

FISCAL NOTE
Requested by Legislative Council
01/25/2017

Amendment to: HB 1399

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2015-2017 Biennium | | 2017-2019 Biennium | | 2019-2021 Biennium | |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2015-2017 Biennium | 2017-2019 Biennium | 2019-2021 Biennium |
|-------------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Under current law, a person engaged in contracting must secure a contractor’s license issued by the Secretary of State if the value per construction project exceeds \$4,000. On page 1, line 8, the amount, by amendment, is changed from \$2,000 to \$3,000.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Under existing law, there are four classes of contractor’s licenses. With a Class D license, a contractor may engage in a construction project that has a value from \$4,000 to \$100,000. For this licensing cycle, the agency has issued this class of license to 3,429 contractors. The agency is unable to estimate how many additional licenses in this class would be issued if the bottom end value is changed from \$4,000 to \$3,000.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

See 2B.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Based on the current licensing fees, the revenue received covers the expenditures required to process the applications regardless if the contract value threshold is changed from \$4,000 to \$3,000.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

None

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-3670

Date Prepared: 01/26/2017

FISCAL NOTE
Requested by Legislative Council
01/16/2017

Bill/Resolution No.: HB 1399

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

| | 2015-2017 Biennium | | 2017-2019 Biennium | | 2019-2021 Biennium | |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | | | |
| Expenditures | | | | | | |
| Appropriations | | | | | | |

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

| | 2015-2017 Biennium | 2017-2019 Biennium | 2019-2021 Biennium |
|-------------------------|--------------------|--------------------|--------------------|
| Counties | | | |
| Cities | | | |
| School Districts | | | |
| Townships | | | |

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Under current law, a person engaged in contracting must secure a contractor's license issued by the Secretary of State if the value per construction project exceeds \$4,000. On page 1, line 8, the amount is reduced to \$2,000.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Under existing law, there are four classes of contractor's licenses. With a Class D license, a contractor may engage in a construction project that has a value from \$4,000 to \$100,000. For this licensing cycle, the agency has issued this class of license to 3,429 contractors. The agency is unable to estimate how many additional licenses in this class would be issued if the bottom end value is reduced from \$4,000 to \$2,000.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

See 2B.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Based on the current licensing fees, the revenue received covers the expenditures required to process the applications regardless if the contract value is reduced from \$4,000 to \$2,000.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

None

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-3670

Date Prepared: 01/20/2017

2017 HOUSE INDUSTRY, BUSINESS AND LABOR

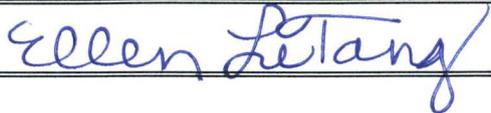
HB 1399

2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1399
1/24/2017
27323

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Contractor license requirements.

Minutes:

Attachment 1, 1A

Chairman Keiser: Opens the hearing of HB 1399.

Rep Jeff Magrum~District 28-Hazelton: Attachment 1 & 1A.

10:36

Rep Laning: I remember some the discussion from last session, it's a tough definition. How would you separate it that out between a do it your self-project, the owner taking on the liability itself, but has a friend help him & it's over the amount? Do you see a way around that?

Rep Magrum: When buddies help, they are usually paid them beer & pizza, I don't see how you will get over \$2,000. I do have your testimony from last session, attachment 1A. I don't see that as an issue in this situation.

Rep Ruby: If I do my own electrical work & it goes over the amount; I have to have it inspected. Is there a different level how much work would be done by a plumber before the plumbing inspector comes in & inspects or do they have to inspect all projects?

Rep Magrum: If you take a permit out, it has to be inspected. If there is no permit, no inspection. The way the law reads for plumbing, you have to get an inspection if you are connected to a public water system. Now with all the rural water going in, most of these houses should have a plumbing inspection.

Rep Ruby: This section of code is for all contractors. The threshold was raised, but maybe it seems too high for plumbers on the projects that you work on but for general construction that is a small level, right?

Rep Magrum: Why would you want a contractor coming in & doing windows, why you would want an unlicensed person with no insurance because of a lawsuit. You are putting the people who are hiring these guys under a huge risk as well, because they could be opened up for a lawsuit. If there is no insurance, we pay for their accident.

Rep Ruby: What about something not as dangerous, it doesn't take much work to be over \$2,000. The threshold was raised because of material & labor that costs.

Rep Magrum: There is still a risk factor for a lawsuit. If someone is injured & they were licensed, they would have had worker's compensation, then that would have been all taken care of. If there aren't licensed, the person who hired them has nowhere to go. The person, will pay for the materials & labor separately, so \$2,000 is still too high for labor. This will not stop them, they just split the labor with one job kitchen & other a closet. A license is only \$50 & they don't get one.

Rep Louser: A property management company that has a handyman for them. With the passage of this bill, the unlicensed handyman does \$2,500 worth of work, is now guilty of a Class C felony?

Rep Magrum: We didn't change any of the language. All we are changing is the \$4,000 to \$2,000. Whatever is in there was approved by this committee 2 years ago. As the property manager, is he your employee or a contractor?

Rep Louser: I don't know if it would matter in the case. I'm asking an employee, an independent contractor or a contractor who is hired. What I'm getting at, is the passage of this bill, if that person is unlicensed & does \$2,500 worth of work, they may be guilty of a Class C felony.

Rep Magrum: That's right, why would you want to get a licensed contractor because you are covered. You are opening yourself up.

Rep Kasper: What about volunteer work, no money exchanged, how does that work?

Rep Magrum: This doesn't affect that at all because there was no money exchanged. This is for someone who is out contracting with no license.

Rep Laning: When the cost value or price per job exceeds the sum of, what I'm hearing you say is that you are relating it to labor cost, would I still be in violation? Does this language relate to labor only?

Rep Magrum: You call someone, ask them to buy the material & install it, there is one bill of \$4,500, yes that would come into effect. Now if you go buy your carpet & have your buddy install the carpet, I don't think that would be affected by this.

Rep Laning: I agree with your belief, but the way it's stated, to me I read it as the job.

Rep Magrum: You are looking at it wrong, it's about contractors not jobs.

Chairman Keiser: There are 3 issues that concerns you. Some are addressed in the bill & some are not.

1. I have a job that is \$4,000 - \$5,000 & split the costs in a way that nothing gets up to \$2,000 but it is one job.
2. For a contractor, you have a contractor license, you can do the work. You concern there is when we raise the threshold, what we did was, we enabled potentially a contractor license to do much bigger jobs, up to \$4,000. That cuts into the contracting business & you are licensed & bonded but they are not. Dropping it to \$2,000, we just make them subdivide it further or restrict on the one project.
3. What rights does a the homeowner have to do a project by themselves without engaging a contractors. They are handy & don't want to get a license to do their own house. Part of the reason to moving it up to \$4,000 was for that group to do something for themselves. If we drop the threshold down to \$2,000, it hurts the individual homeowner. Worker's comp we exclude homeowner from liability if they acted as a general contractor on their own house. Other than protect the license contractor by moving this down to \$2,000, how does the homeowner?

Rep Magrum: It would help the homeowner immensely because he is protected now.

Chairman Keiser: But let us say that he is really qualified but he can't do the project because it hits \$2,00.

Rep Magrum: Usually they split it up. There is no protection for the homeowner.

Chairman Keiser: They would be in violation.

Rep Magrum: Yes.

Rep Bosch: Isn't the easy answer is to split the labor & materials up? Could we put in there in there 2 words, labor of \$500 & the total sum up to \$4,000?

Rep Magrum: What are you saying?

Rep Bosch: \$4,000 worth of material but the labor, what is the key to the equation.

Rep Magrum: Labor is the big part of the problem. If we lower, it to \$2,000 would help.

31:10

Milo Karmer~Business owner in Linton-Class A Licensed Contractor: What I hear is you want to protect the homeowner, not the contractor. If someone is injured & the homeowner doesn't realize what is going on & they are not insured in their house. Guess what, their name is on the lawsuit. My opinion it should be \$500 because if you can't be licensed in the state of ND to work, you should probably work.

All we do is pay for the regulations because you keep making laws for us to do as a business owner. Now, the other guy walks in & does what he wants. We are giving money (fundraisers) to help the community because we're a business but they can walk underneath this by walking under the radar but doesn't help the small town out. In order to succeed in a small town, you have to be able to do everything. If you are exchanging money, yes, that's the bottom line, it needs to be a contractor. I feel if you are going to be in business in ND, you should be licensed & the state should want to know who is working in ND. Everything we paying money to the state by purchasing material, paying license fees & etc. in taxes to help ND.

38:25

Blaine Doppler~Fischer Contracting: I have grave concerns about people who come in that are not qualified & they generally do substandard work. I don't want that to continue on because it's not fair to the consumer. It's not hard or expensive to get a contracting license, why would we allow people not to do that.

In reading line item 1, a person may not engage in the business nor act in the capacity of a contractor. My feeling, if my friend calls me & says, I need to help with a project, I'm going there to help a friend & I'm not going there to engage as a contractor or perform a business. This stuff isn't being policed, I don't know if we need to be that concern about it. Our main concern is that we do not want illegitimate people doing work that professionals do. If not an unrealistic amount of money to spend to get a contractor's license. The insurances & expenses that we incur, the safety, the different thing we encounter every day in our business, it costs a lot of money. It's upsetting to us to watch people not do any of that & do shoddy work & then we get phone calls to fix the shoddy work.

Chairman Keiser: Anyone else to testify in support of HB 1399, opposition, neutral position?
Closes the hearing.

Rep Laning: I agree with what they gave us but I have a concern, could we talk to Legislative Council if the price per job includes the total price? Viewing the friend as a criminal because exceeding the dollar amount. I don't have a problem of what they are saying, I agree with them.

Rep Becker: He is correct; it specifically says the cost or value. The value of the job is whatever would be if you had a contractor do the job. You could say it costs \$100 but the check in the bank could be \$500, I think the intent of the law specifically to have value so they can't circumvent the intent of law.

I have empathy with what Rep Magrum & the other contractors have said. The way I viewed this law, when we raised the cost, we were getting government out of people private individual business. I think to go backwards, takes away from that. In addition to the law we made last time, probably the better route to go would be to try to get government a little more out of the way of the contractors. If the regulations, restrictions & costs are so onerous for the contractors, I think we should attack that problem. I think what we did last time for the \$4,000 limit was to try to decrease the burden & it was appropriate.

Rep Bosch: I think the definition of a contractor is someone who is charges for labor. If these people are charging for labor, I think they would become a contractor. I would agree with the testimony, that even \$500, it's a man's day worth of work & the \$500, you are a contractor.

Rep Ruby: We sent this to Senate with \$6,000, Senate brought it down to \$4,000 & so we must of concurred. I think that Rep Becker is correct in getting government out. I do know that having a piece of paper doesn't determine who is a good or bad contractor are. I'm going to oppose the bill.

Rep Ruby: Moves a Do Not Pass.

Rep Becker: Second.

Roll call was taken for a Do Not Pass on HB 1399, with 5 yes, 9 no, 0 absent, motion failed.

Chairman Keiser: Is there a further motion?

Rep Laning: Moves for a Do Pass.

Rep Bosch: Second.

Rep Beadle: One factor from last session that we didn't bring up was the \$500 threshold was to put in there a few decades ago at this point. For reference, I ran a quick calculation the inflation factor from \$500 in 1970 to now, \$500 would about be \$3,100.

Rep Louser: I do see a merit to have the discussion just be labor. The unlicensed contractor & the licensed contractor, presumable the use materials & the materials seem irrelevant. I wondering if, if the motion failed & we focused on the labor costs, within this part of the century code, if that conflicts with any other language that we have for licensed contractors?

Chairman Keiser: If we were just to specify to labor at \$2,000 or some value?

Rep Louser: We reference value in other parts of the code, but labor in this part? Just wondering if there would be a conflict?

Parnel Grossman~Attorney General~Director of the Consumer Protection Antitrust Division: Whatever you do for the dollar amount is up to you but I ask not to deal with the labor. I would advise you that not a court that would interpret this the way the committee is doing this. If you do your own job, you are not a contractor & you can't be charged for operating as a contractor. This bill has always contemplated somebody who comes in & gets paid for their services for the total value. However, you break it out, we have had everybody try all the tricks. The law looks to who is the contractor who is in the business who makes improvements, currently \$4,000 or more, whether it's labor or materials. I would respectfully suggest to focus on whatever amount you want. Don't get into the weeds where it becomes too difficult to enforce.

Rep Louser: Since we've passed this legislation, has there been an uptake in prosecutions for the Attorney General's Office?

Grossman: This law passed has been tremendously helpful & there has been more prosecutions for bad contractors. Unfortunately, I see the bad contractors but I can't come before you to tell you the success stories. I don't really want to be in the middle of this discussion of \$4,000 being enough. There are some benefits for a licensed contractor. I want to clear up the misconception that somehow that when you bring someone in to do your work, if it's a handyman of an employee or an independent contractor, I hope you keep the 2 separate.

Rep Kasper: I build a house & put in a wood floor in my house, I buy materials for \$7,000, shipped to the house, myself & 2 of my friends lay the wood floor & I paid them with beer & pizza. Have I violated the contractor law or this law in that scenario?

Grossman: No, in my opinion.

Rep Becker: I would consider the committee to resist the motion. If defeated, I would make an amendment to change the \$2,000 to \$3,000. The reason I'm saying that is because we \$4,000 that in the bill, the proponents want \$2,000 & Rep Beadle said that if we look at what was originally there & added inflation, it would be \$3,000. I would go on to support that motion despite my hesitancy to go down at all.

Roll call was taken for a Do Pass on HB 1399 with 6 yes, 8 no, 0 absent, motion failed.

Rep Becker: Moves an amendment where have on line 8, strike the word two & add the word three.

Rep Beadle: Second.

Chairman Keiser: Further discussion?

Voice vote – motion carried.

Chairman Keiser: We have HB 1399 as amended, what are the wishes?

Rep Becker: Moves a Do Pass as Amended.

Rep Beadle: Second.

Chairman Keiser: Further discussion?

Roll call was taken for a Do Pass as Amended on HB 1399 with 11 yes, 3 no, 0 absent & Rep Becker is the carrier.

1/29/17 DA

17.0956.01001
Title.02000

Adopted by the Industry, Business and Labor
Committee

January 24, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1399

Page 1, line 8, replace "two" with "three"

Renumber accordingly

Date: Jan 24, 2017

Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1399**

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or
Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee
- Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions

- Reconsider
- _____

Motion Made By Rep Ruby

Seconded By Rep Becker

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| Chairman Keiser | | X | Rep Laning | | X |
| Vice Chairman Sukut | | X | Rep Lefor | | X |
| Rep Beadle | X | | Rep Louser | X | |
| Rep R Becker | X | | Rep O'Brien | | X |
| Rep Bosch | | X | Rep Ruby | X | |
| Rep C Johnson | | X | Rep Boschee | | X |
| Rep Kasper | X | | Rep Dobervich | | X |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 5 No 9

Absent 0

Floor Assignment _____

Motion failed

Date: Jan 24, 2017

Roll Call Vote #: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1399

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee
- Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions Reconsider _____

Motion Made By Rep Laning Seconded By Rep Bosch

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| Chairman Keiser | | x | Rep Laning | X | |
| Vice Chairman Sukut | X | | Rep Lefor | X | |
| Rep Beadle | | x | Rep Louser | | x |
| Rep R Becker | | x | Rep O'Brien | X | |
| Rep Bosch | X | | Rep Ruby | | x |
| Rep C Johnson | X | | Rep Boschee | | x |
| Rep Kasper | | x | Rep Dobervich | | x |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 6 No 8

Absent 0

Floor Assignment _____

Motion failed

Date: Jan 24, 2017

Roll Call Vote #: 3

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1399

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made By Rep Becker Seconded By Rep Beadle

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| Chairman Keiser | | | Rep Laning | | |
| Vice Chairman Sukut | | | Rep Lefor | | |
| Rep Beadle | | | Rep Louser | | |
| Rep R Becker | | | Rep O'Brien | | |
| Rep Bosch | | | Rep Ruby | | |
| Rep C Johnson | | | Rep Boschee | | |
| Rep Kasper | | | Rep Dobervich | | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____ Voice vote ~ Motion carried

line 8, strike word "two" +
add the word "three".

Date: Jan 24, 2017

Roll Call Vote #: 4

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1399

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions Reconsider _____

Motion Made By Rep Becker Seconded By Rep Beadle

| Representatives | Yes | No | Representatives | Yes | No |
|---------------------|-----|----|-----------------|-----|----|
| Chairman Keiser | X | | Rep Laning | X | |
| Vice Chairman Sukut | X | | Rep Lefor | X | |
| Rep Beadle | | X | Rep Louser | X | |
| Rep R Becker | X | | Rep O'Brien | X | |
| Rep Bosch | X | | Rep Ruby | | X |
| Rep C Johnson | X | | Rep Boschee | X | |
| Rep Kasper | | X | Rep Dobervich | X | |
| | | | | | |
| | | | | | |
| | | | | | |

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep Rick Becker

REPORT OF STANDING COMMITTEE

HB 1399: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1399 was placed
on the Sixth order on the calendar.

Page 1, line 8, replace "two" with "three"

Renumber accordingly

2017 TESTIMONY

HB 1399

NORTH DAKOTA HOUSE OF REPRESENTATIVES



STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Representative Jeffery J. Magrum

District 28
P.O. Box 467
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Jan 24, 2017

COMMITTEES:
Judiciary
Agriculture

01/23/17

Chairman and committee members. I am here to introduce HB1399 .HB1399 reduces the price per job back to \$2000 from the \$4000 without having a contractor license. This was changed last session. I and my constituents believe \$4000 is to high. Actually we believe \$2000 is to high. The old price of \$500 was high enough.

The problem with raising the amount so high is that as a small contractor the unlicensed contractors can easily underbid the licensed contractor. The unlicensed contractor has a huge advantage as far as costs of doing business. The unlicensed contractor has no license fee, usually no insurance, no bonding. If they have help they usually have no workers comp., no unemployment insurance. The unlicensed contractors usually use private or farm vehicles do their contracting. Most likely they don't know the local or state building codes. A good example of this is a simple task of changing out a gas water heater. Installed improperly the building could burn down. The unlicensed contractor most likely not having insurance? Who then is responsible.

Another problem with the \$4000 limit is the unlicensed contractors will take an \$8000 project and have the customer split the project into 2 projects in order to hire the unlicensed contractor to save money. A good example of this as they will dig a basement for \$2500 ,backfill basement and level site \$3500, sewer and water lines

800.

The unlicensed contractor doesn't get any permits and has no chance of oversight. Usually the only way they get caught is to get turned in by the person they are working because of poor work or a licensed contractor.

This puts the licensed contractors in a really bad position because they lose work because of the cost of doing business that the unlicensed contractor doesn't have. Also after the unlicensed contractor turns out an inferior job these customers usually call the licensed contractor to fix the problem. If we fix the problem then we put our name on their job. The customer usually ends up paying way more money, then they are upset.

If the licensed contractor turns the unlicensed contractor in to the appropriate state officials, then the licensed contractor is labeled as a redneck. Many licensed contractors feel like the state is undermining their business. On top of it all the licensed contractors have to stand guard so the state agencies don't raise their license fees. The licensed contractors are in a trap.

I urge this committee to straighten out this mess. I know this was changed last session. People are human and make mistakes. Mistakes can be fixed that's why we're here. I respectfully ask you to please give this bill a do pass.

Thank you chairman and committee members. I will stand for questions

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2188
4/2/2015
Job # 25777

- Subcommittee
- Conference Committee

| |
|--|
| Committee Clerk Signature <i>Carie Winings</i> |
|--|

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 43-07-02 and subsection 3 of section 43-07-10 of the North Dakota Century Code, relating to providing penalties for operating without a contractor's license and committing construction fraud; to repeal section 43-07-18 of the North Dakota Century Code, relating to the penalty for operating without a contractor's license; to provide a penalty; and to declare an emergency.

Minutes:

| |
|----------------|
| No Attachments |
|----------------|

**Committee Members: Chairman Klein, Senator Poolman, Senator Sinner
Representative Laning, Representative Sukut, Representative Nelson**
All were present.

Chairman Klein: Opened the Conference Committee on HB 2188. The House changed the \$2000 to \$6000. It did create some issues with the Secretary of State whom I have a letter from. Maybe we could discuss why we would go from \$2000 to \$6000. This was in a line of things that we wanted to do to fix these rogue contractors to get a better handle on it.

Representative Laning: In our committee part of the discussion was primarily that we did not have any objection to this bill but we had two different people that testified that they had hired a friend to come and help them to do a small remodeling job and actually if you look at this bill as it was with a \$2000 limit it makes that practice illegal. It says that if the entire project exceeds \$2000 you must have a licensed contractor. We thought that was unfair. Most of you that have done remodeling in your homes and had a friend help you out that you paid a little something it would require a license if it was over \$2000. We thought that for small projects around the home that was not fair to the individual. We decided to raise that dollar amount to accommodate those types of things more. The two that testified were at \$3000 to \$4000 on their projects so we made it \$6000. There is nothing really magic about the \$6000 number.

Senator Poolman: Can we split the difference at \$4000.

Chairman Klein: There is certainly some discussion as to where that level should be. I think \$2000 may be too low and \$6000 is certainly too high. There is obviously a reason why we need the number there.

43-07-06. Administrative and governing bodies may impose requirements.

Any administrative body or governing body, agency, or commission having power to enter into public contracts may impose reasonable requirements and conditions as conditions precedent to the awarding of a contract for the construction or reconstruction of public works in addition to the requirements imposed by this chapter.

43-07-07. License fees.

At the time of making application for a license as described and required in this chapter, the applicant shall pay to the registrar the following fees:

1. For a class A license, the sum of three hundred dollars.
2. For a class B license, the sum of two hundred dollars.
3. For a class C license, the sum of one hundred fifty dollars.
4. For a class D license, the sum of fifty dollars.

All moneys collected by the registrar under this chapter must be deposited by the registrar with the state treasurer, who shall credit them to the general fund of the state.

43-07-08. Exceptions.

This chapter does not apply to:

1. Any authorized representative or representatives of the United States government, the state of North Dakota, or any county, municipality, irrigation district, reclamation district, or other political corporation.
2. Any person who furnishes any fabricated or finished product, material, or article of merchandise which is not incorporated into or attached to real property by such person so as to become affixed thereto.

43-07-09. Duty of registrar - Expiration of license.

Within fifteen days from the date of application, the registrar may investigate and determine each applicant's fitness to act in the capacity of contractor as defined in this chapter, and no license may be issued to such applicant until the registrar receives all documentation necessary to obtain a license and the appropriate fee. The license issued on an original application entitles the licensee to act as a contractor within this state, subject to the limitations of such license, until the expiration of the then current fiscal year ending March first, except that an initial license issued to a licensee in January or February is valid until March first of the subsequent year.

43-07-09.1. Name changes.

Not later than ten days after the date of a change in a contractor's name, the licensee must notify the registrar of the name change on a form provided by the registrar. A name change must be accompanied by a ten dollar fee. A licensee may not change its name if the change is associated with a change in the legal status other than a change in marital status. A corporation, limited liability company, limited liability partnership, or limited partnership registered with the secretary of state is not subject to this section.

43-07-10. Renewal of license - Grounds for nonrenewal - Time requirements - Invalidation of license for failure to renew.

1. Any license issued under this chapter may be renewed for each successive fiscal year by obtaining from the registrar a certificate of renewal. To obtain a certificate of renewal, the licensee shall file with the registrar an application that includes a listing of each project, contract, or subcontract completed by the licensee during the preceding calendar year in this state over the amount of twenty-five thousand dollars and the nature of the work of each project, contract, or subcontract. The registrar shall within a reasonable time forward a copy of the list to the state tax commissioner. The applicant shall include with the application a copy of a certificate of liability insurance unless the registrar has a current valid certificate of insurance on file, and a certification that the applicant has submitted all payroll taxes, including North Dakota income tax, workforce

Senator Sinner: I don't know where that number ought to be but if there is some way to fix that little problem that would be a better solution.

Representative Laning: I have had some discussions with the Secretary of State recently regarding that number and he has a real problem with the \$6000 number. He indicated that there are some enforcement issues of going that high and he would rather see the number somewhat lower. The \$4000 may be the correct number. I have no discussed this with my other conference members.

Chairman Klein: Asked the Secretary of State to come to the podium and let us know what he would be comfortable with.

Al Jaeger, Secretary of State: The \$2000 has been in law for a long time. At one time it was only \$500.

Chairman Klein: So these people were all breaking the law way back then?

Al Jaeger: That is not quite correct. The thing is that you can have all kinds of friends help you. It is when you are holding yourself out as a contractor and there is a contractual agreement. If you just help out and get a little bit of compensation but there is not a contract it is fine. I would suspect that friends don't necessarily get into that. In my discussion with Parrell Grossman, this is an enforcement thing. This is not about hitting someone that is running around in a pickup. That \$6000 creates a threshold where they cannot go below in an enforcement action to really go after the people that we want to go after. That is the purpose of this bill. Parrell Grossman and I thought that \$4000 would be a nice level. The reason is that even in that \$2000 difference you start getting into a guy that is coming out and doing a contract and doesn't do the work but takes the money. The Attorney General has that \$2000 difference to give him more enforcement clout. From our standpoint, we would be comfortable with \$4000.

Chairman Klein: What you are saying is if the project is \$4000 then it would be your lid and anything that is above that you can go after the scoundrel a lot easier than you could if it was set at \$6000.

Al Jaeger: Once you start getting up over \$6000 you are getting at a little higher level. That \$2000 might not seem like a lot but based on the calls and things that come to our office it would make a difference.

Senator Sinner: When we talk about these contracts, normally we have an individual contract with each person who comes and I think \$2000 is a fair amount.

Al Jaeger: \$2000 is the current law and since the House raised it to \$6000 we are suggesting is just to reduce it to \$4000.

Representative Sukut: If anyone is interested in getting these contractors in line we are because we are working with a lot of those issues out there. The other side of that is that

Ladd Erickson: I will support the \$5,000 if that would address the concerns. It makes a great deal of sense when you are talking about criminalizing conduct.

Representative M Nelson: When these contractors are prosecuted, are their licenses pulled?

Ladd Erickson: Yes, their license would get pulled through a revocation and they would be denied an application in the future.

Opposition:
None.

Neutral:
None.

Chairman Keiser: Closed the hearing.

Representative Becker: Moved an amendment to raise the amount to \$6,000 before a license is needed. Page 1, line 11.

Representative Ruby: Seconded the motion

Voice vote. Motion carried.

Representative Beadle: On page 2, subsection 5 I have some issues with the mandatory sentencing.

Representative Becker: Last session I voted against making a Class A felony out of over \$50,000. This is consistent with theft by deception.

Representative Ruby: It's more definitive on what class of penalty it is. But the sentencing is still somewhat flexible.

Chairman Keiser: These are really bad operators.

Representative Ruby: Moved Do Pass as amended.

Representative Lefor: Seconded the motion.

A Roll Call vote was taken: Yes 14, No 0, Absent 1.

Do Pass as amended carries.

Representative M. Nelson will carry the bill.

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safety and insurance premiums, and unemployment insurance premiums due at the time of renewal, which documents need not be notarized.

2. The registrar may refuse to renew a license if the registrar determines the application contains false, misleading, or incomplete information or if the contractor's license is not in good standing for any of the reasons listed in subsection 3 of section 43-07-04. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
3. The application for a certificate of renewal must be made to the registrar on or before the first day of March of each year. At the time of filing the application for a certificate of renewal, the applicant shall pay to the registrar a renewal fee equal to twenty percent of the license fee established in section 43-07-07. If any contractor applies for a renewal under a class different from the license previously issued, the new class license may be issued upon the payment of the fee required for the issuance of the license of the class applied for. If any contractor fails to file an application for a certificate of renewal by the March first deadline, the contractor's license is not in good standing and the contractor must be deemed to be unlicensed within the meaning of sections 43-07-02 and 43-07-18. Within sixty days after March first, the contractor must be notified by mail that the contractor's license is not in good standing. The contractor then has until June first to renew by paying a penalty fee of seventy-five percent of the renewal fee, filing an application for a certificate of renewal, and paying the renewal fee. A contractor who applies for a certificate of renewal before or within ninety days of the filing deadline is not subject to the investigation authorized in section 43-07-09. After the June first deadline any licenses not renewed are revoked. Any application for a certificate of renewal must be fully completed within sixty days of the date the application is received by the registrar or the registrar shall return the application to the contractor who then is subject to section 43-07-09. The registrar may destroy all renewals provided for in this section after they have been on file for six years.

43-07-11. Contractor's bond - Requirements.

Repealed by S.L. 1995, ch. 397, § 9.

43-07-11.1. Contracts with state.

1. No contractor, resident or nonresident, is eligible to enter into a public contract with any department of the state of North Dakota, nor any political or governmental subdivision of the state until satisfactory showing is made that said contractor has paid all delinquent income, sales or use taxes, if any, owed to the state pursuant to the provisions of the income, sales or use tax laws, and which have been assessed either by the filing of an income or sales and use tax return by the contractor, or by an assessment of additional income, sales or use taxes against the contractor by the commissioner that has become finally and irrevocably fixed, before the date that the contract was executed by the parties thereto. "Contractor" and "public contract" have the same definition for purposes of this section as in chapter 43-07 relating to issuance of licenses to contractors.
2. A certificate from and by the tax commissioner shall satisfy the requirement of subsection 1. Upon failure to file such a certificate, such department or political or governmental subdivision shall refuse to execute said public contract.
3. The provisions of this section apply only to contracts executed after July 1, 1965.

CHAPTER 43-07
CONTRACTORS

43-07-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Contractor" means any person engaged in the business of construction, repair, alteration, dismantling, or demolition of bridges, highways, roads, streets, buildings, airports, dams, drainage or irrigation ditches, sewers, water or gas mains, water filters, tanks, towers, oil, gas, or water pipelines, and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including the construction, alteration, or repair of property to be held either for sale or rental, and shall include subcontractor, public contractor, and nonresident contractor.
2. "Nonresident contractor" means any contractor who has not an established and maintained place of business within this state, or who has not made reports to North Dakota workforce safety and insurance within the previous year of employees within this state, and who has not made contributions to the North Dakota workforce safety and insurance fund accordingly, or who, during a like period has not made an income tax return in this state.
3. "Person" includes any individual, firm, copartnership, association, corporation, limited liability company, or other group or combination thereof acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is disclosed clearly by the context thereof.
4. "Public contract" means a contract with the state of North Dakota or any board, commission, or department thereof, or with any board of county commissioners, or with any city council or board of city commissioners, board of township supervisors, school board, or with any state or municipal agency, or with any other public board, body, commission, or agency authorized to let or award contracts for the construction or reconstruction of public work when the contract cost, value, or price exceeds the sum of two thousand dollars and includes subcontracts undertaken to perform work covered by the original contract or any part thereof when the contract cost, value, or price of the work included in such subcontract exceeds the sum of two thousand dollars.
5. "Registrar" means the secretary of state of the state of North Dakota.

43-07-02. License required.

A person may not engage in the business nor act in the capacity of a contractor within this state when the cost, value, or price per job exceeds the sum of two thousand dollars nor may that person maintain any claim, action, suit, or proceeding in any court of this state related to the person's business or capacity as a contractor without first having a license as provided in this chapter.

43-07-03. Registrar designated.

The secretary of state as registrar has authority to employ such assistance and procure such records, supplies, and equipment as may be necessary to carry out the provisions of this chapter.

43-07-04. License - How obtained - Failure to grant - Revocation.

1. To obtain a license under this chapter, an applicant who is eighteen years of age or older shall submit, on forms the registrar prescribes, an application under oath containing a statement of the applicant's experience and qualifications as a contractor. A copy of a certificate of liability insurance must be filed with the application and the contractor shall submit a statement from North Dakota workforce safety and insurance that the contractor has secured workforce safety and insurance coverage satisfactory to workforce safety and insurance. If the registrar deems it appropriate or necessary, the registrar may also require any other information to assist the registrar in

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determining the applicant's fitness to act in the capacity of a contractor, including, at the expense of the applicant, criminal history record information of the applicant or the officers, members, or partners of the applicant which is held or maintained by the bureau of criminal investigation or a similar entity in another state. The application must contain a statement that the applicant desires the issuance of a license under this chapter and must specify the class of license sought.

2. The registrar may refuse to grant a license if the registrar determines the application contains false, misleading, or incomplete information; the applicant fails or refuses to authorize or pay for criminal history information requested by the registrar; or as otherwise provided in sections 12.1-33-02.1 and 43-07-04.1. The registrar shall notify the applicant in writing if the registrar does not grant the license and shall provide the applicant an opportunity to respond to or cure the defect in the application for a period of ten days from the date of the written notification. An applicant aggrieved by a decision of the registrar not to grant the license may appeal the decision to the district court of the applicant's county of residence or Burleigh County.
3. No sooner than twenty days after sending written notice to a contractor at the contractor's last-known address, the registrar shall classify as not in good standing the license of any contractor who fails to:
 - a. Maintain liability insurance coverage required by this section or by section 43-07-10;
 - b. File, renew, or properly amend any fictitious name certificate required by chapter 45-11;
 - c. Maintain an active status of a corporation or registration as a foreign corporation;
 - d. Maintain an active status of a limited liability company or registration as a foreign limited liability company;
 - e. File or renew a trade name registration as required by chapter 47-25;
 - f. Maintain a limited liability partnership registration or foreign limited liability partnership registration as required by chapter 45-22; or
 - g. Maintain a limited partnership certificate of limited partnership or foreign limited partnership certificate of authority.
4. Any contractor who has been notified by the registrar that the contractor's license is not in good standing shall cease soliciting or entering new contract projects. If the contractor fails to correct the deficiency specified in the notice by evidence satisfactory to the registrar within thirty days of the date of the notice or if the contractor solicits or enters new contract projects while the contractor's license is not in good standing, the registrar shall use the procedures of chapter 28-32 to revoke the license of the contractor.

43-07-04.1. Conviction not bar to licensure - Exceptions.

Conviction of an offense does not disqualify a person from licensure under this chapter unless the secretary of state determines that the offense has a direct bearing upon a person's ability to serve the public as a contractor or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

43-07-05. Classes of licenses.

Four classes of licenses must be issued under this chapter, which must be designated as class A, B, C, and D licenses. The holders of such licenses are entitled to engage in the contracting business within this state subject to the following limitations:

1. The holder of a class A license is subject to no limitation as to the value of any single contract project.
2. The holder of a class B license is not entitled to engage in the construction of any single contract project of a value in excess of two hundred fifty thousand dollars.
3. The holder of a class C license is not entitled to engage in the construction of any single contract project of a value in excess of one hundred twenty thousand dollars.
4. The holder of a class D license is not entitled to engage in the construction of any single contract project of a value in excess of fifty thousand dollars.