

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 199

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

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 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 ~~G. 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~~

1 ~~license by the commission.]~~

2 B. Proof of responsibility shall be a bond of ten
3 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 bond required pursuant to
8 this section may only be used to cure code violations caused by
9 a licensee, certified by the division and not corrected by the
10 licensee. Claims against the bond shall be made within two
11 years following final inspection or within two years of
12 issuance of a certificate of occupancy for the construction
13 project, whichever is earlier;

14 (2) the total aggregate liability of the
15 surety for all claims shall be limited to the face amount of
16 the bond;

17 (3) the bond carrier shall provide to the
18 division and to the licensee thirty days' prior written notice
19 of intent to cancel a bond required pursuant to this section.
20 The surety for such a bond shall remain liable under the
21 provisions of the bond for all obligations of the principal
22 pertaining to bond terms that occur before the bond is
23 canceled, expires or otherwise becomes ineffective;

24 (4) failure to maintain the bond for the
25 period required by law is cause for revocation of the license;

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1 and

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

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