

January 16, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2235

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 43-07-01, 43-07-03, 43-07-07, 43-07-09, 43-07-09.1, 43-07-10, 43-07-11.1, 43-07-12, 43-07-13, and 43-07-19 of the North Dakota Century Code, relating to the regulation of contractors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-07-01 of the North Dakota Century Code is amended and reenacted as follows:

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~~includes subcontractor, public contractor, and nonresident contractor.
2. "Contractor year" means March second through March first.
3. "Nonresident contractor" means any contractor who ~~has~~does not have 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

four 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 the subcontract exceeds the sum of four thousand dollars.

5. "Registrar" means the secretary of state ~~of the state of North Dakota.~~

SECTION 2. AMENDMENT. Section 43-07-03 of the North Dakota Century Code is amended and reenacted as follows:

43-07-03. Registrar ~~designated~~ authority.

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

SECTION 3. AMENDMENT. Section 43-07-07 of the North Dakota Century Code is amended and reenacted as follows:

43-07-07. Classes of licenses - License fees - License renewal fees.

1. Four classes of licenses may be issued under this chapter, which must be designated as class A, B, C, and D licenses. A holder of a license may engage in the contracting business within this state subject to the following limitations:
 - a. The holder of a class A license is subject to no limitation as to the value of any single contract project.
 - b. The holder of a class B license is not entitled to engage in the construction of any single contract project of a value in excess of five hundred thousand dollars.
 - c. The holder of a class C license is not entitled to engage in the construction of any single contract project of a value in excess of three hundred thousand dollars.
 - d. The holder of a class D license is not entitled to engage in the construction of any single contract project of a value in excess of one hundred thousand dollars.
2. ~~When~~ If applying for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:
 - a. For a class A license, the sum of four hundred fifty dollars.
 - b. For a class B license, the sum of three hundred dollars.
 - c. For a class C license, the sum of two hundred twenty-five dollars.
 - d. For a class D license, the sum of one hundred dollars.
3. For a ~~certificate of renewal for~~ of a license, the licensee shall pay to the registrar the following fees:
 - a. For a class A license, the sum of ninety dollars.

- b. For a class B license, the sum of sixty dollars.
 - c. For a class C license, the sum of forty-five dollars.
 - d. For a class D license, the sum of thirty dollars.
4. Twenty-five percent of all moneys collected by the registrar under this chapter must be deposited in the secretary of state's general services operating fund to pay the cost to administer this chapter and the balance of the moneys collected must be deposited with the state treasurer, who shall credit ~~them~~that amount to the general fund of the state.

SECTION 4. AMENDMENT. Section 43-07-09 of the North Dakota Century Code is amended and reenacted as follows:

43-07-09. Duty of registrar - Expiration of license.

Within fifteen days from the date of application, the registrar may investigate and determine each applicant's eligibility to act in the capacity of a contractor as provided in section 43-07-04.1, and no license may be issued to such applicant until the registrar receives all documentation necessary to obtain a license and the appropriate fee. The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current ~~fiscal~~contractor year ending March first, except that an initial license issued to a licensee in January or February is valid until March first of the subsequent year.

SECTION 5. AMENDMENT. Section 43-07-09.1 of the North Dakota Century Code is amended and reenacted as follows:

43-07-09.1. Name changes.

Not later than ten days after the date of a change in a contractor's name, the licensee ~~must~~shall notify the registrar of the name change on a form provided by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not change ~~its~~the name of the licensee if the change is associated with a change in the legal status other than a change in marital status. A corporation, limited liability company, limited liability partnership, or limited partnership registered with the ~~secretary of state~~registrar is not subject to this section.

SECTION 6. AMENDMENT. Section 43-07-10 of the North Dakota Century Code is amended and reenacted as follows:

43-07-10. Renewal of license - Grounds for nonrenewal - Time requirements - Invalidity of license for failure to renew.

1. Any license issued under this chapter may be renewed for each successive ~~fiscal~~contractor year by obtaining from the registrar a certificate ~~of renewal for the current contractor year.~~ To obtain a certificate ~~of renewal for the current contractor year,~~ the licensee shall file with the registrar an application that includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of twenty-five thousand dollars and the nature of the work of each project, contract, or subcontract. The registrar ~~shall,~~ within a reasonable time, shall forward a copy of the list to the state tax

commissioner. The applicant shall include with the application a copy of a certificate of liability insurance naming the ~~secretary of state~~ registrar as the certificate holder unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes, including North Dakota income tax, workforce safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.

2. The registrar may refuse to renew a license if the registrar determines the application contains false, misleading, or incomplete information or if the contractor's license is not in good standing for any of the reasons listed in subsection 3 of section 43-07-04. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
3. The application for a certificate of ~~renewal~~ for the current contractor year must be made to the registrar ~~on or before the first day of March~~ second of each year, except as provided otherwise under this chapter. At the time of filing the application for a certificate of ~~renewal~~ for the current contractor year, the applicant shall pay to the registrar the renewal fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of ~~renewal~~ for the current contractor year by the March first deadline, the contractor's license is not in good standing and the contractor ~~must be~~ is deemed to be unlicensed within the meaning of section 43-07-02. Within sixty days after March first, the registrar shall notify the contractor ~~must be notified~~ by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of fifty dollars, filing an application for a certificate of ~~renewal~~ for the current contractor year, and paying the renewal fee. A contractor who applies for a certificate of ~~renewal~~ for the current contractor year before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are ~~revoked~~ expired. Any application for a certificate of ~~renewal~~ for the current contractor year must be fully completed within sixty days of the date the application is received by the registrar or the registrar shall return the application to the contractor who then is subject to section 43-07-09. The registrar may destroy all renewals provided for in this section after ~~they~~ the renewals have been on file for six years.

SECTION 7. AMENDMENT. Section 43-07-11.1 of the North Dakota Century Code is amended and reenacted as follows:

43-07-11.1. Contracts with state.

1. ~~No~~ A contractor, resident or nonresident, is not eligible to enter ~~into~~ a public contract with any department of the state of North Dakota, ~~nor~~ or any

political or governmental subdivision of the state until satisfactory showing is made that ~~said~~the contractor has paid all delinquent income, sales or use taxes, if any, owed to the state pursuant to the provisions of the income, sales or use tax laws, and which have been assessed either by the filing of an income or sales and use tax return by the contractor, or by an assessment of additional income, sales or use taxes against the contractor by the commissioner ~~that~~which has become finally and irrevocably fixed, before the date that the contract was executed by the parties thereto. ~~"Contractor" and "public contract" have the same definition for purposes of this section as in chapter 43-07 relating to issuance of licenses to contractorsto the contract.~~

2. A certificate from and by the tax commissioner ~~shall satisfy~~satisfies the requirement of subsection 1. Upon failure to file such a certificate, ~~such~~the department or political or governmental subdivision shall refuse to execute ~~said~~the public contract.
3. The provisions of this section apply ~~only~~ to contracts executed after July 1, 1965.

SECTION 8. AMENDMENT. Section 43-07-12 of the North Dakota Century Code is amended and reenacted as follows:

43-07-12. Bids to show license issued.

All bids and proposals for the construction of any public contract project subject to the provisions of this chapter must contain a copy of the license or certificate of ~~renewal thereoffor the current contractor year of the license~~ issued by the ~~secretary of state~~registrar, enclosed in the required bid bond envelope. ~~No~~A contract may not be awarded to any contractor unless the contractor is the holder of a license in the class within which the value of the project falls as ~~hereinbefore provided under this section~~. A contractor must be the holder of a license at least ten days ~~prior to~~before the date set for receiving bids, to be a qualified bidder. A bid submitted without this information properly enclosed in the bid bond envelope may not be read ~~nor~~or considered and must be returned to the bidder. This section does not apply to bids submitted:

1. To the department of transportation;
2. For use of municipal, rural, and industrial water supply funds authorized by Public Law No. 99-294 [100 Stat. 418];
3. To the public service commission; or
4. For use of federal aid highway funds authorized by Public Law No. 85-767 [72 Stat. 885; 23 U.S.C. 101 et seq.].

SECTION 9. AMENDMENT. Section 43-07-13 of the North Dakota Century Code is amended and reenacted as follows:

43-07-13. Records and certified copies thereof of records.

The registrar shall maintain in the registrar's office, open to public inspection during office hours, a complete indexed record of all applications, licenses, certificates of ~~renewal for the current contractor year~~, revocations, expirations, and other information maintained on contractors. The registrar may dispose of an inactive

contractor file after two years if no attempts have been made to apply for a new license or renew the license. Disposal of the license will proceed according to the provisions of chapter 54-46. Before disposal and upon request, the registrar shall furnish a certified copy of any information maintained upon receipt of the fees prescribed in section 54-09-04. Any certificate or certified copy issued by the ~~secretary of state~~registrar under this section has the same force and effect as provided in section 54-09-02.1.

SECTION 10. AMENDMENT. Section 43-07-19 of the North Dakota Century Code is amended and reenacted as follows:

43-07-19. Nonresident contractors - Agent for service of process.

Every applicant for a contractor's license who is not a resident of the state of North Dakota, by signing and filing the application, appoints the ~~secretary of state~~registrar as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. ~~Such~~The appointment in writing is evidence of the contractor's consent that any ~~such~~ process against the contractor which is so served upon the ~~secretary of state~~ registrar is of the same legal force and effect as if served upon the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to chapter 10-32.1, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited partnerships entitled to do business in the state according to chapter 45-10.2 and having a current registered agent and registered address on file in the ~~secretary of state's~~registrar's office do not need to appoint the ~~secretary of state~~registrar as agent for service of process under this section. Within ten days after service of the summons upon the ~~secretary of state~~registrar, notice of ~~such~~the service with the summons and complaint in the action ~~shall~~must be sent to the defendant contractor at the defendant contractor's last-known address by registered ~~or certified~~ mail with return receipt requested and proof of ~~such~~the mailing ~~shall~~must be attached to the summons. The ~~secretary of state~~registrar shall keep a record of all process served upon the ~~secretary of state~~registrar under this section, showing the day and hour of service. ~~Whenever~~If service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order ~~such~~the continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor."

Renumber accordingly