time if we agree that we can do it within the 60 day time frame -- we may have another one of here that we had a contract with -- his work would be delayed to get your work within that time frame -- we work with the same situation during that hail storm -- had people come to us who had roofs that were leaking and causing interior damage -- damage to merchandise, etc. -- we also had owners who had damage but we put our preference to the ones that were leaking so that we could minimize damage. At the same time putting others on the 'back burner'. By doing that in the light of the proposed language we would become in violation of doing that. Right now the way the existing law -- says unless there is a stipulated start date or completion date -- we don't have a specific time frame to work under.

Rep. Koppelman (44.2) On page 5, section 4 --- doesn't that cover you -- within sixty days from the starting date agreed upon in writing-- if you were going to start June 1 but the law doesn't kick in until August 1st. That's two months after and then its 90 days if you don't have a contract date agreed upon -- that's September 1st -- and unless circumstances beyond the control of the contractor -- so with all that language doesn't that give the flexibility you need as a contractor -- ? Should the time frames be widen even more?

Mr. Miller -- There are two issues there -- first the bill or the law is silent right now on any kind of down payment -- we need to differentiate between the type of work where a customer puts money down on a project or whether we just have signed agreement to do the work -- there a vast difference between the two --- if I am holding your money indefinitely I should be pursuing your work in a diligent manner. We have been in business since 1927 and unless you have some very specialized materials -- we don't required a down payment. If the law made a differentiation between these types of contract -- then we could live more so with that language. The other part of it is the time frames --- current law says that we must begin within 60 days in writing. It is silent upon the completion date or the starting date -- the new wording removes that silence. It puts an arbitrary --- 90 day start date and an arbitrary 180 day completion date.

Rep. Koppelman (50.0) Is there a number you can live with -- in that regard?

Mr. Miller -- We are in favor of maintaining the law in this particular section as it is -- catastrophic situation arise that can throw all kinds of monkey wrenches into it -- the are good times and there are times not so good in construction -- in slow time the 60 days time frame is not a problem for us -- when things get busy I would hate to be pinned down by language in law that says we have to perform --- the time to sell a project is when the customer is ready. That is the time that we as good contractors have to perform within the expected time table or are you going to have patience and wait for a while-- maybe you are going to have to look for someone else.

Rep. Koppelman What about then if we were to amend this -- and say that if instead of consumer fraud action being brought -- if it simply said that if you didn't have a down payment

and you didn't act within a certain period of time -- the consumer had a right to void the contract and go somewhere else?

Mr. Miller Something along that line might not be too unsatisfactory.

Rep. Ekstrom (54.5) Aren't we getting into the area of good faith and reasonable effort -- maybe better legal minds could establish what that is.

End of Side B Tape 1.

Tape 2 Side A

Mr. Miller (continued) The customer should have confidence with who he is dealing with and the contractor should instill the confidence -- it is good business. The customer should know who he is dealing with -- it sort of "buyer be aware".

Rep. Wrangham (0.9) From what you said it leads me to believe that if you have that contractors license it may give the consumer a false sense of security.

Mr. Miller There is a lot of truth in that -- we good into a Doctor's office and see all those the diploma on the wall and we assume he knows what he is talking about.

Rep. Maragos (1.5) Do you have a signed contract on every job with your client?

Mr. Miller Yes at least with 99% of them. It may not be a 10 page legal document with all that stuff but we do have pur own proposal with the work delineated -- terms of payment -- any thing along those lines and stating our insurance, etc.

Rep. Maragos (2.1) Do I get the impression then that if there is no starting date --- have you ever penalized a client if the have put no money down -- and they decide they want out of the contract before you have started work?

Mr. Miller No we have not -- other than the fact as I alluded to earlier -- if we had ordered special materials and required down payment -- that doesn't happen a lot -- for the run of the mill work --no.

Parnell Grossman representing the attorney general's office, we want to express our concern for making some of those changes -- for all practical purposes those change would make it nearly impossible to enforce as far as the Secretary of State's office is concerned and for our office as far that is concerned. If you are going to change that in lines 13 - 14 etc. I believe the Attorney General would want to be left out of the statutes. Where they have not provided a starting date --if we get into it we have adopted a reasonable standard --- now we wait and wait -- sometime six months -- nine months is too long -- these dates are very clear. There is discretion in there for both the Secretary of State and the Attorney General to apply as they deem necessary.

Rep. Koppelman (5.2) I don't know that poor business planning arises to the level of consumer fraud --- but may be we can differentiate between contracts where they are holding the consumers money and where there is no down payment allow the consumer the right to void the contract -- maybe we can come up with some wording -- is that acceptable?

Parnell Grossman -- I don't think that would be to objectionable.

Rep. Maragos (7.8) That was sort of my line of thinking. Are contracts without consideration very enforceable?

Parnell Grossman No but the money factor had escaped me earlier

Rep. Maragos Should we add consideration to make the distinction?

Parnell Grossman That would be an excellent idea.

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Rep. Wrangham (8.9) Clarification -- you said something about taking the Attorney General being taken out on lines 14 through 16 is that on page 6?

Parnell Grossman Yes -- the language in line 14 through 16 on page 6 would not serve any purpose. **Rep. Koppelman** (9.4) You are saying if we totally revert back to the current language right?

Parnell Grossman That is correct.

Mark Dougherty, representing the ND Associated General Contractors -- are in support of the bill with the same reservation as those Mr. Miller expressed.

There being not further testimony on SB2026, **Rep.Devlin, Chairman** closed the hearing.

End of record (11.3).

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2026 b

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date March 10, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|-------------|
| 2 | | x | 41.3 to end |
| 3 | x | | 0.1 to 3.6 |
| | | | |
| Committee Clerk Signature <i>Louise B. Fink</i> | | | |

Minutes: **Rep. Devlin, Chairman** in work session opened the discussion on SB 2026.

Rep. Koppelman (41.3) This the contractors bill -- it comes out of the interim commerce committee and the Secretary Of State. Concerns that we have had as a subcommittee -- and I think maybe all of us share is that --if renewal of a license where money was deposited --that was -- it came out in the hearing and I think that Mr. Grossmann indicated Rep. Herbal, Vice Chairman did as well -- the second issue was that of the bonds and the letters of credit -- there was some concern about whether the bonds and the letter of credit were the same kind of animal. We wanted to be sure that we were adequately protecting the public in the same fashion as well as providing the contractors relief from high premiums for liability insurance. We are providing a surety bond or letter of credit on page 2 line 3 must be conditioned by the contractor for payment of a liability imposed on the contractor and must provide coverage substantially similar to that provided by liability insurance. A quick explanation as to why we did that -- we did not feel that the letter of credit could be accessed for this purpose or -- so we wanted to make sure

that it would do what liability insurance would do. We wanted that to protect the public that they would not have to go to court and get a judgment against the contractor to access the letter of credit. With regard to the surety bond -- we want to make sure that it was the type of bond to get the job done because there are many types of bonds and that purpose of the bond was substantially similar to the protections of that would be provided by liability insurance. And finally we added the emergency clause. That is the amendments the subcommittee came up with. You will recall the Secretary of State had come in with an amendment but the Legislative Council has advised him not to pursue that so that is not being presented. So with that I move the amendments numbered .0305 to SB 2026 on behalf of the subcommittee. **Rep.**

Ekstrom seconded the motion.

Rep. Kretschmar (48.0) I will oppose the amendment. I don't think the amendment will help the bill. The thrust of the bill was or came about because of the high cost of liability insurance. They then want to get a bond -- it wouldn't cost them as much --under the proposed amendment it the bond or the letter of credit is to provide cover to essentially similar to that provided by liability insurance --I don't think will any bank n this country that would is a letter of credit under those conditions -- the surety bond companies would -- you see one of the key things in liability insurance-- whether it be professional liability whether it be for a doctor or a lawyer- - or contractors liability or a farmers liability or anybody's liability --personal liability is that one of the provisions in the insurance policy is that the insurer will provide the cost of defense. It lots of cases -- in the end those costs are a major part of the --- is the cost to defend the case -- and without liability insurance or something similar to it these people will not have their defense costs paid -- you can have an insurance policy that says we will pay a judgment against you --if

some one gets one but any one -- any sensible insurer wants the provision in there my insurance will pay for my protection and my defense if I am sued. That's different than \$10 - 20,000 of defense costs and the insurance policy and company will pay that. I am just not sure when you want a letter of credit for \$500,000 but its got to be the same as liability insurance --I don't see any banker getting too happy about that. I just don't think amendment is going to solve the problem that I see in this bill. The contractors got to have liability insurance but don't want to pay that much for it.

Rep. Koppelman (52.5) Rep. Kreteschmar has brought out some important differences in letters of credit and bonds versus what insurance does -- which just what we grappled with . The on thing was we had wording in the amendment something about coverage to the public or something like that. Rep. Kretschmar you were pointing out the coverage to the contractor and it wouldn't pay his defense costs and true we had not thought about that. What we were driving at was -- and you are right-- was a lower cost coverage for the contractor and yet protect the public.

End of Side B tape 2

Tape 3 Side A

Rep. Kretschmar (0.1) I don't oppose the amendment but I just don't think its going to do what you want it to or what the contractors want it to do. I don't think any prudent contractor would go with out liability insurance.

Rep. Ekstrom (0.3) you are absolutely right in what you said and it gets right at the crux of what the subcommittee struggled with but what we want to do -- is it was a middle answer -- I have my doubts that any bonding company will do that or ---the public has to be our first concern here.

Rep. Koppelman (0.9) We did find a section of law that deals with the licensing of private investigators -- there were questions of liability and letters of credit or bonds in lieu of liability insurance-- I guess that if we passed this bill for the contractors and there was no bank or bonding company that would create a bond like and not bank would give them a letter of credit like this -- so we are back to where we were with liability insurance but there are some who want to self insure and they think this might be a way to do that. I had moved the amendments. The amendments carried on a voice vote.

Rep. Koppelman I move a 'Do Pass as amended" motion for SB 2026. **Rep. Ekstrom** seconded the motion. On a roll call vote the motion carried **6 ayes 2 nays 4 absent.** **Rep. Koppelman** was designated to carry SB 2026 on the floor. End (2.9)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2026 d

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date March 17, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|-------------|
| 1 | x | | 43.3 to end |
| 1 | | x | 3.4 to 31.8 |
| | | | |
| Committee Clerk Signature <i>Lauren B. Fink</i> | | | |

Minutes: **Rep. Devlin, Chairman** in work session stated that he wanted to revisit and discuss SB 2026, the bill that was sent back to committee from the floor yesterday. The Secretary of State is here and will answer questions. The issue on the floor -- a big issue on the floor was over the letter of credit and the bonding. There are some real concerns in the contractor community about the whole bill. --We don't want to reopen the hearing but take a look at this with the Secretary of State and a spokes person from the contractors to see what they want to do. Mr. Secretary of State may we have your assistance?

Al Jaeger -- Secretary of State -- One of the things I would like to go back on -- is that it was inserted into the law two years ago -- that there would be study done of the contractor's licensing law and it grew out of concerns of consumer protection. We have had situations that crept up where -- there were concerns until it was put into the law and since that time during the interim we had some more things come up -- it was assigned to the Commerce Committee and --to the best of my recollection-- I believe we met before the Commerce Committee a minimum of three

times -- went back to the drawing boards three times because they did ask a lot of hard -- good questions -- the position of my office and I think I can safely say for the Attorney General's is that we have somewhere around 5500 -- 6,000 contractors -- I suppose around 98.9 or whatever we really don't have a problem -- oh -- sure they don't renew on time or they don't do some stuff that -- we don't have problems -- and our whole focus was on what could be done in those situations where it was obvious that there were some questions -- so if you will recall the first part of the bill -- it started out that I could do some denying in the renewal process -- because right now if you walk downstairs and you give me some money and you have got a little sheet from Worker's Safety and you have liability insurance and you not dead -- I have to give you a license and yet there might be something that we have heard that should put pause -- so the whole idea was how can we protect the public better. And we have had situations where -- I know if Parnell Grossmann was here he could tell stories about the guys removing houses -- collecting money up front and never did it -- so our whole focus is what can we do in those situations -- to strengthen the law -- so that we have a method going with it -- the timing things that we have in the bill -- has been really been brought up the last several days -- to me and there are some concerns about that from the Attorney General standpoint the practical matter is that when people gave contractors money up front to do a job and many times did not have it in writing -- what happened is when the Attorney General tried to come into that -- even though no work had been done and not visible manner of effort -- they done little things -- they said they will get it done -- they would have attorneys to protect them -- the whole idea was -- just to have some thing n place that at some point -- there's a cutoff -- it doesn't effect 99.9% of the contractors. Most contractors and customers work back and forth and what have you -- but once in a while you are

going to run into a buzz saw -- it the 12 years I have been Secretary of State -- I can assure that -- not any member of the AGC and I think I'd be safe to say that only one or two case have they been a member of the Home Builder's Association -- the people out there doing stuff don't belong to the AGC and they don't belong to the Home Builder's Association -- they -- don't spend that kind of dollars for dues. --so the whole thing was structured --- the insurance thing something that came with the Home Builders --and that got worked through where that is an option and it got to the floor -- it was an issue yesterday. Mr. Chairman we thought there was a lot of merit to the bill -- I appreciate the concerns that have been expressed -- we kept the trade associations informed all through process -- there was some reference to the Attorney General's Office -- well if you look at existing law there is a vague thing in one section how the Secretary of State and the Attorney General can do something but it is not clear -- and so this just meant that if there were certain things that happen they can be kicked in good solid way to the Attorney General where they can pursue fraud. The Attorney General and I are not interested in workmanship issues -- quality issues -- there is no test -- there is nothing there that says how -- do you know how to hold a hammer. I mean we have none of that -- my powers if pretty much limited to a license revocation process. And from day one when we started proceeding on this about three sessions ago there is no way that I would be comfortable with anything that does not have due process it in. If I do anything the way it is structured there are always an avenues of appeal -- there an administrative hearing -- there are other things they can do -- but when you have a couple of guys that -- are getting out and actually got nailed in Wyoming --when he should have been nailed here. So I think there is still a lot of good in this bill -- there is obviously a couple of things that

maybe need -- I have made arrangements to -- all of you know Rep. Carlson -- well enough to know that -- if he agrees he will go along and if he doesn't --- then you will know.

Rep. Kaldor (54.3) on page 2 -- it says the bond or letter of credit is payable to the registrar and I think Rep. Wald --

Al Jaeger I had that same question and Rep. Koppelman knows that as many as eight or ten of us around here have gone through all of that and what my staff reminded me of that a certificate of liability --

End of Side A tape 1

Tape 1 Side B -- continued --

Al Jaeger-- continued -- the letter of credit is an option and even though it is an option --with that in there --it is my personal opinion the bill can not pass.

Rep. Ekstrom (3.5) One of the things were trying to get at -- was that if you had evidence that that coverage were in place -- so what I feel we could say is that you will receive a certificate of evidence of coverage --

Al Jaeger -- That could be but at this point --too if any references of those two things is left -- I don't think it's going to go --

Rep. Ekstrom (5.1) What I am saying is the 'bogey' man word is the word 'payable' business -- you responsibility is as an officer of the state is to insure that for the licenses you issue that these things are in place -- so simply, if a certificate shows that evidence is what I am saying is needed.

Al Jaeger -- I think that was the goal --but whether it will still work on the floor is something - I heard Rep. Koppelman say yesterday at least once -- this was one of three options and whether they can get any of this --

Rep. Wrangham (6. 5) I do believe we have laws on the books against thievery - - from what I have seen if that the more tools we put in the tool box to try to stop unscrupulous people from doing unscrupulous things --especially in areas where we are willing to admit that 99.9% of the people who are regulated are doing just great -- all we wind up doing is making life more difficult for those 99% and those unscrupulous one continue to be unscrupulous so all we are doing is punishing the good people -- my question is do you agree with me?

Al Jaeger -- I understand -- I am not an attorney -- we worked with the Attorney General's office and we have worked this through --I don't get the calls to the Consumer Fraud -- I don't do the prosecution -- all I can say is we worked through a process -- the concern that you raise and Rep. Koppelman can attest to -- is that we wanted to make sure that the -- we don't want to make it more difficult for the people out there doing what they are supposed to do -- there is nothing in this process that has changed their licensing requirements or anything -- only thing that has been put into place is -- if you take money --and you don't do the job -- the attorney's say that if you have this connection in the law back to the Secretary of State -- you can nail the people who are really doing that much stronger --

Rep. Koppelman (8.6) Two quick questions -- one is Rep. Herbal, Vice Chairman issue of the time table and the other is your reference to the Statute of Consumer Fraud -- as I understand it the mention of it in the bill is only a reference to that section of law --- that they have already tried a case like under consumer fraud --

Al Jaeger -- again under the development of this -- under existing if you look back I think -- toward the first section -- there are things the Secretary of State can do --and some stuff the Attorney General -- so we looked at all of that and the Attorney General's office looked at that

and say "well you know that really isn't fair to either party" and so it was just a reference that was made under a particular provisions -- is it going to increase -- no it is just to clarify the process.

Rep. Koppelman (10.1) the question before us is that it is there -- the authority already exists and by putting it in this statute is like waving a red flag -- to invite more --

Al Jaeger -- I don't think so it is there to clarify the law. Is it any more likely that anybody is -- I don't see how -- if the associations are trying to protect members that aren't doing so good -- well I don't see that happening because history shows -- they are not coming in to get licenses revoked for good builders -- we get people who come in and give us files that thick and we get every conceivable picture of every conceivable bad piece of construction -- and I have to say quality construction is not a criteria for revoking somebody's license.

Rep. Koppelman (11.0) that case was pursued by the Attorney General's office --

Al Jaeger -- I think so but what happened -- the fellow did what ever he had to do and then he ultimately -- came into my office with all the right things. I had to give him a license --yet we knew of his reputation -- part of the gearing of this law -- you know I read something in the paper --

Rep. Koppelman (11.5) another question that came up one the floor is the penalty -- changing if from a class B misdemeanor -- to a class A and the difference is this -- the Class B is a maximum of thirty days and a \$1,000 fine ---Class A is one year and \$2,000 -- the fine is not so much the difference but jail time from a month to one year is a big difference --

Al Jaeger -- but there is a difference in the minds of some as to how much projects cost --

It just seem like -- it is a no 'brainer' bump -- I was questioned about that I think that all will agree that if we have a scoundrel out there we want to get him.

Rep. Koppelman (12.3) -- and one thing that may not be clear is the penalty issue -- has not to do with any misdeeds -- the penalty has to do with people working without licenses.

Rep. Wrangham (13.1) that was an interesting statement -- may be we should put in there that the State's Attorney has to give them a thirty days notice before it considered a Class A.

Rep. Devlin, Chairman I am not going to open this up to a new hearing but I believe the Association of General Contractor have comment they want to make.

Mark Dougherty -- representing the AGC -- I will entertain questions but there is one thing I am going to say right now -- I was there yesterday to talked to Rep. Wald about another and completely separate issue -- I actually went against my directions that I had last Friday that they wanted us to work to kill this bill and I did not do that -- some of you from Fargo may have gotten an E-mail from one of our members on his own stationery and they did that on their own -- I didn't -- the AGC didn't put together any organized thing to kill this bill. You were kind enough to open it up again last Friday to get in some of the changes we asked for just so that we were clear that one of the three that was the option -- not the one or one of the other two. The other issues -- we still have some concerns about the time thing -- mostly because of the unwritten agreement thing -- I no the Secretary of State thinks that resolves something but when you have an written agreement you still have a gray area. My time is one time your time is another time. Not much different than it is now --- the way this statute originally was over all the written agreement times and so much time after you were supposed to have commenced in the written agreement you were in compliance or --- my point is this if the job isn't important enough to have written agreement on it -- should it be important enough for the State to have to deal with it. I am a contract person . I love them because it makes it clear for both parties. With

the changes you did get in -- I was asked about materials delivered on site and we were paid for them would that be considered money up front -- but my view is that the materials are there -- we got paid for them -- I don't think that can be considered up front payment. As far as yesterday I answered questions to people who came to that corner, I told them we don't support the bill but we are not against it either. We did nothing as an organized effort to defeat the bill.

Rep. Koppelman (16.5) We did try to work with all the organizations as well as people both in the House and in the Senate -- the subcommittee -- the section about the time limits - what we tried to do in that area -- first of all this has to do mostly with license revocation - - second -- we have inserted the language having to do with money down. I think that is important based on Parnell Grossman's testimony. And if you look at page 5 Section 4 Sub 1 -- it says factors beyond the control of the contractors --- so I think that is a good escape hatch too.

Mark Dougherty -- with that in there we are fine with it -- a small or maybe 1% of the people who are the problem -- that can be handled by civil law or criminal law -- there is nothing new here as far as penalty type - there were some miscommunications --

Doreen Riedmann -- we support the bill all the way -- we still support the ways to give them options -- the bonds are out there -- based on our National boards and HUD -- they all have surety bonds -- we support the letter of credit -- it came up because of the liability insurance problems -- there has been a lot of research on this --

Rep. Herbal, Vice Chairman (23.8) what about the guy that has bobcat and he has liability to cover him but he backs into a gas line that's not a part of his coverage -- how do you respond to that?

Doreen Riedman he is going to self insure -- his letter of credit is going to show that he has the deep pockets is going get it out or the bond is going to show that Rep. Herbal, Vice Chairman has the where with all to do that. Liability insurance doesn't cover everything but a bond and a letter of credit is going to go further in covering issues that may arise.

Rep. Dietrich (25.1) the time element as to when the damaged person could get paid -- they said that liability insurance would pay quicker than surety bond or a letter of credit ?

Doreem Riedman -- again -- nobody is going to want to tap into that bond or letter of credit if they don't have -- those will come back to being very expensive and they probably wouldn't be able to get those in the future if they do tap into them -- so that why they would pay it out of their pocket -- that becomes a personal responsibility --at that point for the company.

Rep. Kaldor (2 6.8) I am assuming that amendment was your amendment in the Senate.

Doreen Riedman- yes it was.

Rep. Koppelman (27.4 0 The Secretary of State said that the bill was in for real tough sledding if the letter of credit and the bond remains in there. If given what we saw on the floor yesterday -- if we have to make them go away -- what is your opinion on the bill then?

Doreen Riedman --- If it does happen we are not going to curl up and die -- but I would like to visit with Rep. Carlson and Rep. Wald. They are both members of our organization.

Rep. Koppelman (29. 1) Given what I just heard - - may recommendation would be to give them a chance and we can come back this afternoon -- could we take it up in the morning -- I will have counsel prepare the amendments to remove the references to the bond and the letter of credit and at the same time give Ms. Riedman to make her contracts.

Rep. Kaldor (30.2) I want to ask Ms. Riedman -- were all the amendments in the Senate based on that on significant change -- I notice on page three on the original bill they had the language of the bond and the letter of credit -- but I don't know about the other amendments -- do you recall

Doreen Riedman --- yes I do -- the only other amendment was on page five -- on the engrossed bill --- if you look at that now -- on line 14 and 15 we added -- failure beyond the control of the contractor.

Rep. Koppelman (31.3) I guess that what I would do is rather trying to reverse the Senate amendments --- or strip them -- I would go into the Legislative Counsel and say get rid of the references to surety bonds and letters of credit.

Rep.Devlin, Chairman that will be tomorrow and --note: the chairman listed other items to be gone over at that time.

End (31.8)


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2026 e

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date March 18, 2005

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-------------|
| 1 | x | | 46.0 to end |
| 1 | | x | 3.4 to 6.5 |
| | | | |
| Committee Clerk Signature  | | | |

Minutes: **Rep. Devlin, Chairman** in work session, asked Rep. Koppelman whether the amendments to SB 2026 were ready for discussion. We had sent this bill out before we asked to have I sent back -- there was concern on the floor about the letter of credit and the bonding.

Rep. Ekstrom if you need a motion to reconsider I will make it -- that we reconsider our actions on SB 2026.

Rep. Maragos seconded.

The motion carried on a voice vote.

Rep. Koppelman (47.5) Just to explain -- the amendment which we just handed out numbered lc .0307 -- basically removes any mention of a bond or letter of credit - what happened on the floor and most of you were there -- there were a lot of questions about and letters of credit -- not to editorialize but I think about 80% of that is confusion and 20% is substance part-- It is the same thing that we had trouble with in our committee -- and the reason we went with a subcommittee is the whole question -- can a letter of credit or a bond be a substitute for liability

insurance -- effectively. We tried to put that in bill because the building folks in the state are being hampered by high liability insurance rates. However it became apparent after the House debate and I think some conversations others have had with people on the floor who had some objections to it -- with that version of the bill we will have some tough sledding unless we remove that. So the North Dakota Association of Builders -- although they wanted that -- they have said they want the bill and they are prepared to support with these amendments -- I have talked with Rep. Wald and I think he will support it.

Rep. Koppelman (50.4) Mr. Chairman I move the amendments to remove the bond and the letter of credit references. **Rep. Dietrich** seconded the motion.

Rep. Devlin, Chairman (50.7) The new language - page 5 line 11 -- I thought that was in there before -- we need to check that and make sure that these apply to the engrossed bill.

Rep. Devlin, Chairman -- so we really are dealing only with pages 1 through 4 .

Rep. Ekstrom (52.8) under amendments -- page 2 line 7 -- why are they removing the class B license?

Rep. Koppelman (53.0) Everything is being removed up to line 7 because they deal with letters of credit.

Rep. Ekstrom (53.5) The other thing we need to address is the concern about the Class A misdemeanor --

Rep. Koppelman (54.5) I will address that on the floor. The section deals with people who operate without a contractor's license and I don't think Rep. Wald realized that. It does not deal with violations or revocations. (55.1)

End of Side A tape 1

Side B Tape 1 continued

Rep. Koppelman (3.4) continued --

Rep. Ekstrom (3.5) Mr. Chairman -- the Builders Association had said they we were going to put a blanket E-mail out to everyone to explain their support of this bill as amended. I asked them to emphasize that is about Class A.

Rep. Wrangham (3.7) a question for Rep. Koppelman first -- you mentioned the fellow walzing in from out of town -- how about the fellow who decides to -- a handy man who decides to do a \$2500 job for his neighbor -- he would also be increased from a Class B to a Class A.

Rep. Koppelman (4.1) I see you point but with any law that we pass that you could find a marginal situation that would be unfair. I talked to the Secretary of State about this --I haven't talked to the Attorney General's people about this specifically --but I am confident that that is not going to happen -- at least as long as those folks are on the job -- but what we are weighing here is the two options of people who come into town and fix a roof after a hail storm here in Bismarck and all leave next -- the best that we can do is fine them \$1,000 and put in them in jail for thirty days if we can catch them -- and what we are trying to say is that if somebody is breaking the law -- we need a little more teeth --

Rep. Wrangham (5.2) To me thirty days and a \$1,000 is a big deal -- would the committee like to in some other section or here put in a "willingly" or a "knowingly" -- what is your thoughts about that?

Rep. Koppelman (5.5) I don't know about that --I think that becomes a legal standard to be proved in court.

Rep. Dietrich (6.2) call for the question.

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Rep. Devlin, Chairman -- the motion approving and adopting the amendments carried on a voice vote.

Rep. Maragos moved a 'Do pass as amended' for SB 2026. **Rep. Ekstrom** seconded the motion.

On a roll call vote the motion carried **10 ayes 1 nay 1 absent**. **Rep. Koppelman** was designated to carry SB 2026 on the floor. **End (6.5)**.

**House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/11/2005**

Page 1, line 3, remove "and" and after "penalty" insert "; and to declare an emergency"

Page 1, line 20, overstrike "insurance indicating liability coverage, as"

Page 1, line 21, overstrike "proof that the applicant has secured" and after the first "a" insert "surety"

**House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/11/2005**

Page 2, line 1, after "a" insert "surety"

Page 2, line 2, after the first "the" insert "surety"

Page 2, line 3, after the first underscored period insert "The surety bond or letter of credit must be conditioned for the payment by the contractor of liability imposed upon the contractor and must provide coverage substantially similar to that provided by liability insurance."

Page 2, line 29, after the second "a" insert "surety"

**House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/11/2005**

Page 3, line 31, overstrike "insurance"

**House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/11/2005**

Page 4, line 1, overstrike "indicating liability coverage as proof that the applicant has secured"

Page 4, line 2, after "a" insert "surety"

Page 4, line 3, after "credit" insert ", as required by section 43-07-04"

**House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/11/2005**

Page 5, line 11, after "excuse" insert "after a deposit of money or other consideration has been provided to the licensee"

House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/11/2005

Page 6, after line 29, insert:

"SECTION 6. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: March 10, 2005
Roll Call Vote: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2026

House POLITICAL SUBDIVISIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Rep M Ekstrom 0305 voice carried

Motion Made By

Rep. Koppelman Seconded By Rep. Ekstrom

| Representatives | Yes | No | Representatives | Yes | No |
|----------------------------|-----|----|-----------------|-----|----|
| Rep. Devlin, Chairman | ✓ | | Rep. Ekstrom | ✓ | |
| Rep. Herbel, Vice Chairman | A | | Rep. Kaldor | A | |
| Rep. Dietrich | ✓ | | Rep. Zaiser | A | |
| Rep. Johnson | ✓ | | | | |
| Rep. Koppelman | ✓ | | | | |
| Rep. Kretschmar | | ✓ | | | |
| Rep. Maragos | A | | | | |
| Rep. Pietsch | ✓ | | | | |
| Rep. Wrangham | | ✓ | | | |
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| | | | | | |
| | | | | | |

Total (Yes)

6

No

2

Absent

24

Floor Assignment

Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/21/2005 *rk*

In lieu of the amendments adopted by the House as printed on pages 1002 and 1003 of the House Journal, Engrossed Senate Bill No. 2026 is amended as follows:

Page 1, line 3, remove "and" and after "penalty" insert "; and to declare an emergency"

Page 1, line 20, overstrike "insurance indicating liability coverage, as"

Page 1, line 21, overstrike "proof that the applicant has secured", overstrike the comma, and remove "a bond, or a letter of credit"

House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/21/2005

Page 2, line 1, remove "If a bond or letter of credit is provided in lieu of liability"

Page 2, remove lines 2 through 6

Page 2, line 7, remove "for a class D license."

Page 2, line 29, remove ", a bond, or a letter of credit"

House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/21/2005

Page 3, line 31, overstrike "insurance"

House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/21/2005

Page 4, line 1, overstrike "indicating liability coverage as proof that the applicant has secured"

Page 4, line 2, remove ", a"

Page 4, line 3, remove "bond, or a letter of credit"

House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/21/2005

Page 5, line 11, after "excuse" insert "after a deposit of money or other consideration has been provided to the licensee"

House Amendments to Engrossed SB 2026 - Political Subdivisions Committee
03/21/2005

Page 6, after line 29, insert:

"SECTION 6. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: March 18, 2005
Roll Call Vote:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2026

House POLITICAL SUBDIVISIONS

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

| Representatives | Yes | No | Representatives | Yes | No |
|----------------------------|-----|----|-----------------|-----|----|
| Rep. Devlin, Chairman | ✓ | | Rep. Ekstrom | ✓ | |
| Rep. Herbel, Vice Chairman | ✓ | | Rep. Kaldor | ✓ | |
| Rep. Dietrich | ✓ | | Rep. Zaiser | ✓ | |
| Rep. Johnson | A | | | | |
| Rep. Koppelman | ✓ | | | | |
| Rep. Kretschmar | ✓ | | | | |
| Rep. Maragos | ✓ | | | | |
| Rep. Pietsch | ✓ | | | | |
| Rep. Wrangham | | ✓ | | | |
| | | | | | |
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Total (Yes) 10 No 1

Absent 1

Floor Assignment Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2026, as engrossed: Political Subdivisions Committee (Rep. Devlin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SB 2026 was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the House as printed on pages 1002 and 1003 of the House Journal, Engrossed Senate Bill No. 2026 is amended as follows:

Page 1, line 3, remove "and" and after "penalty" insert "; and to declare an emergency"

Page 1, line 20, overstrike "insurance indicating liability coverage, as"

Page 1, line 21, overstrike "proof that the applicant has secured", overstrike the comma, and remove "a bond, or a letter of credit"

Page 2, line 1, remove "If a bond or letter of credit is provided in lieu of liability"

Page 2, remove lines 2 through 6

Page 2, line 7, remove "for a class D license."

Page 2, line 29, remove ", a bond, or a letter of credit"

Page 3, line 31, overstrike "insurance"

Page 4, line 1, overstrike "indicating liability coverage as proof that the applicant has secured"

Page 4, line 2, remove ", a"

Page 4, line 3, remove "bond, or a letter of credit"

Page 5, line 11, after "excuse" insert "after a deposit of money or other consideration has been provided to the licensee"

Page 6, after line 29, insert:

"SECTION 6. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2005 SENATE POLITICAL SUBDIVISIONS

CONFERENCE COMMITTEE

SB 2026

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2026

Senate Political Subdivisions Committee

☒ Conference Committee

Hearing Date April 5, 2005

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 2 | X | | 0 - 329 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Shirley Long</i> | | | |

Minutes:

Chairman Cook called the conference committee on SB 2026 to order. Senators Cook, G. Lee, Triplett and Representative Ekstrom and Wrangham were present.

Chairman Cook asked Representative Ekstrom to explain what the house did on SB 2026.

Representative Ekstrom: What we did in the house is initially at the request of the industry, they wanted to put in a surety bond or a letter of credit in lieu of professional liability insurance. We have left it at a class A misdemeanor which was another huge issue. What we did is say you must have professional liability insurance.

Chairman Cook: You put the emergency clause on it, I see. Also on page five line eleven, after a deposit of money or other consideration has been provided to the licensee.

Representative Ekstrom: That is saying that there is in fact a contract in place if the deposit has been received.

Chairman Cook: I see from your testimony that the bonding or letter of credit was given up by the home builders to salvage the bill.

Representative Ekstrom: That is right.

Senator Triplett: The amendments are fine with me.

Chairman Cook asked the committee their wishes on SB 2026.

Senator Gary Lee moved that the Senate accede to the House Amendments on SB 2026.

Senator Triplett seconded that motion.

Discussion: None

Roll call vote: 5 Yes 0 No 1 Absent

Senator Cook closed the conference committee meeting on SB 2026.

REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE) - 420

07398

1 Number) SB 2026 (, as (re)engrossed):

Your Conference Committee

| For the Senate: | Attendance | Vote |
|----------------------|------------|------|
| Senator Cook (Chair) | P | Y |
| Senator G. Lee | P | Y |
| Senator Triplett | P | Y |

| For the House: | Attendance | Vote |
|----------------|------------|------|
| Rep. Koppelman | A | - |
| Rep. Wrangham | A | Y |
| Rep. Ekstrom | R | Y |

☒ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)
723/724 725/726 S724/H726 S723/H725
 the (Senate/House) amendments on ((SJ/HJ) page(s) 997 - 998

☒ and place 2026 on the Seventh order.
727

☐ , adopt (further) amendments as follows, and place
 _____ on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged
 and a new committee be appointed. 690/515

((Re)Engrossed) SB 2026 was placed on the Seventh order of business on the
 calendar.

DATE: 04/06/05

CARRIER: Senator Cook

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

SB 2026, as engrossed: Your conference committee (Sens. Cook, G. Lee, Triplett and Reps. Koppelman, Wrangham, Ekstrom) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 997-998 and place SB 2026 on the Seventh order.

Engrossed SB 2026 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

SB 2026

CONTRACTOR COMPETENCY STUDY

(Jay Buringrud)

Section 5 of Senate Bill No. 2252 directed a study of consumer protection in regard to contractor competency and out-of-state contractors licensed in the state.

Testimony and Committee Considerations

The committee received reports from the Secretary of State and a representative of the Attorney General's office regarding the handling of complaints against contractors. Although the Secretary of State, the Attorney General, and Workforce Safety and Insurance have participated in enforcement checks to determine if contractors are licensed and paying all applicable state payroll taxes and have encouraged consumers to seek background information regarding contractors before entering contracts, consumers in the state occasionally experience problems with unlicensed contractors and contractors that do not complete projects to the satisfaction of consumers. The testimony indicated that a relatively small number of contractors are responsible for a large number of the complaints filed with the Secretary of State and the Attorney General.

The committee received testimony suggesting that some out-of-state contractors that have done work in the state after recent storms or disasters have performed poor work and quickly left the state with no intention of fulfilling warranties. Because concern was expressed that treating out-of-state contractors differently from resident contractors could be found to be unlawfully discriminatory by the courts, committee members generally were reluctant to impose additional regulatory burdens with respect to the licensing process. However, the Secretary of State presented proposals to the committee to enhance the authority of the Secretary of State and the Attorney General to regulate the conduct and the licensing of contractors.

Recommendation

Although committee members expressed concerns regarding placing additional burdens on applicants for licenses, the committee recommended Senate Bill No. 2026, which is essentially the proposals presented to the committee by the Secretary of State. The bill authorizes the Secretary of State to request criminal history record information regarding an applicant for a contractor's license or contractor seeking to renew a license. The bill authorizes the Attorney General to bring a complaint against a contractor under consumer fraud laws. And the bill specifies additional grounds upon which the Secretary of State may deny an application for a contractor's license, refuse to renew a license, or revoke a license.

ALVIN A. JAEGER
SECRETARY OF STATE

PAGE www.state.nd.us/sec



PHONE (701) 328-2900

FAX (701) 328-2992

E-MAIL sos@state.nd.us

SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 14, 2005

TO: Senator Cook, Chairman, and Members of the Senate Political Subdivisions Committee

FR: Al Jaeger, Secretary of State and Secretary to Emergency Commission

RE: SB 2026

Section 1: On page 1, lines 10 through 13, text is removed that overlaps with other applicable existing laws and which now restricts the legal options available to state and local prosecutors:

Section 2: On page 2, lines 1 through 6, the Secretary of State "may" request a criminal background check on an applicant. An amendment has been prepared to add additional text to clarify the options available for out-of-state applicants.

In lines 9 through 18, the Secretary of State "may" refuse to grant an applicant with a contractor's license because the application contains false, misleading, or incomplete information or the applicant refuses to pay for a criminal history background check. A timeline is provided within which the applicant can respond to or cure the reason for the refusal and it provides an appeal process for the applicant if the license is not granted.

Section 3: On page 3, lines 21 and 22 contain a corrective text change.

On page 4, lines 1 through 8, the Secretary of State "may" refuse to renew a license for the same reasons state above in Section 2 and provides the same remedies.

Lines 27 and 28 pertain to a processing procedure.

Section 4: On page 5, lines 7 through 16 establishes timelines under which a license revocation action could be commenced if the contractor does not commence or complete a project within a certain period whether or not the contract is in writing or verbal.

In line 25, it adds "misleading" to the basis under which the Secretary of State may commence a license revocation action subsequently discovered after the license was issued in either the application or renewal process.

On page 6, lines 7 through 9, the Attorney General is given the authority to bring action against a contractor for any act or omission committed in N.D.C.C. § 40-07-14 under Chapter 51-15 of the Century Code, which is titled Unlawful Sales or Advertising Practices.

Section 5: Changes the penalty for a person acting as a contractor without a license from a class B misdemeanor to a class A misdemeanor, which increases the penalty to one years' imprisonment, a fine of \$2,000, or both from 30 days imprisonment and a fine of \$1,000.

#3B

PROPOSED AMENDMENTS TO SENATE BILL NO. 2026

Page 2, line 6, after "state" insert "if the registrar deems it appropriate or necessary to do so"

Page 2, line 12, replace "12-1-33-02.1" with "12.1-33-02.1"

Renumber accordingly

SENATE POLITICAL SUBDIVISIONS COMMITTEE
DWIGHT COOK, CHAIRMAN
JANUARY 14, 2005

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2026

Mr. Chairman and members of the Senate Political Subdivisions Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and the Consumer Protection Division support Senate Bill No. 2026.

The Consumer Protection Division works closely with the Secretary of State in enforcement issues regarding violations of the contractors law and consumer protection issues. We worked jointly with Mr. Jaeger in addressing these issues before the interim Commerce Committee which sponsored this legislation.

This legislation will provide both the Secretary of State and the Attorney General with enhanced enforcement authority in regard to problem contractors that defraud consumers, among other things, by taking advance payments and failing to perform the work promised and agreed upon with the consumer.

The legislation significantly enhances the Secretary of State's ability to deny a license to a questionable contractor that refuses or fails to disclose his criminal background. It clarifies the Secretary of State's ability to obtain information relevant to the applicant's fitness to act as a contractor.

The legislation strengthens the Secretary of State's ability to revoke a license for misleading or deceptive practices, and further provides the Attorney General the ability to bring a consumer fraud action against such contractors engaged in fraudulent activity.

Enhancing the criminal penalties from a class B misdemeanor to a class A misdemeanor will increase the deterrence of rogue contractors who intentionally ignore licensing requirements, refuse to obtain a license, or are ineligible for a license.

The Attorney General appreciates the opportunity to work jointly with the Secretary of State in enforcing license requirements and protecting consumers, and this legislation will contribute to the combined efforts.

For these reasons, the Attorney General respectfully requests this committee to adopt the give Senate Bill 2026 a "do pass" recommendation.

Thank you for your time and consideration. I will be available to try and answer any questions.

Political Subdivision Committee

Mr. Chairman, Committee Members

I am Ron Huff and I live in Bismarck. I am here in support of Senate Bill 2026.

The reason I support this bill is because in the big hail storm of 2001, our building sustained about \$250,000.00 dollars worth of damage. When we found a company to do the needed repairs we made sure they were licensed to do business in the state of North Dakota.

We were under the impression that to be a licensed contractor in this state you went through some type of investigative process to find out if they conducted their business in a reputable manner. We were very naive when it came to what is meant by being licensed and insured in the state.

The shingles started falling off, 2 weeks after the licensed company completed the job. I immediately contacted the state licensing department. The information about this company was extremely limited. Due to this lack of information, the state was unable to help us.

I feel this bill is a step in the right direction , however, there is a way to make this do even more to obtain better information. Requiring a check of any civil action brought against the company or individual requesting to be licensed.

The bill requires the state to do a criminal records check, a lot of times an individual or company does not go through the criminal process. However, most of the time they would go through the civil side of our judicatory system. I think it is important to know if the individual or company is always being taken to court and getting sued. Having a contractors license in North Dakota should mean a lot more then it does now.

By giving favorable action on this bill with a civil records check is certainly an improvement of what we have now.

So, I ask you to give a DO PASS on this bill.

RON HUFF



PRESIDENT
Joe Stenvold, Minot

PRESIDENT-ELECT
ALT. NATIONAL DIRECTOR/ALT. BUILD-PAC TRUSTEE
Don Dabbert, Jr., Fargo

SECRETARY/TREASURER
Lori Willson, Bismarck

IMMEDIATE PAST PRESIDENT
Rusty Wysocki, Grand Forks

STATE REPRESENTATIVE & SR. LIFE DIRECTOR
Gerald Eid, Fargo

BUILD-PAC TRUSTEE & LIFE DIRECTOR
Bob Klave, Grand Forks

ASSOCIATE NATIONAL DIRECTORS
Ken Krajsa, Fargo
Mike Stenvold, Minot

LIFE DIRECTOR
Ralph Applegren, Grand Forks

BISMARCK-MANDAN HOME BUILDERS ASSOCIATION
Eddy Mitzel, President
Rory Schlosser
Lori Willson
Eldon Krein, Executive Officer

DICKINSON AREA BUILDERS ASSOCIATION
Duane Bren, President
Terry Bares
Steve Schafer, Executive Officer

FORX BUILDERS ASSOCIATION
Barry Flath, President
Ralph Applegren
Bob Klave
Walt Knipe
Mario LaPlante
Tim Rosencrans
Rusty Wysocki
Betty McDonald, Executive Officer

HOME BUILDERS ASSOCIATION OF FARGO-MOORHEAD
Dave Anderson, President
Mike Arnold
Don Dabbert, Jr.
Gerald Eid
Ken Krajsa
Tony Watterud
Bryce Johnson, Executive Vice Pres.

MINOT ASSOCIATION OF BUILDERS
Dave Lebrun, President
Joe Stenvold
Mike Stenvold
Vicky Flagstad, Executive Officer

NORTH DAKOTA ASSOCIATION OF BUILDERS
Doreen Riedman,
Executive Officer
Tanya Wisniewski,
Administrative Assistant



Testimony on Senate Bill 2026 **Senate Political Subdivisions Committee** **January 14, 2005**

Doreen Riedman, Executive Officer
North Dakota Association of Builders

Chairman Cook and members of the Senate Political Subdivisions Committee, the North Dakota Association of Builders (NDAB) would like to support and provide input on Senate Bill 2026, relating to contractor licensing.

The NDAB represents 1,575 members statewide, and is affiliated with five local builders associations in Bismarck-Mandan, Dickinson, Fargo-Moorhead, Grand Forks, and Minot; and is part of a larger federation, the National Association of Home Builders (NAHB), which has over 215,000 members.

We have participated throughout the interim with the Commerce Committee on this legislation, and we support the intent to tighten contractor licensing laws for non-resident contractors and those working without contractor licenses. Contractors who circumvent the system by working without valid licenses compete against law abiding licensed contractors. To encourage compliance, we believe the penalty needs to be greater as stated in this bill.

Currently, Sections 2 and 3 require that contractors must provide a certificate of liability insurance when applying for, and renewing their contractors' licenses. We offer amendments to allow contractors the option of providing a bond or letter of credit in lieu of the required liability insurance coverage. The change would give builders much needed compliance options while maintaining the protective intent of the law.

Builders in North Dakota are confronting a liability insurance crisis. Due to adverse insurance market conditions, liability coverage for builders is less available, more expensive and coverage terms are more restrictive.

Builders always have been a difficult class of business to insure. Nationally, the proliferation of construction defect lawsuits has resulted in enormous losses for liability insurers. The insurance crisis is most acute in states with the highest incidence of construction defect litigation, but the liability insurance crisis has spread to North Dakota as well.

Builders in North Dakota are faced with fewer insurance companies in the marketplace and fewer options for insuring their businesses. Along with decreased availability and coverage limits, builders are seeing enormous premium increases ranging from 300 to 1000 percent.

Section 4 of the bill deals with license revocation and consumer fraud action. Due to the fluctuations in weather, product availability, and other issues affecting scheduling, we are suggesting an amendment to page 5, line 7 dealing with the commencement of work. We recommend that the same language used for the completion of work is used for the commencement of work, "unless the failure is due to circumstances beyond the control of the contractor" to allow for variability of instances that affect work done by contractors.

We respectfully ask this committee to consider our recommendations to further improve this bill and make it workable for contractors. Thank you.



PRESIDENT
Joe Stenvold, Minot

PRESIDENT-ELECT
ALT. NATIONAL DIRECTOR/ALT. BUILD-PAC TRUSTEE
Don Dabbert, Jr., Fargo

SECRETARY/TREASURER
Lori Willson, Bismarck

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Doreen Riedman,
Executive Officer
Tanya Wisnewski,
Administrative Assistant

PROPOSED AMENDMENTS TO SENATE BILL 2026

Page 1, Lines 21, following the word "insurance," add or bond, or letter of credit.

Page 2, Line 22, following the word "coverage" add , or bond, or letter of credit

Page 3, Line 26, following the word "file," add or bond, or letter of credit

Page 5, Line 7, following the word "upon" add , unless the failure is due to circumstances beyond the control of the contractor



NAHB
NATIONAL ASSOCIATION
OF HOME BUILDERS



SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 25, 2005

TO: Representative Devlin, Chairman, and Members of the House Political Subdivisions Committee

FR: Al Jaeger, Secretary of State

RE: SB 2026 – Contractors

Section 1: On page 1, lines 10 through 13, text is removed that overlaps with other applicable existing laws and which now restricts the legal options available to state and local prosecutors.

Section 2: On page 2, lines 1 through 7, this is text added by the Senate at the request of the North Dakota Association of Builders. Other text changes were made throughout the bill to provide administrative consistency related to this change.

In lines 7 through 13, although state law already allows the Secretary of State to request "other" information from an applicant to determine their fitness to act as a contractor, the added text makes it clearer and adds the option of conducting, if deemed necessary, a criminal history background investigation, which would be done at the expense of the applicant.

In lines 16 through 25, the Secretary of State "may" refuse to grant a contractor's license if the application contains false, misleading, or incomplete information or the applicant refuses to pay for a criminal history background check. A certain amount of days are provided to allow the applicant sufficient time to respond or cure the reason for the Secretary of State's refusal to grant a contractor's license. An applicant is also given an option to appeal any refusal to grant a contractor's license to the district court.

Section 3: On page 3, lines 28 and 29, the deleted text is corrective because of how "person" is defined in other sections of state law.

On page 4, lines 7 through 14, the Secretary of State "may" refuse to renew a contractor's license for the same reasons in Section 2 given for first-time applicants along with providing the same remedies for a contractor whose license is not renewed.

On page 5, lines 2 and 3 pertain to a processing procedure.

Section 4: On page 5, lines 13 through 22, a timeline is established under which a license revocation action could be commenced if the contractor does not commence or complete a project within a certain period whether or not the contract is in writing or verbal. That is, unless the failure is due to circumstances beyond the control of the contractor.

On page 6, line 1, it adds "misleading" to the basis under which the Secretary of State may commence a license revocation action subsequently discovered after a contractor's license was issued in either the first-time application process or in the renewal application process.

On page 6, lines 14 through 16, the Attorney General is given the authority to bring action against a contractor for any act or omission committed in N.D.C.C. § 40-07-14 under Chapter 51-15 of the Century Code, which is a chapter titled Unlawful Sales or Advertising Practices.

Section 5: On page 6, line 20, the penalty is changed for a person acting as a contractor without a license from a class B misdemeanor to a class A misdemeanor. This increases the penalty from 30 days imprisonment and a fine of \$1,000 to a one-year imprisonment, a fine of \$2,000, or both.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2026

Page 1, line 9, after "dollars" insert "nor may the person maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a contractor"

Renumber accordingly

STATE LAW PERTAINING TO CONTRACTORS

Effective as of August 1, 2003
Office of the Secretary of State
State of North Dakota

The following laws are from the North Dakota Century Code (NDCC) and pertain to Contractor Licensing. Although every attempt has been made for accuracy, the reprint of these laws does not carry the same authority or weight as the actual NDCC and should not be equated with the NDCC as an equal authority. This copy is only intended as a helpful resource and reference. For official and legal purposes, the official NDCC should be used.

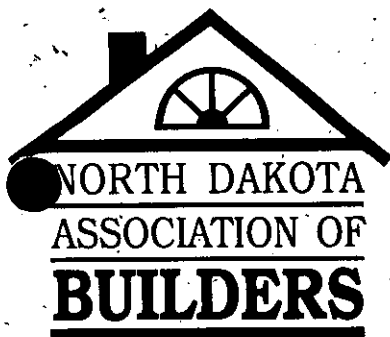
43-07-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Contractor" means any person engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas, or water pipelines, and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and shall include subcontractor, public contractor, and nonresident contractor.
2. "Nonresident contractor" means any contractor who has not an established and maintained place of business within this state, or who has not made reports to North Dakota workforce safety and insurance within the previous year of employees within this state, and who has not made contributions to the North Dakota workforce safety and insurance fund accordingly, or who, during a like period has not made an income tax return in this state.
3. "Person" includes any individual, firm, copartnership, association, corporation, limited liability company, or other group or combination thereof acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed clearly by the context thereof.
4. "Public contract" means a contract with the state of North Dakota or any board, commission, or department thereof, or with any board of county commissioners, or with any city council or board of city commissioners, board of township supervisors, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to let or award contracts for the construction or reconstruction of public work when the contract cost, value, or price exceeds the sum of two thousand dollars and includes subcontracts undertaken to perform work covered by the original contract or any part thereof when the contract cost, value, or price of the work included in such subcontract exceeds the sum of two thousand dollars.
5. "Registrar" means the secretary of state of the state of North Dakota.

43-07-02. License required - Enjoining operation without license. No person may engage in the business nor act in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of two thousand dollars without first having a license as provided in this chapter. The secretary of state may request the attorney general to bring an action to enjoin any person from engaging in the business or acting in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of two thousand dollars, unless the person is properly licensed.

43-07-03. Registrar designated. The secretary of state as registrar has authority to employ such assistance and procure such records, supplies, and equipment as may be necessary to carry out the provisions of this chapter.

43-07-04. License - How obtained - Revocation. To obtain a license under this chapter, an applicant who is eighteen years of age or older shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of insurance indicating liability coverage, as proof that the applicant has secured liability



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Executive Officer

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Administrative Assistant

Testimony on Senate Bill 2026

House Political Subdivisions Committee

February 25, 2005

Doreen Riedman, Executive Officer

North Dakota Association of Builders

Chairman Devlin and members of the House Political Subdivisions Committee, the North Dakota Association of Builders (NDAB) would like to express its support of Engrossed Senate Bill 2026, relating to contractor licensing.

The NDAB represents 1,600 members statewide, and is affiliated with five local builders associations in Bismarck-Mandan, Dickinson, Fargo-Moorhead, Grand Forks, and Minot; and is part of a larger federation, the National Association of Home Builders (NAHB), which has over 215,000 members.

We have participated throughout the interim with the Commerce Committee on this legislation, and we support the intent to tighten contractor licensing laws for non-resident contractors and those working without contractor licenses. Currently, those people working without contractor licenses continue to do so until they're caught. We believe that the penalty needs to be greater for these people who are circumventing the system and competing against contractors who are abiding by the law and getting proper licensing.

We wholeheartedly support the provision to make a bond or letter of credit an option for contractors when applying for and renewing their licenses, in lieu of liability insurance. These are options that would be extremely valuable to those builders who are experiencing liability insurance difficulties.

Nationwide, builders are confronting a liability insurance crisis, and North Dakota is no different. Builders in our state have been faced with fewer insurance companies in the marketplace, fewer options for insuring their businesses, and more exclusions on those policies. Along with decreased availability and coverage limits, builders are seeing an enormous increase in premiums. When



coverage is available, builders in North Dakota are experiencing premium increases ranging from 300 percent to 1000 percent.

Having the option of providing a bond or letter of credit when applying for and renewing their licenses would give builders options and provide a more friendly business climate in our state, lessening the reliance on the liability insurance market.

We respectfully ask this committee to support Engrossed Senate Bill 2026.

HOUSE POLITICAL SUBDIVISIONS COMMITTEE
WILLIAM R. DEVLIN, CHAIRMAN
FEBRUARY 25, 2005

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2026

Mr. Chairman and members of the House Political Subdivisions Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and the Consumer Protection Division support Engrossed Senate Bill No. 2026.

The Consumer Protection Division works closely with the Secretary of State in enforcement issues regarding violations of the contractors law and consumer protection issues. We worked jointly with Mr. Jaeger in addressing these issues before the interim Commerce Committee which sponsored this legislation.

This legislation will provide both the Secretary of State and the Attorney General with enhanced enforcement authority in regard to problem contractors that defraud consumers, among other things, by taking advance payments and failing to perform the work promised and agreed upon with the consumer.

The legislation significantly enhances the Secretary of State's ability to deny a license to a questionable contractor that refuses or fails to disclose his criminal background. It clarifies the Secretary of State's ability to obtain information relevant to the applicant's fitness to act as a contractor.

The legislation strengthens the Secretary of State's ability to revoke a license for misleading or deceptive practices, and further provides the Attorney General the ability to bring a consumer fraud action against such contractors engaged in fraudulent activity.

Enhancing the criminal penalties from a class B misdemeanor to a class A misdemeanor will increase the deterrence of rogue contractors who intentionally ignore licensing requirements, refuse to obtain a license, or are ineligible for a license.

The Attorney General appreciates the opportunity to work jointly with the Secretary of State in enforcing license requirements and protecting consumers, and this legislation will contribute to the combined efforts.

For these reasons, the Attorney General respectfully requests this committee to adopt the Secretary of State's proposed amendments to Engrossed Senate Bill 2026 and give Engrossed Senate Bill 2026 a "do pass" recommendation.

Thank you for your time and consideration. I will be available to try and answer any questions.

Chairman Devlin & Members of the Committee:

My name is Marvin Miller; I am vice president of Twin City Roofing, Inc. located in Mandan, North Dakota.

Our company supports SB 2026 for the most part. We are however opposed to the changes in language from the current law as proposed on page 5, lines 13 through 22. It is our opinion the wording in the current law is sufficient. We think the proposed additional wording will create some unintended problems and increase the workload of the Secretary of State's office.

Projects that are put out for public bid generally include construction schedules. The owner and specifiers have decided by bid time if they wish to include liquidated damages for failure to meet this schedule. Many times they decide against including damages because their inclusion can cause pricing to be more because overtime costs may become a factor in meeting the schedule. This is how they deal with time issues.

Our company negotiates a great deal of our work directly with owners. I think that is very common in the construction industry. Our work also tends to be seasonal due to North Dakota's weather.

We often sell a roofing project in December and are not able to begin work until April or May. That condition itself already puts us in violation of the new language. If you multiply this scenario by ten jobs, fifteen jobs we begin to look like we cannot get any work done. Yet in our business this happens every year. This also happens in many construction related businesses in North Dakota.

We do business in about one third of the state. We like to group projects in close proximity of each other. This allows us to be more competitive in our pricing. This may cause a client to wait until June or July or longer. Now we will really be violating the statute.

We try to get a sense of our customer's urgency before we ever price a project. If their need is more immediate we must decide if we can perform within their parameters or pass on the project.

I understand some of the impetus for this wording comes from catastrophic losses from hailstorms, windstorms, floods, etc. These events generate a much larger volume of business than normal. This extends time lines for getting work done. Under the proposed language this situation causes all of us in construction to fall behind and thus be in violation.

In 2001 a major storm struck Bismarck-Mandan. You have probably heard all the horror stories of transient contractors, shoddy work, etc. Our company had a backlog that exceeded two years. These were customers that chose to wait to have their work done by local people they knew and trusted. Our company was not alone. Other roofing and siding contractors in the area can tell you similar stories.

I urge you to amend SB 2026 to retain the wording of existing law on page 5 lines 13-22. It will be much easier for small contractors to comply with the law. I would urge you to find other ways to control problem contractors.

Thank you for your time. I will be glad to answer any questions.