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HOUSE BILL 320

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Rick Little

AN ACT

RELATING TO CONSTRUCTION INDUSTRIES; PROVIDING FOR REVOCATION
AND SUSPENSION OF LICENSES AND CERTIFICATES; PROVIDING FOR
ESCALATION OF PENALTIES FOR UNLICENSED CONTRACTING; RESTRICTING
APPLICATION AND RENEWAL OF LICENSES AND CERTIFICATES.

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

SECTION 1. 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~~] an applicant unless the director is satisfied that the
applicant is or has in [~~his~~] the applicant's 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.

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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)]~~ (2) demonstrate familiarity with the rules ~~[and regulations]~~ promulgated by the commission and division concerning the classification for which application is made;

~~[(4)]~~ (3) 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)]~~ (4) if a person other than the persons described in Paragraph ~~[(4)]~~ (3) of this subsection, provide a current physical location address and mailing address of the applicant's place of business;

~~[(6)]~~ (5) submit proof of registration with the taxation and revenue department and submit a current identification tax number;

~~[(7)]~~ (6) comply with any additional

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1 procedures and rules [~~and regulations which~~] that are
2 established by the commission relating to issuance of licenses;
3 and

4 [~~(8)~~] (7) have had four years, within the ten
5 years immediately prior to application, of practical or related
6 trade experience dealing specifically with the type of
7 construction or its equivalent for which the applicant is
8 applying for a license, except that the commission may [~~by~~
9 ~~regulation~~] provide for:

10 (a) reducing this requirement for a
11 particular industry or craft where it is deemed excessive, but
12 the requirement shall not be less than two years; and

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

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

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

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

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

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

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

12 ~~(a) caused monetary damage to any~~
13 ~~person; or~~

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

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

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

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

5 **SECTION 2.** Section 60-13-23 NMSA 1978 (being Laws 1967,
6 Chapter 199, Section 26, as amended) is amended to read:

7 "60-13-23. REVOCATION OR SUSPENSION OF LICENSE BY THE
8 COMMISSION--CAUSES.--Any license issued by the division shall
9 be revoked or suspended by the commission for any of the
10 following causes:

11 A. if the licensee or qualifying party of the
12 licensee willfully or by reason of incompetence violates any
13 provision of the Construction Industries Licensing Act or any
14 rule [~~or regulation~~] adopted pursuant to that act by the
15 division;

16 B. knowingly contracting or performing a service
17 beyond the scope of the license;

18 C. misrepresentation of a material fact by the
19 applicant in obtaining a license;

20 D. failure to maintain proof of responsibility as
21 required by the Construction Industries Licensing Act;

22 E. unjustified abandonment of any contract as
23 determined by a court of competent jurisdiction;

24 F. conversion of funds or property received for
25 prosecution or completion of a specific contract or for a

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1 specified purpose in the prosecution or completion of any
2 contract, obligation or purpose, as determined by a court of
3 competent jurisdiction;

4 G. departure from or disregard of plans or
5 specifications that result in code violations;

6 H. willful or fraudulent commission of any act by
7 the licensee as a contractor in consequence of which another is
8 substantially injured, as determined by a court of competent
9 jurisdiction;

10 I. failure to maintain workers' compensation
11 insurance as required by the Workers' Compensation Act;

12 J. aiding, abetting, combining or conspiring with a
13 person to evade or violate the provisions of the Construction
14 Industries Licensing Act by allowing a contractor's license to
15 be used by an unlicensed person or acting as agent, partner,
16 associate or otherwise in connection with an unlicensed person,
17 with the intent to evade the provisions of the Construction
18 Industries Licensing Act; [~~or~~]

19 K. conviction pursuant to Subsection A or B of
20 Section 60-13-52 NMSA 1978; or

21 [~~K-~~] L. acting in the capacity of a licensee under
22 any other name than is set forth upon the license."

23 SECTION 3. Section 60-13-24 NMSA 1978 (being Laws 1967,
24 Chapter 199, Section 27, as amended) is amended to read:

25 "60-13-24. CERTIFICATES OF QUALIFICATION--CAUSES FOR

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1 REVOCATION OR SUSPENSION.--Any certificate of qualification
2 shall be revoked or suspended by the commission for the
3 following causes:

4 A. misrepresentation of a material fact by the
5 individual in obtaining the certificate;

6 B. violation, willfully or by reason of
7 incompetence, of any provision of the Construction Industries
8 Licensing Act or any code, minimum standard or rule [~~or~~
9 ~~regulation~~] adopted pursuant to that act; [~~or~~]

10 C. aiding, abetting, combining or conspiring with a
11 person to evade or violate the provisions of the Construction
12 Industries Licensing Act or any code, minimum standard, rule or
13 regulation adopted pursuant to that act; or

14 D. conviction pursuant to Subsection A or B of
15 Section 60-13-52 NMSA 1978."

16 SECTION 4. Section 60-13-36 NMSA 1978 (being Laws 1967,
17 Chapter 199, Section 39, as amended) is amended to read:

18 "60-13-36. CERTIFICATES OF COMPETENCE--SUSPENSION AND
19 REVOCATION.--

20 A. The commission may suspend any certificate of
21 competence issued within the scope of the bureau's trade for a
22 definite period not exceeding ninety consecutive days.

23 B. Suspension of a certificate of competence shall
24 be for any cause specified in the Construction Industries
25 Licensing Act.

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1 C. The commission may revoke any certificate of
2 competence issued by it only for the following causes:

3 (1) misrepresentation of a material fact by
4 the individual obtaining the certificate;

5 (2) violation willfully or by reason of
6 incompetence of any provision of the Construction Industries
7 Licensing Act or any code, minimum standard or rule [~~or~~
8 ~~regulation~~] adopted pursuant to that act pertaining to
9 installation, alteration, maintenance, connection or repair;
10 [~~or~~]

11 (3) aiding, abetting, combining or conspiring
12 with a person to evade or violate the provisions of the
13 Construction Industries Licensing Act or any code, minimum
14 standard, rule or regulation adopted pursuant thereto; or

15 (4) conviction pursuant to Subsection A or B
16 of Section 60-13-52 NMSA 1978."

17 SECTION 5. Section 60-13-52 NMSA 1978 (being Laws 1977,
18 Chapter 377, Section 6, as amended) is amended to read:

19 "60-13-52. PENALTY--MISDEMEANOR.--

20 A. ~~[Any]~~ A person who acts [~~in the capacity~~] as a
21 contractor [~~within the meaning of~~] as defined in the
22 Construction Industries Licensing Act without a license
23 [~~required by~~] or certificate issued pursuant to that act [~~and~~
24 ~~any person who holds himself out as a sales representative of a~~
25 ~~contractor, which contractor is without a license as required~~

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1 ~~by that act]~~ is guilty of a misdemeanor and upon conviction
2 ~~[therefor the court shall:~~

3 ~~(1) where the dollar value of the contracting~~
4 ~~work is five thousand dollars (\$5,000) or less, sentence the~~
5 ~~person to be imprisoned in the county jail for a term of ninety~~
6 ~~days or to the payment of a fine of not less than three hundred~~
7 ~~dollars (\$300) nor more than five hundred dollars (\$500), or to~~
8 ~~both such imprisonment and fine in the discretion of the court;~~
9 ~~and~~

10 ~~(2) where the dollar value of the contracting~~
11 ~~work exceeds five thousand dollars (\$5,000), sentence the~~
12 ~~person to be imprisoned in the county jail for a term of six~~
13 ~~months or to the payment of a fine of ten percent of the dollar~~
14 ~~value of the contracting work, or to both such imprisonment and~~
15 ~~fine in the discretion of the court.~~

16 ~~B. Any person who acts in the capacity as a~~
17 ~~journeyman within the meaning of the Construction Industries~~
18 ~~Licensing Act without holding a valid certificate of competence~~
19 ~~issued by the division is guilty of a misdemeanor, and upon~~
20 ~~conviction therefor the court shall sentence the person to be~~
21 ~~imprisoned in the county jail for a term of ninety days or to~~
22 ~~payment of a fine of not less than one hundred dollars (\$100)~~
23 ~~nor more than three hundred dollars (\$300), or to both such~~
24 ~~imprisonment and fine.~~

25 ~~G. Any person who, after having been convicted and~~

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1 ~~sentenced in accordance with the provisions of either~~
2 ~~Subsection A or Subsection B of this section, is again~~
3 ~~convicted pursuant to the provisions of this section shall be~~
4 ~~sentenced to twice the applicable penalty imposed by the~~
5 ~~provisions of this section.~~

6 ~~D. In the case of a first conviction under this~~
7 ~~section, the court may impose a deferred sentence on the~~
8 ~~condition that the person comply with the provisions for~~
9 ~~licensure pursuant to Subsection D of Section 60-13-14 NMSA~~
10 ~~1978] shall be sentenced in accordance with the provisions of~~
11 ~~Subsection A of Section 31-19-1 NMSA 1978.~~

12 B. A person who is licensed or certified pursuant to
13 the Construction Industries Licensing Act and who does the
14 following is guilty of a misdemeanor and upon conviction shall
15 be sentenced in accordance with the provisions of Subsection A
16 of Section 31-19-1 NMSA 1978:

17 (1) uses the services of a person without a
18 license or certificate issued pursuant to that act to perform
19 contracting; or

20 (2) allows the use of the person's license or
21 certificate by a person without a license or certificate issued
22 pursuant to that act to perform contracting.

23 C. In the case of a first conviction for a violation
24 of Subsection A or B of this section, the court may impose a
25 deferred sentence in accordance with the provisions of Section

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31-20-6 NMSA 1978.

D. A person who is convicted of a second or subsequent violation of Subsection A or B of this section is guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

E. A person who is convicted of a violation of Subsection A or B of this section shall not be eligible to apply for or renew a license or certificate issued pursuant to the Construction Industries Licensing Act unless the division has satisfactory proof that the applicant has complied with all orders and sentencing requirements, including the terms and conditions of a deferred sentence imposed by the court in connection with the conviction."