

Introduced by

Senator Dever

1 A BILL for an Act to amend and reenact sections 43-07-01, 43-07-03, 43-07-07, 43-07-09.1,
2 43-07-10, 43-07-11.1, 43-07-12, 43-07-13, and 43-07-19 of the North Dakota Century Code,
3 relating to the regulation of contractors.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

7 **43-07-01. Definitions.**

8 In this chapter, unless the context or subject matter otherwise requires:

- 9 1. "Contractor" means any person engaged in the business of construction, repair,
10 alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings,
11 airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters,
12 tanks, towers, oil, gas, or water pipelines, and every other type of structure, project,
13 development, or improvement coming within the definition of real or personal property,
14 including the construction, alteration, or repair of property to be held either for sale or
15 rental, and ~~shall include~~includes subcontractor, public contractor, and nonresident
16 contractor.
- 17 2. "Contractor year" means March first through the last day of February.
- 18 3. "Nonresident contractor" means any contractor who ~~has~~does not ~~have~~
19 and maintained place of business within this state, or who has not made reports to
20 North Dakota workforce safety and insurance within the previous year of employees
21 within this state, and who has not made contributions to the North Dakota workforce
22 safety and insurance fund accordingly, or who, during a like period has not made an
23 income tax return in this state.

1 3. ~~"Person" includes any individual, firm, copartnership, association, corporation, limited-~~
2 liability company, or other group or combination thereof acting as a unit, and the plural
3 as well as the singular number, unless the intent to give a more limited meaning is
4 disclosed clearly by the context thereof.

5 4. "Public contract" means a contract with the state of North Dakota or any board,
6 commission, or department thereof, or with any board of county commissioners, or
7 with any city council or board of city commissioners, board of township supervisors,
8 school board, or with any state or municipal agency, or with any other public board,
9 body, commission, or agency authorized to let or award contracts for the construction
10 or reconstruction of public work when the contract cost, value, or price exceeds the
11 sum of four thousand dollars and includes subcontracts undertaken to perform work
12 covered by the original contract or any part thereof when the contract cost, value, or
13 price of the work included in the subcontract exceeds the sum of four thousand
14 dollars.

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

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

18 **43-07-03. Registrar ~~designated~~ authority.**

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

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

24 **43-07-07. Classes of licenses - License fees - License renewal fees.**

- 25 1. Four classes of licenses may be issued under this chapter, which must be designated
26 as class A, B, C, and D licenses. A holder of a license may engage in the contracting
27 business within this state subject to the following limitations:
- 28 a. The holder of a class A license is subject to no limitation as to the value of any
29 single contract project.
 - 30 b. The holder of a class B license is not entitled to engage in the construction of any
31 single contract project of a value in excess of five hundred thousand dollars.

- 1 c. The holder of a class C license is not entitled to engage in the construction of any
2 single contract project of a value in excess of three hundred thousand dollars.
- 3 d. The holder of a class D license is not entitled to engage in the construction of any
4 single contract project of a value in excess of one hundred thousand dollars.
- 5 2. ~~When~~If applying for a license as described and required in this chapter, the applicant
6 shall pay to the registrar the following fees:
- 7 a. For a class A license, the sum of four hundred fifty dollars.
- 8 b. For a class B license, the sum of three hundred dollars.
- 9 c. For a class C license, the sum of two hundred twenty-five dollars.
- 10 d. For a class D license, the sum of one hundred dollars.
- 11 3. For a certificate of renewal for a license, the licensee shall pay to the registrar the
12 following fees:
- 13 a. For a class A license, the sum of ninety dollars.
- 14 b. For a class B license, the sum of sixty dollars.
- 15 c. For a class C license, the sum of forty-five dollars.
- 16 d. For a class D license, the sum of thirty dollars.
- 17 4. Twenty-five percent of all moneys collected by the registrar under this chapter must be
18 deposited in the secretary of state's general services operating fund to pay the cost to
19 administer this chapter and the balance of the moneys collected must be deposited
20 with the state treasurer, who shall credit ~~them~~that amount to the general fund of the
21 state.

22 **SECTION 4. AMENDMENT.** Section 43-07-09.1 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **43-07-09.1. Name changes.**

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

1 **SECTION 5. AMENDMENT.** Section 43-07-10 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-07-10. Renewal of license - Grounds for nonrenewal - Time requirements -**
4 **Invalidity of license for failure to renew.**

5 1. Any license issued under this chapter may be renewed for each successive fiscal year
6 by obtaining from the registrar a certificate of ~~renewal~~for the current contractor year. To
7 obtain a certificate of ~~renewal~~for the current contractor year, the licensee shall file with
8 the registrar an application that includes a listing of each project, contract, or
9 subcontract completed by the licensee during the preceding calendar year in this state
10 over the amount of twenty-five thousand dollars and the nature of the work of each
11 project, contract, or subcontract. The registrar ~~shall~~, within a reasonable time, shall
12 forward a copy of the list to the state tax commissioner. The applicant shall include
13 with the application a copy of a certificate of liability insurance naming the ~~secretary of~~
14 ~~state~~registrar as the certificate holder unless the registrar has a current valid certificate
15 of insurance on file, and a certification that the applicant has submitted all payroll
16 taxes, including North Dakota income tax, workforce safety and insurance premiums,
17 and unemployment insurance premiums due at the time of renewal, which documents
18 need not be notarized.

19 2. The registrar may refuse to renew a license if the registrar determines the application
20 contains false, misleading, or incomplete information or if the contractor's license is
21 not in good standing for any of the reasons listed in subsection 3 of section 43-07-04.
22 The registrar shall notify the applicant in writing if the registrar does not grant the
23 license and shall provide the applicant an opportunity to respond to or cure the defect
24 in the application for a period of ten days from the date of the written notification. An
25 applicant aggrieved by a decision of the registrar not to grant the license may appeal
26 the decision to the district court of the applicant's county of residence or Burleigh
27 County.

28 3. The application for a certificate of renewal must be made to the registrar ~~on or~~ before
29 ~~the first day of~~ March second of each year. At the time of filing the application for a
30 certificate of renewal, the applicant shall pay to the registrar the renewal fee
31 established in section 43-07-07. If any contractor applies for a renewal under a class

1 different from the license previously issued, the new class license may be issued upon
2 the payment of the fee required for the issuance of the license of the class applied for.
3 If any contractor fails to file an application for a certificate of renewal by the March first
4 deadline, the contractor's license is not in good standing and the contractor ~~must be~~is
5 deemed to be unlicensed within the meaning of section 43-07-02. Within sixty days
6 after March first, the registrar shall notify the contractor ~~must be notified~~ by mail that
7 the contractor's license is not in good standing. The contractor then has until June first
8 to renew by paying a penalty fee of fifty dollars, filing an application for a certificate of
9 renewal, and paying the renewal fee. A contractor who applies for a certificate of
10 renewal before or within ninety days of the filing deadline is not subject to the
11 investigation authorized in section 43-07-09. After the June first deadline any licenses
12 not renewed are ~~revoked~~expired. Any application for a certificate of renewal must be
13 fully completed within sixty days of the date the application is received by the registrar
14 or the registrar shall return the application to the contractor who then is subject to
15 section 43-07-09. The registrar may destroy all renewals provided for in this section
16 after ~~they~~the renewals have been on file for six years.

17 **SECTION 6. AMENDMENT.** Section 43-07-11.1 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **43-07-11.1. Contracts with state.**

- 20 1. ~~No~~A contractor, resident or nonresident, is not eligible to enter ~~into~~ a public contract
21 with any department of the state of North Dakota, ~~nor~~or any political or governmental
22 subdivision of the state until satisfactory showing is made that ~~said~~the contractor has
23 paid all delinquent income, sales, or use taxes, if any, owed to the state pursuant to
24 the provisions of the income, sales, or use tax laws, and which have been assessed,
25 either by the filing of an income or a sales and use tax return by the contractor, or by
26 an assessment of additional income, sales, or use taxes against the contractor by the
27 commissioner ~~that~~which has become finally and irrevocably fixed, before the date ~~that~~
28 the contract was executed by the parties ~~thereto~~to the contract. "Contractor" and
29 "public contract" ~~have the same definition for purposes of this section as in chapter~~
30 ~~43-07 relating to issuance of licenses to contractors.~~

1 2. A certificate from and by the tax commissioner ~~shall satisfy~~satisfies the requirement of
2 subsection 1. Upon failure to file such a certificate, ~~such~~the department or political or
3 governmental subdivision shall refuse to execute ~~said~~the public contract.

4 3. The provisions of this section apply ~~only~~ to contracts executed after July 1, 1965.

5 **SECTION 7. AMENDMENT.** Section 43-07-12 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-07-12. Bids to show license issued.**

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

- 17 1. To the department of transportation;
- 18 2. For use of municipal, rural, and industrial water supply funds authorized by Public Law
19 No. 99-294 [100 Stat. 418];
- 20 3. To the public service commission; or
- 21 4. For use of federal aid highway funds authorized by Public Law No. 85-767 [72 Stat.
22 885; 23 U.S.C. 101 et seq.].

23 **SECTION 8. AMENDMENT.** Section 43-07-13 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **43-07-13. Records and certified copies ~~thereof~~ records.**

26 The registrar shall maintain in the registrar's office, open to public inspection during office
27 hours, a complete indexed record of all applications, licenses, certificates of renewal,
28 revocations, and other information maintained on contractors. The registrar may dispose of an
29 inactive contractor file after two years if no attempts have been made to apply for a new license
30 or renew the license. Disposal of the license will proceed according to the provisions of chapter
31 54-46. Before disposal and upon request, the registrar shall furnish a certified copy of any

1 information maintained upon receipt of the fees prescribed in section 54-09-04. Any certificate
2 or certified copy issued by the ~~secretary of state~~registrar under this section has the same force
3 and effect as provided in section 54-09-02.1.

4 **SECTION 9. AMENDMENT.** Section 43-07-19 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **43-07-19. Nonresident contractors - Agent for service of process.**

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