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HOUSE BILL 199

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Ben Lujan

FOR THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES LICENSING; AMENDING SECTION
60-13-49 NMSA 1978 (BEING LAWS 1967, CHAPTER 199, SECTION 57,
AS AMENDED) PROVIDING FOR PROOF OF RESPONSIBILITY.

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

Section 1. Section 60-13-49 NMSA 1978 (being Laws 1967,
Chapter 199, Section 57, as amended) is amended to read:

"60-13-49. PROOF OF RESPONSIBILITY.--

A. No applicant for a contractor's license or for
renewal of a contractor's license shall be issued a license
until the director determines that ~~[he]~~ the applicant is
responsible to perform under the individual permit capacity for
which ~~[he]~~ the applicant furnishes proof of responsibility
pursuant to Subsection ~~[G]~~ B of this section.

~~[B. Proof of responsibility shall be:~~

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1 ~~(1) a license bond acceptable to the director~~
2 ~~and underwritten by a corporate surety authorized to transact~~
3 ~~business in New Mexico;~~

4 ~~(2) an agreement of cash collateral assignment~~
5 ~~executed with a state or national bank or federally insured~~
6 ~~savings association authorized to do business in New Mexico as~~
7 ~~trustee, in a form prescribed by the commission. Interest, if~~
8 ~~any, accumulating on the cash collateral assignment shall~~
9 ~~accrue to the licensee; or~~

10 ~~(3) a current financial statement, which shall~~
11 ~~be filed initially with the license application and filed~~
12 ~~annually thereafter with the division. The financial statement~~
13 ~~shall be a current audited financial statement or certified by~~
14 ~~a financial institution.~~

15 ~~C. Proof of responsibility shall be furnished in~~
16 ~~amounts as follows:~~

17 ~~(1) for a licensee or applicant who permits or~~
18 ~~contracts projects singly in New Mexico for a dollar value of~~
19 ~~twenty-five thousand dollars (\$25,000) or less, proof of~~
20 ~~responsibility in the amount of five hundred dollars (\$500).~~
21 ~~This licensee's maximum permit or contract capacity shall be~~
22 ~~twenty-five thousand dollars (\$25,000);~~

23 ~~(2) for a licensee or applicant who permits or~~
24 ~~contracts projects singly in New Mexico for a dollar value of~~
25 ~~more than twenty-five thousand dollars (\$25,000) but less than~~

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1 ~~two hundred thousand dollars (\$200,000), proof of~~
2 ~~responsibility in the amount of one thousand dollars (\$1,000).~~
3 ~~This licensee's maximum permit or contract capacity shall be~~
4 ~~two hundred thousand dollars (\$200,000);~~

5 ~~(3) for a licensee or applicant who permits or~~
6 ~~contracts projects singly in New Mexico for a dollar value of~~
7 ~~more than two hundred thousand dollars (\$200,000) but less than~~
8 ~~one million dollars (\$1,000,000), proof of responsibility in~~
9 ~~the amount of two thousand five hundred dollars (\$2,500). This~~
10 ~~licensee's maximum permit or contract capacity shall be one~~
11 ~~million dollars (\$1,000,000); and~~

12 ~~(4) for a licensee or applicant who permits or~~
13 ~~contracts projects singly in New Mexico for a dollar value of~~
14 ~~more than one million dollars (\$1,000,000), proof of~~
15 ~~responsibility in the amount of five thousand dollars (\$5,000).~~
16 ~~This licensee shall have no maximum permit or contract~~
17 ~~capacity.~~

18 ~~D. Proof of responsibility shall be for the payment~~
19 ~~of fines and penalties.~~

20 ~~E. Proof of responsibility, if a bond, shall be a~~
21 ~~continuous form bond on a form prescribed by the commission.~~
22 ~~It shall be a condition of the bond that the total aggregate~~
23 ~~liability of the surety for all claims shall be limited to the~~
24 ~~face amount of the bond irrespective of the number of years the~~
25 ~~bond is in force.~~

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1 ~~F. Proof of responsibility posted by a licensee or~~
2 ~~applicant shall be in a form to provide thirty days' written~~
3 ~~notice of a cancellation to the division.~~

4 ~~G. Failure to maintain proof of responsibility for~~
5 ~~the period required by law is cause for revocation of the~~
6 ~~license.~~

7 ~~H. No legal action may be maintained on the proof~~
8 ~~of responsibility unless the action is commenced within twelve~~
9 ~~months after the case accrues or within twelve months after~~
10 ~~substantial completion of the project, whichever is earlier.~~

11 ~~I. If a licensee's license bond or cash collateral~~
12 ~~assignment is canceled, expires or otherwise becomes~~
13 ~~ineffective during the period for which it is required, the~~
14 ~~division shall cancel the license upon receiving notice of such~~
15 ~~cancellation, expiration or ineffectiveness. The cancellation~~
16 ~~of the license shall become effective thirty days after the~~
17 ~~date that notice of such action is mailed to the licensee by~~
18 ~~the division, unless the licensee provides to the division~~
19 ~~within that thirty days proof of responsibility as required~~
20 ~~under this section. A person whose license has been canceled~~
21 ~~pursuant to this subsection may be renewed or reinstated~~
22 ~~provided he complies with all licensing requirements.~~

23 ~~J. Contracting or bidding during the period when~~
24 ~~the license bond or cash collateral assignment is canceled,~~
25 ~~expired or otherwise ineffective is cause for revocation of the~~

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1 ~~license by the commission.]~~

2 B. Proof of responsibility shall be a code bond of
3 ten thousand dollars (\$10,000) acceptable to the director and
4 underwritten by a corporate surety authorized to transact
5 business in New Mexico. Such bond shall meet the following
6 conditions:

7 (1) payments from a code bond may only be used
8 within two years following final inspection or within two years
9 of issuance of a certificate of occupancy for the construction
10 project to cure code violations caused by a licensee. The
11 proceeds of a bond shall not be used to pay punitive damages,
12 attorney fees or costs associated with, or attributable to,
13 pain and suffering;

14 (2) the bond shall be continuous for the life
15 of the license on a form approved by the commission. It shall
16 be a condition of the bond that the total aggregate liability
17 of the surety for all claims shall be limited to the face
18 amount of the bond irrespective of the number of years the bond
19 is in force;

20 (3) the bond carrier shall provide thirty
21 days' written notice of cancellation to the division. If the
22 bond is canceled, the surety shall remain liable under the
23 provisions of the bond for all obligations of the principal
24 pertaining to bond terms that occur prior to the effective date
25 of cancellation. No suit or action shall be brought on the

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1 bond beyond two years following the rendering of services;
2 (4) failure to maintain the bond for the
3 period required by law is cause for revocation of the license;
4 and

5 (5) if the bond is canceled, expires or
6 otherwise becomes ineffective during the period for which it is
7 required, the division shall suspend the affected license for a
8 period not to exceed thirty days and shall notify the license
9 holder of the suspension. If the licensee has not provided
10 proof of a new bond before the fortieth day after the date of
11 the notice, the license shall be void for failure of proof of
12 responsibility."

13 Section 2. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2009.