

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 849

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO CONSTRUCTION; CLARIFYING DEFINITIONS IN THE
CONSTRUCTION INDUSTRIES LICENSING ACT; PROVIDING AN ELECTRICAL
PERMIT EXEMPTION ON FARMS AND RANCHES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-13-2 NMSA 1978 (being Laws 1967,
Chapter 199, Section 2, as amended) is amended to read:

"60-13-2. GENERAL DEFINITIONS.--As used in the
Construction Industries Licensing Act:

A. "division" means the construction industries
division of the regulation and licensing department;

B. "trade bureau" means the electrical bureau, the
mechanical bureau, the general construction bureau or the
liquefied petroleum gas bureau of the division;

C. "jurisdictional conflict" means ~~any~~ a conflict

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1 between or among trade bureaus as to the exercise of
2 jurisdiction over an occupation or trade for which a license is
3 required under the provisions of the Construction Industries
4 Licensing Act;

5 D. "person" includes an individual, firm,
6 partnership, corporation, association or other organization, or
7 any combination thereof;

8 E. "qualifying party" means [~~any~~] an individual who
9 submits to the examination for a license to be issued under the
10 Construction Industries Licensing Act and who is responsible
11 for the licensee's compliance with the requirements of that act
12 and with the rules, regulations, codes and standards adopted
13 and promulgated in accordance with that act;

14 F. "certificate of qualification" means a
15 certificate issued by the division to a qualifying party;

16 G. "journeyman" means [~~any~~] an individual who is
17 properly certified by the electrical bureau or the mechanical
18 bureau, as required by law, to engage in or work at [~~his~~] the
19 certified trade;

20 H. "apprentice" means an individual who is engaged,
21 as [~~his~~] the individual's principal occupation, in learning and
22 assisting in a trade;

23 I. "wages" means compensation paid to an individual
24 by an employer from which taxes are required to be withheld by
25 federal and state law;

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1 J. "public use" means the use or occupancy of [~~any~~]
2 a structure, facility or manufactured commercial unit to which
3 the general public, as distinguished from residents or
4 employees, has access;

5 K. "bid" means a written or oral offer to contract;

6 L. "building" means [~~any~~] a structure built for use
7 or occupancy by persons or property, including manufactured
8 commercial units and modular homes or premanufactured homes
9 designed to be placed on permanent foundations whether mounted
10 on skids or permanent foundations or whether constructed on or
11 off the site of location;

12 M. "inspection agency" means a firm, partnership,
13 corporation, association or any combination thereof approved in
14 accordance with regulations as having the personnel and
15 equipment available to adequately inspect for the proper
16 construction of manufactured commercial units, modular homes or
17 premanufactured homes;

18 N. "director" means the administrative head of the
19 division;

20 O. "chief" means the administrative head of a trade
21 bureau;

22 P. "commission" means the construction industries
23 commission;

24 Q. "manufactured commercial unit" means a movable
25 or portable housing structure over thirty-two feet in length or

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1 over eight feet in width that is constructed to be towed on its
2 own chassis and designed so as to be installed without a
3 permanent foundation for use as an office or other commercial
4 purpose and that may include one or more components that can be
5 retracted for towing purposes and subsequently expanded for
6 additional capacity, or two or more units separately towable
7 but designed to be joined into one integral unit, as well as a
8 single unit, but that does not include any movable or portable
9 housing structure over twelve feet in width and forty feet in
10 length that is used for nonresidential purposes. "Manufactured
11 commercial unit" does not include modular or premanufactured
12 homes, built to a nationally recognized standard adopted by the
13 commission and designed to be permanently affixed to real
14 property; [~~and~~]

15 R. "code" means a body or compilation of provisions
16 or standards adopted by the commission that govern contracting
17 or some aspect of contracting; that provide for safety and
18 protection of life and health; and that are published by a
19 nationally recognized standards association; and

20 S. "employee" means an individual who is employed
21 by a licensee or a person who is exempt from licensing under
22 the Construction Industries Licensing Act and who receives
23 wages as compensation for performing construction as an
24 employee of the licensee or the exempted person; provided,
25 however, that an individual shall not be considered an employee

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1 unless the employer can provide to the division documentary
2 evidence of the payment of wages to the individual."

3 Section 2. Section 60-13-3 NMSA 1978 (being Laws 1978,
4 Chapter 66, Section 1, as amended) is amended to read:

5 "60-13-3. DEFINITION--CONTRACTOR.--As used in the
6 Construction Industries Licensing Act, "contractor":

7 A. means [~~any~~] a person who undertakes, offers to
8 undertake by bid or other means or purports to have the
9 capacity to undertake, by [~~himself~~] the person alone or through
10 others, contracting. Contracting includes constructing,
11 altering, repairing, installing or demolishing any:

12 (1) road, highway, bridge, parking area or
13 related project;

14 (2) building, stadium or other structure;

15 (3) airport, subway or similar facility;

16 (4) park, trail, bridle path, athletic field,
17 golf course or similar facility;

18 (5) dam, reservoir, canal, ditch or similar
19 facility;

20 (6) sewerage or water treatment facility,
21 power generating plant, pump station, natural gas compressing
22 station or similar facility;

23 (7) sewerage, water, gas or other pipeline;

24 (8) transmission line;

25 (9) radio, television or other tower;

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- 1 (10) water, oil or other storage tank;
2 (11) shaft, tunnel or mining appurtenance;
3 (12) leveling or clearing land;
4 (13) excavating earth;
5 (14) air conditioning, conduit, heating or
6 other similar mechanical works;
7 (15) electrical wiring, plumbing or plumbing
8 fixture, consumers' gas piping, gas appliances or water
9 conditioners; or
10 (16) similar work, structures or installations
11 [~~which~~] that are covered by applicable codes adopted under the
12 provisions of the Construction Industries Licensing Act;
13 B. includes subcontractor and specialty contractor;
14 C. includes a construction manager who coordinates
15 and manages the building process; who is a member of the
16 construction team with the owner, architect, engineer and other
17 consultants required for the building project; and who utilizes
18 his or her skill and knowledge of general contracting to
19 develop schedules, prepare project construction estimates,
20 study labor conditions and advise concerning construction; and
21 D. does not include:
22 (1) [~~any~~] a person who merely furnishes
23 materials or supplies at the site without fabricating them
24 into, or consuming them in the performance of, the work of a
25 contractor;

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1 (2) [~~any~~] a person who drills, completes,
2 tests, abandons or operates [~~any~~] a petroleum, gas or water
3 well; [~~or~~] services equipment and structures used in the
4 production and handling of [~~any~~] a product incident to the
5 production of [~~any~~] petroleum, gas or water wells, excluding
6 [~~any~~] a person performing duties normally performed by
7 electrical, mechanical or general contractors; or [~~who~~]
8 performs geophysical or similar exploration for oil, gas or
9 water;

10 (3) a public utility or rural electric
11 cooperative that constructs, reconstructs, operates or
12 maintains its plant or renders authorized service by the
13 installation, alteration or repair of facilities, up to and
14 including the meters, which facilities are an integral part of
15 the operational system of the public utility or rural electric
16 cooperative; provided that the construction of a building by a
17 public utility or rural electric cooperative or the
18 installation or repair of [~~any~~] a consumer gas or electrical
19 appliance not an integral part of the operational system makes
20 a public utility or rural electric cooperative a contractor for
21 that purpose;

22 (4) a utility department of [~~any~~] a
23 municipality or local public body rendering authorized service
24 by the installation, alteration or repair of facilities, up to
25 and including the meters, which facilities are an integral part

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1 of the operational system of the utility department of the
2 municipality;

3 (5) [~~any~~] a railroad company;

4 (6) a telephone or telegraph company or rural
5 electric cooperative that installs, alters or repairs
6 electrical equipment and devices for the operation of signals
7 or the transmission of intelligence where that work is an
8 integral part of the operation of a communication system owned
9 and operated by a telephone or telegraph company or rural
10 electric cooperative in rendering authorized service;

11 (7) a pipeline company that installs, alters
12 or repairs electrical equipment and devices for the operation
13 of signals or the transmission of intelligence where that
14 service is an integral part of the operation of the
15 communication system of that pipeline company and is not for
16 hire or for the use of the general public, or [~~any~~] a pipeline
17 company [~~which~~] that installs, alters or repairs plumbing
18 fixtures or gas piping where the work is an integral part of
19 installing and operating the system owned or operated by the
20 pipeline company in rendering its authorized service;

21 (8) [~~any~~] a mining company, gas company or oil
22 company that installs, alters or repairs its facilities,
23 including plumbing fixtures or gas piping, where the work is an
24 integral part of the installing or operating of a system owned
25 or operated by the mining company, gas company or oil company;

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1 provided the construction of a building by a mining company, a
2 gas company or an oil company is required to be done in
3 conformity with all other provisions of the Construction
4 Industries Licensing Act and with orders, rules, [~~regulations~~]
5 standards and codes adopted pursuant to that act;

6 (9) a radio or television broadcaster who
7 installs, alters or repairs electrical equipment used for radio
8 or television broadcasting;

9 (10) an individual who, [~~by himself~~] alone or
10 with the aid of [~~others who are paid wages and~~] one or more
11 employees who receive no other form of compensation, builds or
12 makes installations, alterations or repairs in or to a single-
13 family dwelling owned and occupied or to be occupied by [~~him~~]
14 the individual; provided that the installation, building,
15 alteration or repair is [~~required to be done~~] performed in
16 conformity with all other provisions of the Construction
17 Industries Licensing Act and with the orders, rules,
18 [~~regulations~~] standards and codes adopted pursuant to that act;

19 [~~(11) a person who acts on his own account to~~
20 ~~build or improve a single family residence for his personal~~
21 ~~use, including the building or improvement of a freestanding~~
22 ~~storage building located on that residential property; provided~~
23 ~~that the construction or improvement is required to be done in~~
24 ~~conformity with all other provisions of the Construction~~
25 ~~Industries Licensing Act and with the orders, rules,~~

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1 ~~regulations, standards and codes adopted pursuant to that act;~~
2 ~~and provided further that he does not engage in commercial~~
3 ~~construction;~~

4 ~~(12)]~~ (11) a person who, ~~[by himself]~~ alone or
5 with the aid of ~~[others who are paid wages and]~~ one or more
6 employees who receive no other form of compensation, builds or
7 makes installations, repairs or alterations in or to a building
8 or other improvement on a farm or ranch taxed as an
9 agricultural enterprise and owned, occupied or operated by
10 ~~[him, or makes installations of electrical wiring that are not~~
11 ~~to be connected to electrical energy supplied from a power~~
12 ~~source outside the premises of the farm or ranch owned,~~
13 ~~occupied or operated by him; provided that the state codes and~~
14 ~~any local codes adopted pursuant to Subsection F of Section~~
15 ~~60-13-44 NMSA 1978 shall not require any permits or inspections~~
16 ~~for such construction on a farm or ranch except for electrical~~
17 ~~wiring to be connected to a power source outside the premises;~~

18 ~~(13) an individual who works only for wages]~~
19 the person;

20 (12) an employee;

21 ~~[~~(14)] (13) an individual who works on one
22 undertaking or project at a time that, in the aggregate or
23 singly, does not exceed seven thousand two hundred dollars
24 (\$7,200) compensation a year, the work being casual, minor or
25 inconsequential, such as handyman repairs; provided that this

1 exemption shall not apply to any undertaking or project
2 pertaining to the installation, connection or repair of
3 electrical wiring, plumbing or gas fitting as defined in
4 Section 60-13-32 NMSA 1978 and provided:

5 (a) the work is not part of a larger or
6 major operation undertaken by the same individual or different
7 contractor;

8 (b) the individual does not advertise or
9 maintain a sign, card or other device [~~which~~] that would
10 indicate to the public that [~~he~~] the individual is qualified to
11 engage in the business of contracting; and

12 (c) the individual files annually with
13 the division, on a form prescribed by the division, a
14 declaration substantially to the effect that [~~he~~] the
15 individual is not a contractor within the meaning of the
16 Construction Industries Licensing Act, that the work [~~he~~] the
17 individual performs is casual, minor or inconsequential and
18 will not include more than one undertaking or project at one
19 time and that the total amount of such contracts, in the
20 aggregate or singly, will not exceed seven thousand two hundred
21 dollars (\$7,200) compensation a year;

22 [~~(15) any~~] (14) a person, firm or corporation
23 that installs fuel containers, appliances, furnaces and other
24 appurtenant apparatus as an incident to its primary business of
25 distributing liquefied petroleum fuel;

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1 ~~[(16)]~~ (15) a cable television or community
2 antenna television company that constructs, installs, alters or
3 repairs facilities, equipment, cables or lines for the
4 provision of television service or the carriage and
5 transmission of television or radio broadcast signals; or

6 ~~[(17) any]~~ (16) a weatherization project not
7 exceeding two thousand dollars (\$2,000) that has been approved
8 and is administered by a federal or state agency [~~or~~

9 ~~(18) a person who performs work consisting of~~
10 ~~short-term depreciable improvements to commercial property to~~
11 ~~provide needed repairs and maintenance for items not covered by~~
12 ~~building codes adopted by the construction industry commission~~
13 ~~if the total amount paid the person for the work on a single~~
14 ~~undertaking, including materials, services and wages of those~~
15 ~~who work for him, does not exceed the sum of five thousand~~
16 ~~dollars (\$5,000)]."~~

17 Section 3. Section 60-13-3.1 NMSA 1978 (being Laws 2005,
18 Chapter 94, Section 1) is recompiled in Chapter 50 NMSA 1978
19 and is amended to read:

20 "EMPLOYER AND EMPLOYEE RELATIONSHIP--INDEPENDENT
21 CONTRACTOR--IMPROPER REPORTING--PENALTY--LICENSE SANCTIONS.--

22 A. Except as provided in Subsection D of this
23 section, for purposes of the employer and employee relationship
24 within those construction industries subject to the
25 Construction Industries Licensing Act, a contractor who is an

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1 employer shall consider a person providing labor or services to
2 the contractor for compensation to be an employee of the
3 contractor and not an independent contractor unless the
4 following standards indicative of an independent contractor are
5 met:

6 (1) the person providing labor or services is
7 free from direction and control over the means and manner of
8 providing the labor or services, subject only to the right of
9 the person for whom the labor or services are provided to
10 specify the desired results;

11 (2) the person providing labor or services is
12 responsible for obtaining business registrations or licenses
13 required by state law or local ordinance for the person to
14 provide the labor or services;

15 (3) the person providing labor or services
16 furnishes the tools or equipment necessary to provide the labor
17 or services;

18 (4) the person providing labor or services has
19 the authority to hire and fire employees to perform the labor
20 or services;

21 (5) payment for labor or services is made upon
22 completion of the performance of specific portions of a project
23 or is made on the basis of a periodic retainer; and

24 (6) the person providing labor or services
25 represents to the public that the labor or services are to be

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1 provided by an independently established business. A person is
2 engaged in an independently established business when four or
3 more of the following circumstances exist:

4 (a) labor or services are primarily
5 performed at a location separate from the person's residence or
6 in a specific portion of the residence that is set aside for
7 performing labor or services;

8 (b) commercial advertising or business
9 cards are purchased by the person or the person is a member of
10 a trade or professional association;

11 (c) telephone or email listings used for
12 the labor or services are different from the person's personal
13 listings;

14 (d) labor or services are performed only
15 pursuant to a written contract;

16 (e) labor or services are performed for
17 two or more persons within a period of one year; or

18 (f) the person assumes financial
19 responsibility for errors and omissions in labor or services as
20 evidenced by insurance, performance bonds and warranties
21 relating to the labor or services being provided.

22 B. The [~~labor~~] workforce solutions department shall
23 administer and enforce the provisions of Subsection A of this
24 section, including coordination with the construction
25 industries division of the regulation and licensing department.

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1 C. A contractor who intentionally and willfully
2 reports to a state agency or other client that an employee is
3 an independent contractor or who, for the purposes of a program
4 administered by a state agency, intentionally and willfully
5 treats or otherwise lists an employee as an independent
6 contractor when the employee's status does not meet the
7 standards indicative of an independent contractor as identified
8 in Subsection A of this section is guilty of a misdemeanor and
9 shall be punished by a fine of not more than five thousand
10 dollars (\$5,000) or by imprisonment for a definite term not to
11 exceed six months or both. For the purposes of this
12 subsection, "state agency" means an administration, board,
13 commission, department or division of this state.

14 D. Conviction of a contractor for violating
15 Subsection C of this section shall be grounds for the
16 construction industries commission to take action to suspend,
17 revoke or refuse to renew a license issued to that contractor
18 by the construction industries division of the regulation and
19 licensing department.

20 E. Subsections A, B and C of this section shall not
21 be construed to affect or apply to a common law or statutory
22 action providing for recovery in torts and shall not be
23 construed to affect or change the common law interpretation of
24 independent contractor status as it relates to tort liability.

25 F. The provisions of Subsections A, B and C of this

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1 section shall not affect or apply to the licensing requirements
2 adopted by the construction industries division of the
3 regulation and licensing department pursuant to the
4 Construction Industries Licensing Act."

5 Section 4. Section 60-13-45 NMSA 1978 (being Laws 1967,
6 Chapter 199, Section 53, as amended) is amended to read:

7 "60-13-45. TRADE BUREAUS--PERMITS.--

8 A. The trade bureaus within their respective
9 jurisdictions may require a permit to be secured and
10 conspicuously posted prior to any construction, installation,
11 alteration, repair or addition to or within any building,
12 structure or premises.

13 B. No permit shall be required for the performance
14 of any of the following classes of work:

15 (1) minor repairs, replacement of lamps, the
16 connection of portable electrical equipment to suitable
17 receptacles [~~which~~] that are permanently installed, minor
18 repairs or replacement of or to faucets, taps or jets or
19 connection of portable equipment to suitable connections or
20 inlets [~~which~~] that have been permanently installed;

21 (2) installation of temporary wiring for testing
22 electrical equipment or apparatus or installation of temporary
23 fixtures or devices for testing fixtures, equipment, apparatus
24 or appliances;

25 (3) installation, alteration or repair of

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1 electrical equipment for the operation of signals or the
2 transmission of intelligence by wire; ~~and~~

3 (4) installation or work ~~which~~ that is done
4 after regular business hours or during a holiday when immediate
5 action is imperative to safeguard life, health or property,
6 provided the person making the installation or performing the
7 work applies for a permit covering the installation or work not
8 later than the next business day; and

9 (5) installation of electrical wiring that is
10 not connected to electrical energy supplied from a power source
11 outside the premises of a farm or ranch when the installation
12 is performed by a person, or the employee of a person, who
13 owns, occupies or operates the farm or ranch.

14 C. If a permit has been issued for construction of
15 a new residential building, that residential building shall not
16 be occupied until a certificate of occupancy has been issued
17 certifying compliance with all codes and standards.

18 D. The commission shall make rules and regulations
19 pertaining to the issuance of permits and the setting of
20 reasonable fees to be paid by the applicant for a permit. The
21 regulations shall provide a procedure for the issuance of
22 permits outside the corporate limits of a municipality where
23 inspection is made by a state inspector or a municipal
24 inspector serving as a part-time state inspector and for
25 inspections within a municipality where the inspection is done

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1 exclusively by a full-time state inspector. Each trade bureau
2 by regulation may require a reasonable bond or surety in the
3 penal sum of five hundred dollars (\$500) or more, but not to
4 exceed [~~fifteen hundred dollars~~] one thousand five hundred
5 dollars (\$1,500), with such bureau named as obligee and
6 conditioned for the payment of inspection fees provided in the
7 Construction Industries Licensing Act. Nothing in this section
8 shall preclude municipalities from making inspections in
9 accordance with the Construction Industries Licensing Act or
10 rules and regulations pursuant to that act or from establishing
11 a schedule of fees to be paid by an applicant for a permit.

12 E. In the event that the division assumes
13 inspections of a municipal or county jurisdiction, the permit
14 fees shall be paid directly to the division."

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