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ROLL NUMBER

DESCRIPTION

2252

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Operator's Signature

Date

2003 SENATE POLITICAL SUBDIVISIONS

SB 2252

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Deanne O'Neil
Operator's Signature

10/21/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2252

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 6, 2003

Tape Number	Side A	Side B	Meter #
1	X		0 - 5319
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

CHAIRMAN COOK called the committee to order. All senators (6) were present.

CHAIRMAN COOK opened the hearing on SB 2252 which relates to contractor's license.

license complaints, hearings, revocations, civil penalties, remedies, and service of process.

SENATOR COOK, Prime Sponsor on SB2252, introduced the bill on behalf of a constituent who brought a problem of his to his attention. Senator Cook had conversations with the Attorney General and Secretary of State. The Secretary of State put this bill draft together.

REPRESENTATIVE CARLSON, District 41, Fargo, ND and also a contractor. He is concerned that our industry is properly monitored and that the people out there providing services to the people are properly licensed, bonded and are paying workers compensation, doing their unemployment compensation and following the rules that would provide good services and good quality work for the citizens. His association has a couple concerns. Overall it is getting to the

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Deanna Ball
Operator's Signature

10/21/03
Date

Page 2

Senate Political Subdivisions Committee

Bill/Resolution Number SB 2252

Hearing Date February 6, 2003

point that if someone is not doing their job properly they can lose their license. A word of caution, we don't want to make criminals out of the good guys.

Al Jaeger, Secretary of State explained the bill. Secretary of States office is responsible for licensing the contractors. (See attached testimony)

Parrell Grossman, Director, Consumer Protection and Antitrust Division, Attorney Generals Office, spoke in favor of SB . (See attached testimony)

Streyle Mehlhoff, Executive Officer North Dakota Association of Builders, spoke in favor of SB 2252 with amendments. (See attached testimony and amendment recommendations)

Ron Huff, BLE Lobbyist and President of a condo association in Bismarck, spoke in favor of the bill. (See attached testimony) Mr Huff suggested that this committee might want to look at a requirement to have a one year performance bond. That way the consumer might have a chance to go back and recuperate their money.

No testimony in opposition of SB 2252.

CHAIRMAN COOK closed the hearing on SB 2252.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2252

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date February 13, 2003 (Discussion)

Tape Number	Side A	Side B	Meter #
1		X	1850 - 4450
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

CHAIRMAN COOK called the committee to order. All members (6) were in attendance.

CHAIRMAN COOK passed out amendments for the committee to look at. (see attached amendments) He reviewed the amendments with the committee.

SENATOR JUDY LEE had a question on the word rebuttable. It means guilty until proven innocent. She asked if everyone was comfortable with having rebuttable in the amendment.

TeLisa Nemec (Intern) looked up the legal meaning and explained that you would not need a. and b. in line 18 of the amendment if you took out the word rebuttable.

SENATOR COOK asked the committee if they were comfortable with the amendments and they were comfortable.

SENATOR COOK would like to see a study resolution attached to the bill. He asked TeLisa to address the concern with owner and get a study resolution drawn up.

Committee adjourned and will act on the bill tomorrow.

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Deanna Dally
Operator's Signature

10/21/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **SB 2252**

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date **February 2-14-03 (Action)**

Tape Number	Side A	Side B	Meter #
1	x		653 - 2000

Committee Clerk Signature

Shirley Borg

Minutes:

CHAIRMAN COOK called the committee to order. All senators (6) present.

CHAIRMAN COOK reviewed the bill which deals with contractors license. We have amendments before us. Would like to add a study resolution to the bottom of amendments.

SENATOR JUDY LEE moved adoption of amendments on SB 2252

SENATOR GARY LEE seconded the motion

Roll call vote: Yes 5 No 1 Absent 0

Discussion see Tape 1, Side A, Meter # 653 - 1661

SENATOR JUDY LEE moved a DO PASS AS AMENDED on SB 2252

SENATOR POLOVITZ seconded the motion

Roll call vote: Yes 5 No 1 Absent 0

Carrier: **SENATOR GARY LEE**

CHAIRMAN COOK closed the meeting on SB 2252.

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Deanna Dallas
Operator's Signature

10/21/03
Date

FISCAL NOTE
Requested by Legislative Council
01/20/2003

Bill/Resolution No.: SB 2252

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The purpose of this bill is to update several portions of the state's contractor licensing laws and to provide for a more efficient and effective method of enforcement against those contractors who violate the law.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill will not generate additional revenues.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill will not result in additional expenditures.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

None needed.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	01/21/2003

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Date

Proposed Amendments to Senate Bill No. 2252

Prepared by TaLisa Nemec, Legislative Intern for the Political Subdivision Committee

Page 2, line 20, remove the overstrike over "sixty"

Page 2, line 21, remove "thirty"

Page 2, line 22, remove the overstrike over "ninety"

Page 2, line 23, remove "sixty"

Page 3, line 10, replace "an owner" with the "the contracting party" and replace "within sixty days after the" with "if a rebuttable presumption of abandonment has arisen under subsection 1 and the contracting party has made a request to the licensee for a refund."

Page 3, remove line 11

Page 3, remove line 12

Page 3, line 28, after "If" insert "after an adjudicative proceeding or as part of an informal disposition under chapter 28-32"

Page 3, line 28, overstrike "has been" and insert immediately thereafter "is", overstrike "any of the acts" and insert immediately thereafter "an act", overstrike "omissions" and insert immediately thereafter "omission", and after "charged" insert "or if the licensee admits guilt to an act or omission charged"

Page 3, line 30, remove "or"

Page 3, line 31, after "dollars" insert ", or impose some lesser sanction or remedy"

Page 5, after line 4 insert:

Renumber accordingly

38326.0101
Title.

Prepared by the Legislative Council staff for
Senator Cook
February 12, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2252

Page 2, line 20, remove the overstrike over "sixty"

Page 2, line 21, remove "thirty"

Page 2, line 22, remove the overstrike over "ninety"

Page 2, line 23, remove "sixty"

Page 3, line 10, replace "within sixty days after the" with "if a rebuttable presumption of abandonment has arisen under subsection 1 and the owner has made a request to the licensee for a refund"

Page 3, remove line 11

Page 3, line 12, remove "starting date agreed upon in writing"

Page 3, line 27, after "If" insert "after an adjudicative proceeding or as part of an informal disposition under chapter 28-32,"

Page 3, line 28, overstrike "has been" and insert immediately thereafter "is", overstrike "any of the acts" and insert immediately thereafter "an act", overstrike "omissions" and insert immediately thereafter "omission", and after "charged" insert "or if the licensee admits guilt to an act or omission charged"

Page 3, line 30, remove "or"

Page 3, line 31, after "dollars" insert ", or impose some lesser sanction or remedy"

Renumber accordingly

38326.0102
Title.0200

Adopted by the Political Subdivisions
Committee

February 12, 2003

[Signature]
2-14-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2252

Page 1, line 3, after the semicolon insert "to provide for a legislative study;"

Page 2, line 20, remove the overstrike over "sixty"

Page 2, line 21, remove "thirty"

Page 2, line 22, remove the overstrike over "ninety"

Page 2, line 23, remove "sixty"

Page 3, line 10, replace "an owner's" with "the contracting party's" and replace "within sixty days after the" with "if a rebuttable presumption of abandonment has arisen under subsection 1 and the contracting party has made a request to the licensee for a refund"

Page 3, remove line 11

Page 3, line 12, remove "starting date agreed upon in writing"

Page 3, line 27, after "it" insert ", after an adjudicative proceeding or as part of an informal disposition under chapter 28-32."

Page 3, line 28, overstrike "has been" and insert immediately thereafter "is", overstrike "any of the acts" and insert immediately thereafter "an act", overstrike "omissions" and insert immediately thereafter "omission", and after "charged" insert "or if the licensee admits guilt to an act or omission charged"

Page 3, line 30, remove "or"

Page 3, line 31, after "dollars" insert ", or impose some lesser sanction or remedy"

Page 5, after line 4, insert:

"SECTION 5. CONTRACTOR COMPETENCY - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 Interim, consumer protection in regard to contractor competency and out-of-state contractors licensed in the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

Date: 2-14-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2252

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38326, 0102

Action Taken Move Amendments

Motion Made By Sen. Judy Lee Seconded By Senator Gary Lee

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator John O. Syverson, VC		X			
Senator Gary A. Lee	X				
Senator Judy Lee	X				
Senator Linda Christenson	X				
Senator Michael Polovitz	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment _____

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

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Deanna Dallas 10/21/03
Operator's Signature Date

Date: 2-14-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 8252

Senate Political Subdivisions Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Senator Judy Lee Seconded By Senator Polovitz

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	X				
Senator John O. Syverson, V C		X			
Senator Gary A. Lee	X				
Senator Judy Lee	X				
Senator Linda Christenson	X				
Senator Michael Polovitz	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Gary Lee

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

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Deanna Waller
Operator's Signature

10/21/03
Date

REPORT OF STANDING COMMITTEE (410)
February 17, 2003 1:50 p.m.

Module No: SR-30-2932
Carrier: G. Lee
Insert LC: 38326.0102 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2252: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2252 was placed on the Sixth order on the calendar.

Page 1, line 3, after the semicolon insert "to provide for a legislative study;"

Page 2, line 20, remove the overstrike over "sixty"

Page 2, line 21, remove "thirty"

Page 2, line 22, remove the overstrike over "ninety"

Page 2, line 23, remove "sixty"

Page 3, line 10, replace "an owner's" with "the contracting party's" and replace "within sixty days after the" with "if a rebuttable presumption of abandonment has arisen under subsection 1 and the contracting party has made a request to the licensee for a refund"

Page 3, remove line 11

Page 3, line 12, remove "starting date agreed upon in writing"

Page 3, line 27, after "If" insert ", after an adjudicative proceeding or as part of an informal disposition under chapter 28-32."

Page 3, line 28, overstrike "has been" and insert immediately thereafter "is", overstrike "any of the acts" and insert immediately thereafter "an act", overstrike "omissions" and insert immediately thereafter "omission", and after "charged" insert "or if the licensee admits guilt to an act or omission charged"

Page 3, line 30, remove "or"

Page 3, line 31, after "dollars" insert ", or impose some lesser sanction or remedy"

Page 5, after line 4, insert:

"SECTION 5. CONTRACTOR COMPETENCY - LEGISLATIVE COUNCIL STUDY. The legislative council shall consider studying, during the 2003-04 interim, consumer protection in regard to contractor competency and out-of-state contractors licensed in the state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

2003 HOUSE INDUSTRY, BUSINESS AND LABOR
SB 2252

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Deanna D. Smith
Operator's Signature

10/21/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2252

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 10, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.0-26.2
1		x	2.0-19.9
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Kelser** opened the hearing on SB 2252.

Sen. Cook, District 34, introduced the bill and presented brief testimony in support of the legislation and urged a Do Pass. He turned the podium over to **Parrell Grossman**, Director of the Consumer Protection and Antitrust Division, Office of the Attorney General, who testified in support of SB 2252. (See attached #1)

Rep. Kasper: When does someone who wishes to do work as a contractor become licensed under current law?

Grossman: The threshold is \$2000 and then they must obtain a contractor's license.

Rep. Froseth: If an out of state contractor does shoddy work in North Dakota, and your office receives a complaint and suspends his license, is any notification forwarded to that contractor's home state?

Grossman: I don't believe so. But that's an excellent suggestion.

Rep. Ekstrom: Was any consideration given to putting some heat into "anti-gouging"?

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Operator's Signature

10/21/03
Date

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2252

Hearing Date March 10, 2003

Grossman: I don't know that we saw any gouging after the hailstorms, per se, the prices were reasonable but the work was substandard.

Rep. Kasper: Was that \$2000 per job, or \$2000 cumulative?

Grossman: \$2000 per job, so many contractors skate just under that.

Chairman Keiser: So a civil penalty up to \$1000 could be issued by the registrar and an order of restitution up to \$5000 is allowed. Is that a significant authority to give to the registrar? Normally that's the job for courts to administer. Are we setting precedent here?

Grossman: It is somewhat of a significant departure but it's easier for the Secretary of State to settle without litigation, rather than a lengthy court proceeding to revoke a license. This would be reserved for instances where restitution is due. The aggrieved party can still challenge the Secretary of State or the Agency's decision in District Court.

Chairman Keiser: The bill mentions "adjudicative hearing", what is that process? Civil Court?

Grossman: That is a civil proceeding, an administrative hearing conducted through the Office of Hearings. The Registrar would have to bring the proceeding for penalty in the adjudicative proceeding, the Office of Administrative Hearings. Then if the Hearing Officer recommends the penalty and/or the Secretary of State concurs, the aggrieved party could challenge the disposition in District Court.

Rep. Dosch: Are there bonds required of these contractors?

Grossman: There is a contractor's bond, but it isn't required for these situations. There's a bonding procedure for government contracts but not for private deals. So many problems can be fixed with this statute. The dilemma is that in order to fix this, to take care of the bad operators, legitimate contractors would have to comply with more regulations too.

Page 3
House Industry, Business and Labor Committee
Bill/Resolution Number SB 2252
Hearing Date March 10, 2003

Rep. Dosch: How about requiring a bond if you haven't worked within the state for say, three years?

Grossman: That's a good idea, as long as you are treating in and out of state contractors equally.

Rep. Kasper: What are the current contractor fees?

Grossman: There are four classes of contractors. Mary Feist can answer that for you.

Chairman Kelser: Will it take more FTE's to manage this?

Grossman: I don't believe so. The two offices will make a concerted effort, although it is possible, if more adjudicative proceedings take place, that additional administrative staff support will be necessary.

Mary Feist, Director of Licensing Division, on behalf of Al Jaeger, Secretary of State, testified in support of SB 2252. She presented a minor amendment for consideration (p.4, line 3, remove "imposes" and replace with "impose") (See attached #2)

There are four classes of contractor's licenses:

1. D \$50 up to \$50,000 job
2. C \$150 up to \$120,000 job
3. B \$200 up to \$250,000 job
4. A \$300 unlimited

The renewal fee is a percentage of the original fee.

Rep. Froseth: Back to the out of state contractors, do you have records of other states where they are licensed?

Feist: We do, but we don't contact the states for information about them.

Page 4

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2252

Hearing Date March 10, 2003

Rep. Froseth: So it would be possible to contact other states, in the event that their license is revoked or suspended here in North Dakota?

Feist: We could do that. In the 23 years I've been with the Secretary of State's Office we have only revoked 2 licenses. It has been too burdensome a procedure to get to that point.

Rep. Ekstrom: Is anyone under 18 licensed as a contractor at present?

Feist: Last summer we had 3 teenagers who wanted to be licensed during the roofing period. We grandfathered them in because they were already working.

Rep. Thorpe: Why 18, is that because of legal aspects?

Feist: The Attorney General's office issued the opinion. In another statute that relates to land and making improvements to land, anybody under the age of 18 cannot legally sign contracts and be responsible for those contracts.

Rep. Keiser: The Consumer Fraud Division and Small Claims Court are established and do their jobs well. I think the adjudication will be intense. This is a big issue.

Feist: The Attorney General can't do anything until fraud is proven. If the two Departments work together it will help more people and they won't have to go through small claims, we want to do mediation before litigation.

Rep. Kasper: Where is "registrar" defined in the bill?

Feist: It's currently in statute: 43-07-01.

As there was no one else present to testify in support of or in opposition to SB 2252, the hearing was closed.

Page 5

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2252

Hearing Date March 10, 2003

Chairman Keiser called for committee work on SB 2252.

Rep. Klein moved to adopt the amendments. (Imposes to impose)

Rep. Ekstrom seconded the motion.

A voice vote carried the motion to adopt the technical amendment

Rep. Froseth: If the committee thinks this has merit, I'd like to draft an amendment that would accomplish the notification to other states if we revoke a license so that a bad mark follows those bad operators. We're looking to provide consumer safety and protection.

Rep. Kasper: When contractors apply for a license do they have to furnish information about other states where they are licensed? Shouldn't we be asking those other states if they have bad records?

Rep. Froseth: I think that Feist said they do ask for that information.

Chairman Keiser: Let's take action on this good bill before expanding the scope. I have more issue with the 18 year old restriction. I can't believe that we are going to give authority to issue fines. The revocations and licensure parts, that authority already rests there. But we are opening up a lot of problems with giving the Secretary of State the authority to issue civil penalties.

Rep. Thorpe: This legislation was brought forth as a reaction to the hailstorm. Logistically, this is not what we need to do. The age requirement bothers me too.

Rep. Klein: We have a ruling from the Attorney General that you can't be licensed if you are under age 18. This is putting it into law. At the present time you can't do that unless you have been grandfathered.

Chairman Keiser: That's the law unless tested in the court or unless the Legislature changes it.

Page 6
House Industry, Business and Labor Committee
Bill/Resolution Number SB 2252
Hearing Date March 10, 2003

Rep. Ruby: I think the line of thinking about the under 18 limitation is due to the fact that, within the legal system they are not always held responsible for their actions.

Chairman Kelser: This bill has abilities to communicate with other states.

Rep. Klein: But if the other states don't share their information with us, we're just creating a lot of work.

Rep. Froseth: The Secretary of State could probably do that communication now. I think the industry should look at this during the interim, before next session.

Rep. Dosch: I won't rent a room to someone under 18 because of legal liability. I can understand the dilemma from a consumer standpoint, they go to the Attorney General, and they say, sorry, we can't help you. The Secretary of States office can't really help you. So you go to Small Claims Court, but if the contractor is out of town, you're out of luck. I think a study should look at the bonding idea I suggested earlier. Require a \$50,000 bond. Save the consumer the headaches.

Rep. Froseth: Don't labor laws prohibit people under age 16 working?

Chairman Kelser: Not if you are in business for yourself.

Rep. Klein: I think the amount of work the Secretary of State and Attorney General's office put into this is commendable. We are addressing an existing problem. This bill has some good things in it.

Rep. Froseth moved a Do Pass As Amended.

Rep. Ekstrom seconded the motion.

Rep. Thorpe: I wish we could do something about the age limit issue. Change it to 16 or older. I hate to legislate those people out of doing something they are capable of doing.

Deanna Wallis
Operator's Signature

10/21/03
Date

Page 7

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2252

Hearing Date March 10, 2003

Rep. Ekstrom: But in terms of legal liability, it would fall back on their parents or guardians.

The result of the roll call vote was 7-4-3.

Rep. Klein will carry this on the floor.

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Deanna Hall
Operator's Signature

10/21/03
Date

House Amendments to Engrossed SB 2252 - Industry, Business and Labor Committee
03/10/2003

Page 4, line 3, replace "imposes" with "impose"

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Deanna Hall
Operator's Signature

10/21/03
Date

Date: 3/10/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2252

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

38326.0201
Title .0300

Action Taken

Do Pass As Amended

Motion Made By

Froese

Seconded By

Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Boe		✓
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe		✓
Froese	✓		Zaiser		
Johnson					
Kasper	✓				
Klein	✓				
Nottestad					
Ruby		✓			
Tieman	✓				

Total (Yes)

7

No

4

Absent

3

Floor Assignment

Rep. Klein

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

REPORT OF STANDING COMMITTEE (410)
March 11, 2003 9:07 a.m.

Module No: HR-43-4422
Carrier: M. Klein
Insert LC: 38326.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2252, as engrossed: Industry, Business and Labor Committee (Rep. Kelsor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2252 was placed on the Sixth order on the calendar.

Page 4, line 3, replace "imposes" with "impose"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-43-4422

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Deanna Ball
Operator's Signature

10/21/03
Date

2003 TESTIMONY

SB 2252

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Deanna D. Smith
Operator's Signature

10/21/03
Date

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.state.nd.us/seo



SECRETARY OF STATE

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

February 6, 2003

PHONE (701) 328-2900
FAX (701) 328-2992

E-MAIL sos@state.nd.us

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

FR: Al Jaeger, Secretary of State

RE: SB 2252 - Contractors

As of today, approximately 6,000 contractors are licensed until March 1, 2003, through the Secretary of State's office. March 1 is the license expiration date for the past year and the renewal date for the upcoming year. Therefore, the Licensing Division is currently busy processing renewals.

If adopted, this bill would do the following:

Section 1: On page 1, line 8, it would require an applicant for a contractor's license to be at least 18 years of age or older. This would make an Attorney General's opinion a matter of law. It states that the Secretary of State is prohibited from issuing a contractor's license to an applicant younger than 18.

Section 2: N.D.C.C. § 43-07-14 pertains to the types of complaints that can be filed with the Secretary of State's office requesting the revocation of a contractor's license.

- On page 2, lines 20 and 23, it would reduce two timelines by 30 days in those situations where a contractor abandons a written contract without a legal excuse.
- On page 2, on line 30, and continuing through line 1 on the next page, it would clarify text.
- On page 3, line 2, it would remove a reference to small claims court and change it to a specific dollar amount of \$3,000.
- On page 3, lines 4 through 7, it would add a reference to applicants that have been convicted of an offense and a reference to a section of law pertaining to prior convictions and exceptions.
- On page 3, lines 8 and 9, it would add a situation related to a contractor working without a license, which is required of the contractor under other local or other state and federal laws.
- On page 3, lines 10 through 12, it would add a situation whereby an owner has advanced funds to a contractor under a written agreement and the contractor fails to commence work within 30 days of the timeline agreed upon in that agreement and fails within 60 days to refund to the owner the funds that were advanced.

Section 3: N.D.C.C. § 43-07-15 pertains to the process for revoking a contractor's license.

- On page 3, lines 19 through 27, it would delete text and add new text that clarifies the process under which a complaint for license revocation is received, reviewed, and how action is initiated under the provisions of Chapter 28-32 (Administrative Agencies Act) if required.
- On page 3, line 29, it would change "shall" revoke a license to "may" suspend or revoke a license.
- On page 3, lines 29 through 31, it would allow for the ordering of a civil penalty up to \$1,000 or ordering restitution up to \$5,000.
- On page 3, line 31, it would provide that a contractor's license could not be suspended for more than 60 months.
- On page 4, lines 1 through 5, it would restrict the issuance of a new, renewed, or reinstatement of a license to a contractor until any civil penalties or restitutions are paid and, if not paid, what legal action can be taken.

Section 4: On page 4, lines 12 through 13, it would clarify the service of process procedures for a non-resident contractor and eliminate a form.

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Deanna D. Hall
Operator's Signature

10/21/03
Date

PROPOSED AMENDMENTS TO SENATE BILL NO. 2252

Page 3, line 27, overstrike "registrar"

Page 3, line 28, overstrike "determines that the" and after licensee overstrike "has been" and immediately thereafter insert "is determined"

The proposed end result is that line 27, beginning with the word "If" it would read, "If the licensee is determined guilty of any of the acts or omissions charged, the registrar..."

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Deanna Waller
Operator's Signature

12/21/03
Date

SENATE POLITICAL SUBDIVISIONS COMMITTEE
DWIGHT COOK, CHAIRMAN
FEBRUARY 6, 2003

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2252

Mr. Chairman and members of the Senate Political Subdivisions Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. The Attorney General and the Consumer Protection Division support Senate Bill No. 2252.

The Attorney General's Consumer Protection Division works closely with the Secretary of State and his staff in reviewing, mediating or investigating contractor complaints. We particularly coordinate and cooperate on complaints involving possible or actual fraud.

Many of the complaints received by the Attorney General are quality of work complaints or breach of contract complaints, *et cetera*. The Secretary of State and the Attorney General do not have an official role in such complaints. However, both agencies do receive complaints containing serious allegations of fraud, failure to return advance payments when work has not been commenced or completed, *et cetera*. In some of these instances the alleged conduct may not fit squarely within the consumer fraud statutes as a violation, or may not constitute sufficient violation or conduct necessary to revoke the contractor's license.

The proposed amendments in this legislation will provide the Secretary of State with greater authority to deal with some of this fraudulent or illegal conduct. In my experience with the Consumer Protection Division, the changes to section 43-07-14 will be particularly useful in future enforcement or regulatory action by the Secretary of State and the Attorney General.

Subsections 1(a) and 1(b) will address the problem of questionable contractors that frequently take advance deposits and then don't commence or complete the work in a reasonable amount of time, if at all.

Subsection (3) will give the Secretary of state the ability to revoke a contractor's license for fraudulent conduct. I am currently prosecuting a civil consumer fraud case involving fraud in which the contractor has harmed numerous victims all in amounts less than \$5,000 the current threshold. Under existing law, this conduct would not be a basis for revoking the contractor's license. With the amendments it would be, and should be a basis to revoke.

Subsection(4) regarding false statements, violating provisions of the chapter, *et cetera* is straightforward and reasonable as a basis to revoke a license.

Subsection (5) will address those circumstances in which the individual is not licensed to do the work but continues to engage in the work. For instance, I am suing a contractor

that continues to engage in plumbing when he is not licensed and has been repeatedly advised by the state that he requires a plumbing license. He is not eligible for the license and continues to ignore the law and engage in plumbing. The Attorney General has received numerous consumer complaints because his work is not properly completed. One homeowner was without running water in her home for ten days, as a result of the defendant's plumbing work or lack thereof. Licensed contractors should not be permitted to ignore specific professional licensing requirements.

Subsection (6) addresses those frequent problems when questionable contractors take advance payments, and for one reason or another (and none of the reasonable or true) never commences the work. There must be some definite time frame to perform or refund the advance payment.

Section 3 of the bill, or section 43-07-15, provides the Secretary of State some needed discretion and authority to determine when to take action and what action to take. His only current option is to revoke the license. Suspension may be more appropriate in some circumstances. The Secretary of State would also have some important discretion to decide which cases and circumstances are appropriate for regulatory action, and he would have some flexibility to work out settlement agreements. The Secretary of State and the Attorney General often would prefer restitution for consumers and a reasonable penalty, but allow the contractor to continue business with appropriate monitoring, *et cetera*.

In the experiences of the Secretary of State and the Consumer Protection Division, some of the complaints do not belong within our offices or jurisdictions and should be addressed by the parties to the contract in legal proceedings or court. We do not have the staff, expertise or resources to handle these types of disputes. We spend significant time reviewing such complaints, only to come to the conclusion we cannot provide further relief or assistance. Consumers, nonetheless, expect our agencies to receive and review these complaints.

We will continue to exercise sound judgment in these matters. We are not looking to engage in more revocations, but must have the authority to do so when appropriate and necessary to protect the public from bad actors and fraudulent conduct. The Attorney General will continue to work cooperatively and jointly with the Secretary of State in these issues and assist consumers, if the legislature provides us the necessary authority.

For these reasons, the Attorney General respectfully urges this committee to give Senate Bill 2252 a "do pass" recommendation.

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



PRESIDENT

Paul Bosch, Dickinson

PRESIDENT-ELECT

Claron "Rusty" Wysocki, Grand Forks

SECRETARY/TREASURER

Joe Stenvold, Minot

IMMEDIATE PAST PRESIDENT

Jack Knutson, Bismarck

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BISMARCK-MANDAN HOME BUILDERS ASSOCIATION

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Don Krahn, Executive Officer

DICKINSON AREA BUILDERS ASSOCIATION

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Claron "Rusty" Wysocki

Betty McDonald, Executive Officer

HOME BUILDERS ASSOCIATION OF FARGO-MOORHEAD

Don Dabbert Jr., President

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Karen Studt

Bryce Johnson, Executive Vice Pres.

MINOT ASSOCIATION OF BUILDERS

Boyd Sivertson, President

Dave Lebrun

Joe Stenvold

Bruce Walker

Vicky Flagstad, Executive Officer

DAKOTA ASSOCIATION OF BUILDERS

Doreen Streyle Mehlhoff,

Executive Officer

Amber Bintliff,

Administrative Assistant



**Testimony in Support of SB2252 with Proposed Amendments
Senate Political Subdivisions Committee
February 6, 2003**

**Doreen Streyle Mehlhoff, Executive Officer
North Dakota Association of Builders**

Chairman Cook and members of the Senate Political Subdivisions Committee, the North Dakota Association of Builders (NDAB) respectfully asks for your consideration of our position on Senate Bill 2252 dealing with contractor licensing.

The NDAB represents just over 1,400 members statewide, and is affiliated with five local builders associations in Bismarck-Mandan, Dickinson, Fargo-Moorhead, Grand Forks, and Minot. Our national association, the National Association of Home Builders (NAHB), has over 205,000 members across the nation.

We support Sections 1 and 4 of the bill, but recommend amending Section 2 of the bill and eliminating Section 3. In Section 2, we suggest that no changes be made to subsection a. or b. (lines 20-23 on page 2 of the bill) in Section 1 of 43-07-14 dealing with commencing and completing work. With the uncertainty of the weather in North Dakota, it is unreasonable to expect and ensure that such short timelines can always be met. On page 3, lines 10 and 11, we also suggest that the timeframes be changed to "ninety" and "sixty," respectively, making it consist with the previous changes.

Section 3 of the bill provides for restitution and civil penalties, putting the responsibility for determining such penalties on the registrar (Secretary of State). We believe the Secretary of State currently has the powers and abilities needed to enforce the laws on contractor licensing without having the responsibility and sole authority to issue restitution orders and civil penalties. We recommend that Section 3 be eliminated in its entirety.

The North Dakota Association of Builders and its membership ask the Senate Political Subdivisions Committee to consider our proposed amendments and then give a favorable recommendation to Senate Bill 2252.

1

301 East Front Avenue, Suite 106 ♦ Bismarck, ND 58504-5601 ♦ 701/222-2401 ♦ Fax: 701/222-3699 ♦ www.ndabuild.com

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Operator's Signature

Date

PROPOSED AMENDMENTS TO SB 2252

Page 2, line 20, remove overstrike from "sixty"

Page 2, line 21, remove "thirty"

Page 2, line 22, remove overstrike from "ninety"

Page 2, line 23, remove "sixty"

Page 3, line 10, remove "sixty" and insert "ninety"

Page 3, line 11, remove "thirty" and insert "sixty"

Page 3, remove lines 16 through 31

Page 4, remove lines 1 through 9

Renumber accordingly

Deanne Waller
Operator's Signature

10/21/03
Date

Good Morning Mr. Chairman and Committee Members.

I am Ron Huff a BLE Lobbyist.

I am not here on BLE's behalf, I am here for myself.

I am President of a condo Assoc. here in Bismarck. In June 2001 a large hail storm passed through and our building sustained much damage. We contacted local contractors to do the re-shingling. We were unable to hire local contractors, due to the height of our building. An out of state contractor agreed to do the job. The contractor was licensed and insured as required by our state. We thought that meant something, but we soon found out differently. It seems like anyone can pay a simple license fee and go right into business, and no one will check to see if they are reputable.

Shortly after the job was completed, the shingles started falling off. At that time the contractor was still working in the state. We talked with the Company Rep. and he said he would come in from Devils Lake with in a week to fix the roof. This did not happen. So I contacted the Sec. of States office for help. I found out there is not much help to be had there.

Looking at SB 2252 the only things that I can see that have changed are: 1. you must be 18 years or older to be licensed. 2. License may be revoked if the damage is \$1,000 or more. 3. The limits for small claims court is changed to 1,000 to 5,000 dollars.

For example, our roof repair was \$165,000. Are we limited to the 5,000 max or can we go to District Court for total recovery? Does our state have the authority to extradite violators after they have moved out of state?

Can the state require a preformance bond for new contractors for a period of 1 year? May we grant the Sec. of State the ability to wave this requirement after an extensive check has been completed ?

Submitted by
Ron Huff

Attachment #1

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
GEORGE KAISER, CHAIRMAN
MARCH 10, 2003

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2252

Mr. Chairman and members of the House Industry, Business and Labor Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. The Attorney General and the Consumer Protection Division support Senate Bill No. 2252.

The Attorney General's Consumer Protection Division works closely with the Secretary of State and his staff in reviewing, mediating or investigating contractor complaints. We particularly coordinate and cooperate on complaints involving possible or actual fraud.

Many of the complaints received by the Attorney General are quality of work complaints or breach of contract complaints, *et cetera*. The Secretary of State and the Attorney General do not have an official role in such complaints. However, both agencies do receive complaints containing serious allegations of fraud, failure to return advance payments when work has not been commenced or completed, *et cetera*. In some of these instances the alleged conduct may not fit squarely within the consumer fraud statutes as a violation, or may not constitute sufficient violation or conduct necessary to revoke the contractor's license.

The proposed amendments in this legislation will provide the Secretary of State with greater authority to deal with some of this fraudulent or illegal conduct. In my experience with the Consumer Protection Division, the changes to section 43-07-14 will be particularly useful in future enforcement or regulatory action by the Secretary of State and the Attorney General.

Subsection (3) will give the Secretary of state the ability to revoke a contractor's license for fraudulent conduct. I am currently prosecuting a civil consumer fraud case involving fraud in which the contractor has harmed numerous victims all in amounts less than \$5,000 the current threshold. Under existing law, this conduct would not be a basis for revoking the contractor's license. With the amendments this conduct would appropriately constitute a basis for the Secretary of State to consider an action to revoke a license.

Subsection(4) regarding false statements, violating provisions of the chapter, *et cetera* is straightforward and reasonable as a basis for a complaint for a license revocation.

Subsection (5) will address those circumstances in which the individual is not licensed to do the work but continues to engage in the work. For instance, I am suing a contractor that continues to engage in plumbing when he is not licensed and has been repeatedly advised by the state that he requires a plumbing license. He is not eligible for the license

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and continues to ignore the law and engage in plumbing. The Attorney General has received numerous consumer complaints because his work is not properly completed. One homeowner was without running water in her home for ten days, as a result of the defendant's plumbing work or lack thereof. Licensed contractors should not be permitted to ignore specific professional licensing requirements.

Subsection (6) addresses those frequent problems when questionable contractors take advance payments, and for one reason or another (without appropriate justification or excuse) never commence the work. There must be some definite time frame to perform or refund the advance payment. Failure to do so may be considered by the Secretary of State as a basis for license revocation.

Section 3 of the bill, or section 43-07-15, provides the Secretary of State some needed discretion and authority to determine when to take action and what action to take. His only current option is to revoke the license. Suspension may be more appropriate in some circumstances. The Secretary of State would also have some important discretion to decide which cases and circumstances are appropriate for regulatory action, and he would have some flexibility to work out settlement agreements. The Secretary of State and the Attorney General often would prefer restitution for consumers and a reasonable penalty, but allow the contractor to continue business with appropriate monitoring, *et cetera*.

In the experiences of the Secretary of State and the Consumer Protection Division, some of the complaints do not belong within our offices or jurisdictions and should be addressed by the parties to the contract in legal proceedings or court. We do not have the staff, expertise or resources to handle these types of disputes. We spend significant time reviewing such complaints, only to come to the conclusion we cannot provide further relief or assistance. Consumers, nonetheless, expect our agencies to receive and review these complaints.

We will continue to exercise sound judgment in these matters. We are not necessarily looking for the Secretary of State to engage in more revocations, but the Secretary of State must have the authority to do so, when appropriate and necessary to protect the public from bad actors and fraudulent conduct. The Attorney General will continue to work cooperatively and jointly with the Secretary of State in these issues and assist consumers, if the legislature provides us the necessary authority.

For these reasons, the Attorney General respectfully urges this committee to give Senate Bill 2252 a "do pass" recommendation.

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

Deanna D. Hall
Operator's Signature

10/21/03
Date

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.state.nd.us/sec



SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0600

March 10, 2003

44# 2
PHONE (701) 328-2800
FAX (701) 328-2992

E-MAIL sos@state.nd.us

TO: Rep. Kelsner, Chairman and Members of the House Industry, Business, and Labor Committee

FR: Mary Felst, Director, Licensing Division, on behalf of Al Jaeger, Secretary of State

RE: SB 2252 - Contractors

As of today, there are approximately 5,000 contractors licensed by the Secretary of State's office. That number is expected to increase by approximately another thousand licensees within the next few months since we are now in the annual license renewal process.

This bill does the following:

Section 1: On page 1, line 9, it requires an applicant for a contractor's license to be at least 18 years of age or older. The Attorney General has issued an opinion that prohibits the Secretary of State from issuing a contractor's license to an applicant younger than 18. This makes the opinion a matter of law.

Section 2: N.D.C.C. § 43-07-14 pertains to complaints filed with the Secretary of State's office and the basis upon which a revocation of a contractor's license can be considered.

- On page 3, lines 1 through 3, the text is clarified.
- On page 3, line 4, a reference to the Century Code section regarding small claims court is deleted and a specific dollar amount of \$3,000 is inserted.
- On page 3, lines 6 through 9, a reference is added regarding applicants that have been convicted of an offense as well as a Century Code reference pertaining to prior convictions and exceptions.
- On page 3, lines 10 and 11, a license may be revoked in those cases whereby a contractor is working without a license required under other local, state, or federal laws.
- On page 3, lines 12 through 14, a license may be revoked in those cases whereby an owner has advanced funds to a contractor under a written agreement and then the contractor fails to commence work as agreed upon and does not refund the owner's advance.

Section 3: N.D.C.C. § 43-07-15 pertains to the process for revoking a contractor's license.

- On page 3, lines 21 through 30, the process is clarified under which a complaint for license revocation is received, reviewed, and how action, if required, is initiated under the provisions of Chapter 28-32 (Administrative Agencies Act).
- On page 4, line 1, "shall" is removed and changed to "may" suspend or revoke a license, which provides the Secretary of State with significantly more settlement options.
- On page 4, lines 2 through 4, as part of an adjudicative proceeding, a civil penalty up to \$1,000 could be assessed, restitution up to \$5,000 could be ordered, or some lesser sanction imposed.
- On page 4, lines 4 and 5, as part of an adjudicative proceeding, a contractor's license could be suspended for a period up to 60 months.
- On page 4, lines 5 through 7, it prohibits the issuance of a new, renewed, or reinstated license to a contractor until any civil penalties or restitutions are paid and what legal action can be taken.

Section 4: On page 4, lines 18 and 19, the text clarifies the service of process procedures for a non-resident contractor and eliminates a form.

Section 5: On page 5, line 9 through 13, the Senate added an amendment, which states that the Legislative Council "shall consider studying" during the interim consumer protection issues in regard to contractor competency and out-of-state contractors

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Deanna D. Smith
Operator's Signature

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PROPOSED AMENDMENT TO FIRST ENGROSSED SENATE BILL NO. 2252

Page 4, line 3, remove "Imposes" and replace with "Impose"

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Operator's Signature

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PRESIDENT
Paul Bosch, Dickinson

PRESIDENT-ELECT
Clarion "Rusty" Wysocki, Grand Forks

SECRETARY/TREASURER
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KOTA ASSOCIATION OF BUILDERS
Doreen Streyle Mehlhoff, Executive Officer
Amber Blinliff, Administrative Assistant



Testimony in Support of SB2252
House Industry, Business and Labor Committee
March 10, 2003

Doreen Streyle Mehlhoff, Executive Officer
North Dakota Association of Builders

Chairman Keiser and members of the House Industry, Business and Labor Committee, the North Dakota Association of Builders (NDAB) respectfully encourages you to support Engrossed Senate Bill 2252 dealing with contractor licensing.

The NDAB represents just over 1,400 members statewide having more than 53,000 employees in North Dakota. NDAB is affiliated with five local builders associations in Bismarck-Mandan, Dickinson, Fargo-Moorhead, Grand Forks, and Minot. Our national association, the National Association of Home Builders (NAHB), has over 205,000 members across the nation.

Amendments made by the Senate Political Subdivisions Committee have brought the bill to a form that is supported by the North Dakota Association of Builders.

The North Dakota Association of Builders and its membership encourage the House Industry, Business and Labor Committee to support Engrossed Senate Bill 2252.

301 East Front Avenue, Suite 106 ♦ Bismarck, ND 58504-5601 ♦ 701/222-2401 ♦ Fax: 701/222-3699 ♦ www.ndbuild.com

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Doreen Streyle Mehlhoff
Operator's Signature

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