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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/09
 SPONSOR Lujan, B. LAST UPDATED 2/21/09 HB 313/aHJC
 SHORT TITLE Create Construction Crimes Bureau SB _____
 ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	\$2,000	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NA	\$518.8	\$518.8	\$1,037.6	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Regulation and Licensing Department (RLD)
 Public Defender (PD)
 Department of Corrections (DOC)

SUMMARY

Synopsis of HJC

The House Judiciary amendment to HB 313 inserts "certified or holding a qualifying certificate issued" after the word "licensed". The amendment extends provisions for those "licensed" to include those with "qualifying certificates".

Synopsis of Bill

House Bill 313 creates a "construction crimes bureau" within the Construction Industries Division of the State of New Mexico Regulation and Licensing Department. The new bureau will investigate and prosecute alleged crimes committed by licensees of the Division.

FISCAL IMPLICATIONS

HB 313 would create a new bureau within CID that would be comprised no less than 15 new FTEs. It is estimated that the salaries of these FTEs and associated costs of operating the bureau will require an increase in CID's annual budget of \$1,518.800. The bill appropriates a total of \$2 million for use in FY 10 and 11. This would leave an unfunded remainder of \$1, 037.6 million for the two year fiscal period (\$518.8 per year).

According to the December 2008 revenue estimate, FY10 recurring revenue will only support a base expenditure level that is \$293 million, or 2.6 percent, less than the FY09 appropriation. All appropriations outside of the general appropriation act will be viewed in this declining revenue context.

SIGNIFICANT ISSUES

House Bill 313 creates a "construction crimes bureau" with the Construction Industries Division which is to investigate and prosecute alleged crimes committed by licensees of the Division. The crimes subject to this provision are those which occur "in the course of performing any act for which a license is required." This language eliminates a potential jurisdictional issue by clarifying that the bureau will only prosecute crimes related to construction licensure. The bill recognizes that the bureau may not always have primary jurisdiction over a matter stating that the bureau will "pursue prosecution against, or cooperate in the prosecution of, a person licensed by the division against whom criminal charges are filed, in coordination with the law enforcement agency having prosecutorial authority over the crime." Under NMSA 1978, Section 36-1-18(A) district attorneys shall "prosecute and defend for the state in all courts of record of the counties of his district all cases, criminal and civil, in which the state or any county in his district may be a party or may be interested." It appears that CID would first have to determine whether it or the relevant district attorney has jurisdiction before taking any action.

According to the Attorney General's Office, HB 313 does not address what consequences such a prosecution would have on the actual license of the person involved. Under NMSA 1978, Section 60-13-23, the Construction Industries Commission has the authority to revoke a license for cause. House Bill 313 allows for criminal charges only. Civil action against a license would have to be taken separately pursuant to the provisions of the Construction Industries Licensing Act, NMSA 1978, Sections 60-13-1 to -59, and the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -33. Taking both criminal charges and civil charges against a licensee is unlikely to raise the issue of double jeopardy. This office has commented that it is lawful for a District Attorney to pursue civil damages against someone who has already been convicted and sentenced in a criminal prosecution based on the same underlying conduct.

ADMINISTRATIVE IMPLICATIONS

Currently law enforcement agencies frequently decline to prosecute these crimes because they do not have the resources to investigate and develop the cases. This bill would authorize CID to assist the State's district attorneys and the State Attorney General's Office in the investigation and prosecution of these crimes.

TECHNICAL ISSUES

The bill fails to specify exactly when the bureau can prosecute the licensed individuals for their crimes, and when it must turn over such prosecutions to another prosecutorial entity.

Section 1(B) (1) may want to add “division” in front of license to clarify that the acts covered are only those requiring a license from the division. It is unclear from Section 1(B) (2), whether the phrase “pursue prosecution against” has reference to “in coordination with the law enforcement agency having prosecutorial authority over the crime.”

OTHER SUBSTANTIVE ISSUES

According to the Construction Industries Division (CID), the instance of construction related crimes in New Mexico has increased significantly in recent years. Complaints of these crimes are often reported to the Governor, the Lt. Governor and Attorney General’s Consumer Protection Division, and are then referred to CID for investigation. CID is not currently staffed or funded to undertake these investigations which are frequently labor intensive and time consuming because they involve complicated facts and sophisticated financial analysis. Currently CID’s investigators, who were hired to investigate unlicensed contracting, are being diverted to perform investigation of fraud and other serious crimes committed in the context of construction work. This has resulted in a decline in the prosecution of unlicensed contracting which harms New Mexico’s legitimately licensed contractors and increases the occurrence of sub-standard construction.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Unlicensed contracting and construction crimes will continue to be under investigated and under prosecuted. To the extent construction crimes are investigated at all, it will be by individuals who do not have the necessary training or expertise to adequately and efficiently perform this work.

CS/svb:mt