

unpaid principal of the original purchase price plus the amount of unpaid accrued interest, but in no case shall the resale price be more than the original sale price, such contract of resale to be upon the same terms as said original contract excepting that the contract of resale may provide that the purchaser may pay the first one-fifth of the resale price in five equal successive annual installments, the first installment to be paid at the time of execution of the resale contract, and that such resale contract shall bear interest at the rate of three per cent per annum payable annually; and provided further, that this Section shall be deemed self-executing insofar as provision is made herein for resale of lands sold to the original purchaser or to his heirs or assigns.

Filed March 6, 1937.

CONTRACTS AND CONTRACTORS

CHAPTER 110

H. B. No. 78—(Godwin, Burgum and Twitchell)

PUBLIC CONTRACTORS, REGISTRATION ACT

An Act providing for the registration of public contractors, and defining the term public contractor; providing the requirements and method of obtaining a license to engage in the business of public contracting in the State of North Dakota; classifying and fixing the fee for such license; providing the method of suspension, cancellation and reinstatement thereof; providing added requirements in bond of foreign contractor; prescribing penalties for the violation of this Act; repealing all Acts or parts of Acts in conflict with the provisions hereof; and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. The following words, terms and phrases of this Act are, for the purposes hereof, defined as follows:

(a) The word "registrar" as used herein is the Secretary of State of the State of North Dakota;

(b) The word "person" as used includes any individual, co-partnership, association, corporation or other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is clearly disclosed by the context hereof;

(c) A "public contractor" within the meaning of this Act shall include any person, as hereinbefore defined, who submits a proposal to or enters into 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 City Commission, Village or Township Board, School Board, or with any agency of any thereof, 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 thereof exceeds the sum of Two Thousand (\$2,000.00) Dollars.

(d) The term "public contractor" includes sub-contractors undertaking to perform work covered by the original contract, or any part thereof, the contract cost, value or price of which exceeds the sum of One Thousand (\$1,000.00) Dollars;

(e) The term "non-resident contractor" as used herein, denotes and applies to any contractor who has not established and maintained place of business within this State, or who has not made reports to the North Dakota Workmen's Compensation Bureau within the previous year of employees within this State and made contribution to the North Dakota Workmen's Compensation fund accordingly, or who has not during like period made Income Tax Return in this State. The public contractor's license as herein provided, shall not be required within the forty (40) day period immediately following the taking effect of this Act, and the license fee required hereby to be paid by public contractors in the several classes for the balance of the calendar year 1937, shall be two-thirds of the amount of fee fixed hereby for an original license for such class for a calendar year.

§ 2. From and after the passage and approval of this Act, it shall be unlawful for any person, firm, copartnership, association, corporation or any combination of any thereof, to engage in the business or act in the capacity of a "public contractor," as herein defined, within the State of North Dakota without first having a license therefor as herein provided.

§ 3. The Secretary of State for the State of North Dakota is hereby constituted the "Registrar" for the purposes of this Act, and is empowered to employ such assistance and procure such records, supplies and equipment as may be necessary to carry out its provisions.

§ 4. To obtain a license under this Act, the applicant shall submit, on such forms as the Registrar shall prescribe, an application under oath, which shall contain a statement of the applicant's experience and qualifications as a contractor; the value and character of the contract work completed and for whom performed, during the five years preceding the date of such application; on such forms and disclosing such information as shall be required by the Registrar. Such application shall also contain such other information as may be requested by the Registrar under such rules and regulations as may be adopted by said Registrar and which will assist said Registrar

in determining the applicant's fitness to act in the capacity of a public contractor as defined in this Act. Such application shall also contain a statement that the applicant desires the issuance of a license under the terms of this Act, and shall specify the class of license applied for, as hereinafter provided. Any applicant refused a license by the Registrar shall have the right of appeal from such refusal, to the District Court of Burleigh County, North Dakota.

§ 5. There shall be four classes of licenses issued under the provisions of this Act; and such licenses are hereby designated as Classes "A," "B," "C," and "D;" subject, however, to such pre-qualifications requirements as imposed by the public body or bodies referred to in Section 1 (c) hereof.

The holder of a Class "A" license shall be entitled to engage in the public contracting business within the State of North Dakota without any limitation as to the value of any single public contract project, and at the time of making the application for such license the applicant shall pay the Registrar a fee of Two Hundred and Fifty (\$250.00) Dollars.

The holder of a Class "B" license shall be entitled to engage in the public contracting business within the State of North Dakota, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of One Hundred Twenty-five Thousand (\$125,000) Dollars, and shall pay to the Registrar a fee of One Hundred and Fifty (\$150.00) Dollars, at the time of making application for such license.

The holder of a Class "C" license shall be entitled to engage in the public contracting business within the State of North Dakota, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of Sixty Thousand (\$60,000) Dollars; and shall pay to the Registrar a fee of One Hundred (\$100.00) Dollars, at the time of making application for such license.

The holder of a Class "D" license shall be entitled to engage in the public contracting business within the State of North Dakota, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of Fifteen Thousand (\$15,000) Dollars; and shall pay to the Registrar a fee of Fifteen (\$15.00) Dollars at the time of making application for such license.

Nothing herein shall require any original public contractor to procure a license or to pay any license fee on any public contract project of a value of less than Two Thousand (\$2,000) Dollars; nor a sub-contractor to procure a license or pay a license fee on any public contract project of a value less than One Thousand (\$1,000) Dollars. Provided however, that the provisions of this Act shall not apply to any road construction or road repair contract financed in whole, or in part, through Federal Aid furnished by the Bureau of

Public Roads of the Department of Agriculture, except such Bureau approve the provisions hereof.

§ 6. It shall be the duty of the Registrar to investigate and determine the applicant's fitness to act in the capacity of public contractor, as defined in this Act, and no license shall be issued unto such applicant until the expiration of ten (10) days from and after the filing of such application; provided, that this latter provision shall not apply to bids or proposals made or requested, nor to contracts let or awarded, during the period of ten (10) days immediately following the passage and approval of this Act. The license so issued in pursuance of the first application shall entitle the licensee to act as a public contractor within this State, subject to the limitations of such license, until the expiration of the then current calendar year.

Any license issued under the provisions of the Act may be renewed for each successive calendar year by obtaining from the Registrar a certificate of renewal thereof. For the purpose of obtaining such certificate of renewal the licensee shall file with the Registrar an application therefor, stating the class of license applied for and containing the same information as that required in the application of the original license. The application for such certificate of renewal must be made to the Registrar on or before the first day of March of each successive calendar year; and such renewal certificate shall be good for the then current calendar year.

At the time of filing the application for a certificate of renewal, the applicant shall pay unto the Registrar a license fee equal to fifty (50) per cent of the license fee for the original license; provided that if any applicant for a certificate of renewal shall apply for a renewal under a different class from the license theretofore issued to him, such new license shall only be issued upon the same showing and under the same terms and conditions and upon the payment of the same fee required for the issuance of an original license.

All certificates of renewal, wherein the applicant does not apply for a change in the class of license shall be issued by the Registrar to the applicant forthwith when the application is filed and the license renewal fee is paid.

§ 7. Every non-resident contractor as hereinbefore defined, engaging in business as a public contractor under the provisions of this Act; shall be and is hereby required to include in the undertaking and bond required by law to be executed to insure the performance of any contract for such public work or project, further and added provisions to insure the payment to the North Dakota Workmen's Compensation Fund of all premiums to become due upon labor employed in such work or project, and for the payment to the State of North Dakota of State Income Tax upon income derived from such work or project and to become due.

§ 8. All bids and proposals for the construction of any public contract project subject to the provisions of this Act shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided.

§ 9. Any and all expenses incurred by the Registrar in the administration of this Act shall be paid out of the fund accruing from the fees imposed by and collected under the provisions hereof. All moneys collected hereunder, less the expense incurred in the administration of this Act, shall be deposited by the Registrar with the State Treasurer, who shall credit them to the General Fund of the State.

§ 10. The Registrar shall maintain in said Registrar's office at Bismarck, North Dakota, open to public inspection during office hours, a complete indexed record of all applications and all licenses issued and all certificates of renewal and of cancellations or suspensions thereof; and shall furnish a certified copy of any license issued, of renewal certificates, or of the cancellations or suspensions thereof, upon receipt of the sum of One (\$1.00) Dollar; and such certified copy shall be received in all Courts and elsewhere as prima facie evidence of the facts stated therein.

§ 11. Any person, firm, copartnership, corporation, association or any other organization may file a duly verified complaint with the Registrar charging that the licensee is guilty of one or more of the following acts or omissions:

- (1) Abandonment of any contract without legal excuse.
- (2) Diversion of funds or property received under express agreement for the prosecution or completion of a specific contract under this Act, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract obligation or purpose with intent to defraud or deceive creditors or the owner;
- (3) The doing of any willful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;
- (4) The making of any false statement in any application for a license or renewal thereof.

Upon the filing of such complaint the Registrar shall investigate the charge and within sixty days after the filing of such complaint shall render and file said Registrar's decision with said Registrar's reasons therefor. If the Registrar's decision be that the licensee has been guilty of any such acts or omissions, said Registrar shall suspend the contractor's license. At any time within twenty

days thereafter the complainant or the contractor may petition the Registrar for a rehearing. In the order granting or denying such rehearing the Registrar shall set forth a statement of the particular grounds and reasons for said Registrar's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the Registrar shall set the matter for further hearing on due notice to the parties, and within thirty days after submission of the matter, serve said Registrar's decision after rehearing in like manner as an original decision.

The filing of such petition for rehearing as to the Registrar's actions in suspending or cancelling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

Within thirty days after the decision on rehearing, any party aggrieved by such decision of the Registrar may appeal therefrom to the District Court in and for the County in which the licensee under this Act resides or does business as a public contractor, by serving upon the Registrar a notice of such appeal. The matter shall thereupon be heard de novo by the District Court. An appeal may be taken from the decision of the District Court in the same manner as appeals in other civil cases.

In all cases where the licensee has filed his notice of appeal from the decision of the Registrar or from the decision of the District Court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy.

§ 12. After cancellation of a license such licensee shall not be relicensed during the current calendar year in which the offense was committed.

§ 13. Any person, firm, copartnership, corporation, association or other organization acting in the capacity of public contractor within the meaning of this Act, without a license as herein provided, shall be guilty of a misdemeanor and shall, upon conviction thereof, if a person, be punished by a fine of not to exceed Five Hundred (\$500.00) Dollars or by imprisonment in the County jail for a term not to exceed six months or by both such fine and imprisonment, in the discretion of the Court. The same penalties shall apply, upon conviction, to any member of a copartnership, or to any construction, managing or directing officer of any corporation or other organization consenting to, participating in, or aiding or abetting any such violation of this Act.

§ 14. If any section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional or invalid such decision shall not affect the constitutionality or validity of the remaining portions of this Act. The Legislature hereby declares

that it would have passed this Act and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may later be declared unconstitutional and/or invalid.

§ 15. An emergency is hereby declared to exist and this Act shall take effect and be in force from and after its passage and approval, except as hereinbefore provided.

§ 16. All Acts and parts of Acts in conflict herewith are hereby repealed.

Approved March 11, 1937.

(NOTE: Emergency failed in Senate.)

CHAPTER 111

H. B. No. 88—(Johnson, Thompson and Schauss)

PAYMENT OF ESTIMATES PUBLIC BUILDINGS, REPAIRS AND IMPROVEMENTS

An Act to amend and re-enact Section 5 of Chapter 195 of the Session Laws of North Dakota for the year 1929, relating to the construction of all public buildings and repairs and improvements connected with or pertaining thereto, contracts therefor, and allowance and payment of estimates thereon:

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 5 of Chapter 195 of the Session Laws of 1929 be and the same is hereby amended to read as follows:

§ 5. ALLOWANCE AND PAYMENT OF ESTIMATES.] At least once during each calendar month during the continuance of work upon any public building or erection begun and carried on under the provisions of the preceding Sections, the Board of Administration, the County Commission, City Commission, City Council, Board of Park Commissioners, School District officials or the village trustees, as the case may be; or a committee thereof duly authorized by said Board for that purpose, shall meet and receive and consider estimates furnished by the supervising architect or the superintendent of construction of such building or erection if either such is in supervision thereof; and shall allow such estimates in an amount of approximately 90 per cent of the labor then performed upon said building or erection, and of the material then upon the ground for use in the construction thereof. In event no supervising architect or no superintendent of construction is employed upon such contract, the contractor may at the end of each calendar month during the continuance of work under any such contract, furnish to such Board or public body in charge of such work, like estimates which shall be

in like manner allowed. Said Board or committee thereof, shall immediately after considering and allowing any such estimate verify and forward the same to the State Auditor, County Auditor, City Auditor, or other official having the power to draw warrants, who shall forthwith draw his warrant upon the proper fund and transmit the same promptly to the contractor or contractors entitled thereto; and in case said Board or committee shall fail or neglect to certify any such estimate allowed or the said Auditor shall neglect or fail to issue said warrant as above provided, for a period of more than 30 days from the date of such estimate; then and in that event said estimate shall draw interest from its date at the rate of six per cent per annum until the issuance of a proper warrant therefor, which interest shall be computed and added to the face of said estimate by the officer required to issue such warrant and shall be included in the warrant when drawn and be charged to the fund upon which the same is drawn. No payment for, or on account of any contract made under the provisions of this Act, shall be made, except upon estimate of the supervising architect or superintendent of construction, as in this section provided; if either such be employed in supervisions of such construction or erection.

Approved February 15, 1937.

CORPORATIONS

CHAPTER 112

H. B. No. 318—(Holmquist)

AMENDMENT COOPERATIVE GRAZING ASSOCIATION ACT

An Act to amend and re-enact Sections 1, 2 and Sub-section (e) of Chapter 106 of the 1935 Session Laws, relating to the incorporation of Cooperative Grazing Associations, to provide for the organization of groups with a smaller acreage than 50,000 acres, where they may be required, and making no restrictions as to the number of organizations in any one County to operate under said chapter.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 1 of Chapter 106 of the Laws of North Dakota for the year 1935 is hereby amended and re-enacted to read as follows:

§ 1. For the purposes of this Act the words
“Associations” shall mean a cooperative grazing association;
“District” shall mean a cooperative grazing district;
“Subdivision” shall mean any portion or block of land situated within the outside boundaries of a district;