

AN ACT

RELATING TO REGULATION OF THE CONSTRUCTION INDUSTRY; PLACING BUREAU CHIEFS OF THE CONSTRUCTION INDUSTRIES DIVISION OF THE REGULATION AND LICENSING DEPARTMENT UNDER THE PERSONNEL ACT; CHANGING LICENSE ISSUANCE AND QUALIFICATION PROVISIONS; CHANGING CERTAIN FEES; EXTENDING THE PERMITTED PERIOD FOR A CERTIFICATE OF COMPETENCE; ABOLISHING THE JOURNEYMEN TESTING REVOLVING FUND.

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

Section 1. Section 9-16-8 NMSA 1978 (being Laws 1983, Chapter 297, Section 24) is amended to read:

"9-16-8. BUREAUS--CHIEFS.--The superintendent shall establish within each division such "bureaus" as he deems necessary to carry out the provisions of the Regulation and Licensing Department Act. He shall appoint a "chief" to be the administrative head of any such bureau. The positions so appointed may be exempted from the Personnel Act by action of the superintendent, except for the construction industries division trade bureaus created pursuant to Section 60-13-31 NMSA 1978. The chiefs of those bureaus shall be covered positions under the Personnel Act."

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

"60-13-3. DEFINITION--CONTRACTOR.--As used in the

Construction Industries Licensing Act, "contractor":

A. means any person who undertakes, offers to undertake by bid or other means or purports to have the capacity to undertake, by himself or through others, contracting. Contracting includes but is not limited to constructing, altering, repairing, installing or demolishing any:

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

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

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

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

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

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

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or mining appurtenance;

(12) leveling or clearing land;

(13) excavating earth;

(14) air conditioning, conduit, heating or other similar mechanical works;

(15) electrical wiring, plumbing or plumbing fixture, consumers' gas piping, gas appliances or water conditioners; or

(16) similar work, structures or installations which are covered by applicable codes adopted under the provisions of the Construction Industries Licensing Act;

B. includes subcontractor and specialty contractor;

C. includes a construction manager who coordinates and manages the building process; who is a member of the construction team with the owner, architect, engineer and other consultants required for the building project; and who utilizes his skill and knowledge of general contracting to develop schedules, prepare project construction estimates, study labor conditions and advise concerning construction; and

D. does not include:

(1) any person who merely furnishes materials or supplies at the site without fabricating them into, or consuming them in the performance of, the work of a contractor;

(2) any person who drills, completes, tests, abandons or operates any petroleum, gas or water well; or

services equipment and structures used in the production and handling of any product incident to the production of any petroleum, gas or water wells, excluding any person performing duties normally performed by electrical, mechanical or general contractors; or who performs geophysical or similar exploration for oil, gas or water;

(3) a public utility or rural electric cooperative which constructs, reconstructs, operates or maintains its plant or renders authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the public utility or rural electric cooperative; provided that the construction of a building by a public utility or rural electric cooperative or the installation or repair of any consumer gas or electrical appliance not an integral part of the operational system makes a public utility or rural electric cooperative a contractor for that purpose;

(4) a utility department of any municipality or local public body rendering authorized service by the installation, alteration or repair of facilities, up to and including the meters, which facilities are an integral part of the operational system of the utility department of the municipality;

(5) any railroad company;

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

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

(8) any mining company, gas company or oil company which installs, alters or repairs its facilities, including but not limited to plumbing fixtures or gas piping, where the work is an integral part of the installing or operating of a system owned or operated by the mining company, gas company or oil company; provided the construction of a building by a mining company, a gas company or an oil company is required to be done in conformity with all other provisions

of the Construction Industries Licensing Act and with orders, rules, regulations, standards and codes adopted pursuant to that act;

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

(10) an individual who, by himself or with the aid of others who are paid wages and who receive no other form of compensation, builds or makes installations, alterations or repairs in or to a single-family dwelling owned and occupied or to be occupied by him; provided that the installation, building, alteration or repair is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act;

(11) a person who acts on his own account to build or improve a single-family residence for his personal use, including the building or improvement of a free standing storage building located on that residential property, provided that the construction or improvement is required to be done in conformity with all other provisions of the Construction Industries Licensing Act and with the orders, rules, regulations, standards and codes adopted pursuant to that act, and provided further that he does not engage in commercial

construction;

(12) a person who, by himself or with the aid of others who are paid wages and receive no other form of compensation, builds or makes installations, repairs or alterations in or to a building or other improvement on a farm or ranch owned, occupied or operated by him, or makes installations of electrical wiring which are not to be connected to electrical energy supplied from a power source outside the premises of the farm or ranch owned, occupied or operated by him; provided that the state codes and any local codes adopted pursuant to Subsection F of Section 60-13-44 NMSA 1978 shall not require any permits or inspections for such construction on a farm or ranch except for electrical wiring to be connected to a power source outside the premises;

(13) an individual who works only for wages;

(14) an individual who works on one undertaking or project at a time which, in the aggregate or singly, does not exceed seven thousand two hundred dollars (\$7,200) compensation a year, the work being casual, minor or inconsequential such as, but not limited to, handyman repairs; provided that this exemption shall not apply to any undertaking or project pertaining to the installation, connection or repair of electrical wiring, plumbing or gas fitting as defined in

Section 60-13-32 NMSA 1978 and provided:

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

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

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

(15) any person, firm or corporation which installs fuel containers, appliances, furnaces and other appurtenant apparatus as an incident to its primary business of distributing liquefied petroleum fuel;

(16) a cable television or community antenna television company which constructs, installs, alters or repairs facilities, equipment, cables or lines for the provision of television service or the carriage and transmission of television or radio broadcast signals; or

(17) a person who performs work consisting of short-term depreciable improvements to commercial property to provide needed repairs and maintenance such as painting, carpeting, flooring and similar items if the total amount paid the person for the work on a single undertaking, including materials, services and wages of those who work for him, does not exceed the sum of five thousand dollars (\$5,000)."

Section 3. Section 60-13-14 NMSA 1978 (being Laws 1967, Chapter 199, Section 17, as amended) is amended to read:

"60-13-14. DIVISION--LICENSE ISSUANCE--REPORTS.--

A. No license shall be issued by the division to any applicant unless the director is satisfied that the applicant is or has in his employ a qualifying party who is qualified for the classification for which application is made and the applicant has satisfied the requirements of Subsection B of this section.

B. An applicant for a license shall:

(1) demonstrate proof of responsibility as provided in the Construction Industries Licensing Act;

(2) comply with the provisions of Subsection D of this section if he has engaged illegally in the contracting business in New Mexico within one year prior to making application;

(3) demonstrate familiarity with the rules and regulations promulgated by the commission and division

concerning the classification for which application is made;

(4) if a corporation, incorporated association, registered limited liability partnership or limited liability company, have complied with the laws of this state requiring qualification to do business in New Mexico and provide the name of its current registered agent and the current address of its registered office in New Mexico;

(5) if a person other than the persons described in Paragraph (4) of this subsection, provide a current physical location address and mailing address of the applicant's place of business;

(6) submit proof of registration with the taxation and revenue department and submit a current identification tax number;

(7) comply with any additional procedures, rules and regulations which are established by the commission relating to issuance of licenses; and

(8) have had four years, within the ten years immediately prior to application, of practical or related trade experience dealing specifically with the type of construction or its equivalent for which the applicant is applying for a license, except that the commission may by regulation provide for:

(a) reducing this requirement for a particular industry or craft where it is deemed excessive but

the requirement shall not be less than two years; and

(b) a waiver of the work experience requirement of this paragraph when the qualifying party has been certified in New Mexico with the same license classification within the ten years immediately prior to application.

C. The division, with the consent of the commission, may enter into a reciprocal licensing agreement with any state having equivalent licensing requirements.

D. The director may issue a license to an applicant who at any time within one year prior to making application has acted as a contractor in New Mexico without a license as required by the Construction Industries Licensing Act if:

(1) the applicant in addition to all other requirements for licensure pays an additional fee as follows:

(a) in an amount up to ten percent of the contract price or the value of the nonlicensed contracted work in the discretion of the commission; or

(b) if the applicant has bid or offered a price on a construction project and was not the successful bidder or offeror, the fee shall be at least one percent but not more than five percent of the total bid amount; and

(2) the director is satisfied that no incident of such contracting without a license:

(a) caused monetary damage to any person; or

(b) resulted in an unresolved consumer complaint being filed against the applicant with the division.

E. An unlicensed contractor who has performed unlicensed work may settle the claims against him without becoming licensed if the claims arise from his first offense and he pays an administrative fee calculated pursuant to Paragraph (1) of Subsection D of this section. In addition to the administrative fee, an additional ten percent of the amount of the administrative fee shall be assessed as a service fee.

F. If the total fee to be paid by the contractor pursuant to the provisions of Subsection D or E of this section is twenty-five dollars (\$25.00) or less, the fee may be waived.

G. The director shall report every incident of nonlicensed contracting work to the taxation and revenue department to assure that the contractor complies with tax requirements and pays all taxes due."

Section 4. Section 60-13-16 NMSA 1978 (being Laws 1967, Chapter 199, Section 18, as amended) is amended to read:

"60-13-16. DIVISION--QUALIFYING PARTY--EXAMINATION--CERTIFICATE.--

A. Except as otherwise provided in this section,

no certificate of qualification shall be issued to an individual desiring to be a qualifying party until he has passed with a satisfactory score an examination approved and adopted by the division.

B. The examination shall consist of a test based on general business knowledge, rules and regulations of the division and the provisions of the Construction Industries Licensing Act. In addition, applicants for a GB, MM or EE classification or for any other classification that the commission determines to be appropriate shall take a test based on technical knowledge and familiarity with the prescribed codes and minimum standards of the particular classification for which certification is requested. The division shall provide examinations in both English and Spanish.

C. In lieu of the examination to determine knowledge of business and construction industries law provided in Subsection B of this section, an applicant may satisfy the business and law knowledge requirement by receiving a certificate of completion of a business and law course of study offered by an accredited education institute approved by the commission. The course and any preparation and instruction materials shall be available in both English and Spanish and shall be made available to the division, the commission or the designated agent of the division, upon

request, for review.

D. If a contractor's license is subject to suspension by the commission and if the suspension is based on the requirement that the licensee employ a qualifying party and the employment of the qualifying party is terminated without fault of the licensee, a member of that trade who is experienced in the classification for which the certificate of qualification was issued and has been employed for five or more years by the licensed contractor shall be issued without examination a temporary certificate of qualification in the classification for which the contractor is licensed. The temporary qualifying party is required to pass the regular examination as set forth in Subsection B of this section within ninety days of issuance of a temporary certificate of qualification.

E. The certificate of qualification is not transferable.

F. A qualifying party whose certificate is revoked by the commission shall not reapply for a certificate for one year."

Section 5. Section 60-13-20 NMSA 1978 (being Laws 1967, Chapter 199, Section 22, as amended) is amended to read:

"60-13-20. FEES ESTABLISHED BY THE DIVISION--PAYMENT OF EXAMINATION AND LICENSING SERVICE FEES.--

A. The division shall by regulation establish and

charge reasonable candidate and applicant fees for each license and certificate classification for initial applications, initial and additional examinations, license issuance and renewals, certificate of qualification issuance and renewal, and licensing verification services.

B. The division by regulation may provide that fees charged pursuant to Subsection A of this section shall be paid to the agency providing or administering the service if the service is provided pursuant to authority of the division."

Section 6. Section 60-13-39 NMSA 1978 (being Laws 1967, Chapter 199, Section 42, as amended) is amended to read:

"60-13-39. CERTIFICATES AND EXAMINATION.--

A. Certificates of competence issued by the division are not transferable and shall expire on the date established by the division, not more than three years from the month of issuance.

B. Application shall be made before the expiration date for renewal of a current certificate of competence and shall be accompanied by the fee prescribed for the initial issuance of the certificate.

C. Applications for a renewal of a certificate of competence shall be filed with the division prior to the last working day before the certificate expires. An expired certificate shall be renewable within a six-month period

without examination and only upon paying a fee in twice the amount of the renewal fee. If the certificate has not been renewed within the six-month period, it shall be canceled."

Section 7. Section 60-13-58 NMSA 1978 (being Laws 1978, Chapter 194, Section 1, as amended) is amended to read:

"60-13-58. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--
-The construction industries commission and division and its trade bureaus are terminated on July 1, 2005 pursuant to the Sunset Act. The construction industries commission and division and its trade bureaus shall continue to operate according to the provisions of Chapter 60, Article 13 NMSA 1978 and Chapter 70, Article 5 NMSA 1978 until July 1, 2006. Effective July 1, 2006, Chapter 60, Article 13 NMSA 1978 and Chapter 70, Article 5 NMSA 1978 are repealed."

~~Section 8. A new section of the Construction Industries Licensing Act is enacted to read:~~

~~"CONSTRUCTION INDUSTRIES DIVISION REGULATORY COMPLIANCE REVOLVING FUND CREATED--APPROPRIATION.--The "construction industries division regulatory compliance revolving fund" is created. All money collected by the division for plan review, building permits and inspection services pursuant to the Construction Industries Licensing Act shall be deposited with the state treasurer to be credited to the fund. Money in the fund is appropriated to the division. Fees for plan review, building permits and inspection services shall be established~~

~~by regulations adopted by the division and approved by the commission. Disbursements from the fund shall be made by warrants signed by the secretary of finance and administration, based upon vouchers signed by the director and only in accordance with a budget approved by the department of finance and administration. Expenditures from the fund shall be used to achieve compliance with the provisions of the Construction Industries Licensing Act. Money in the fund shall not revert at the end of the fiscal year."~~

Section 9. A new section of the Construction Industries Licensing Act is enacted to read:

"CONSTRUCTION INDUSTRIES DIVISION PUBLICATIONS REVOLVING FUND CREATED--APPROPRIATION.--The "construction industries division publications revolving fund" is created. All money collected by the division from the sale of publications and information related to the licensing and regulatory provisions of and issues arising under the Construction Industries Licensing Act and regulations adopted pursuant to that act shall be deposited with the state treasurer to be credited to the fund. Money in the fund is appropriated to the division. Money in the fund shall be used only for printing and maintenance of publications and information related to the licensing and regulatory provisions of and issues arising under the Construction Industries Licensing Act and regulations adopted pursuant to that act. Disbursements from

the fund shall be made by warrants signed by the secretary of finance and administration, based upon vouchers signed by the director and only in accordance with a budget approved by the department of finance and administration. Money in the fund shall not revert at the end of the fiscal year."

Section 10. TEMPORARY PROVISION--APPROPRIATION OF BALANCE IN JOURNEYMEN TESTING REVOLVING FUND.--The balance remaining in the journeymen testing revolving fund on June 30, 1997, is appropriated to the construction industries division of the regulation and licensing department for expenditure in fiscal years 1998, 1999, and 2000 in accordance with approved budgets for the division. Any unexpended or unencumbered balance remaining at the end of fiscal year 2000 shall revert to the general fund.

Section 11. REPEAL.--Section 60-13-40.1 NMSA 1978 (being Laws 1983, Chapter 82, Section 2, as amended) is repealed.

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1997. _____