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FISCAL IMPACT REPORT

SPONSOR HBIC ORIGINAL DATE 02/23/17
 LAST UPDATED 03/16/17 HB 362/HBICS

SHORT TITLE Home Inspector Licensing Act SB _____

ANALYST Amacher

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
	\$176.0	\$0.0-\$176.0	Recurring	Home Inspector Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$14.9	\$56.7	\$170.1	Recurring	RLD

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with: HB 431 and SB 352;

SOURCES OF INFORMATION

- LFC Files
- Mortgage Finance Authority (MFA)
- Office of the Attorney General (OAG)
- Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of HBIC Substitute

The House Business and Industry Committee Substitute for House Bill 362 enacts the Home Inspector Licensing Act; creates a new board with powers and duties as outlined; provides for licensure requirements, fingerprinting and background checks, continuing education and penalties; and allows for reciprocity. This bill also creates a Home Inspector Fund to be funded by statutorily specified fees. Funds incurred are to be used by the board in the enforcement of the Home Inspector Licensing Act; any remaining fees are to remain in the fund. It also provides for injunctive relief relating to civil and criminal penalties. The effective date of this bill is January 1, 2018.

FISCAL IMPLICATIONS

In addition to any fees to cover reasonable and necessary administrative expenses, this bill provides for the following fees to be collected by the New Mexico Home Inspectors Board:

- license application or renewal fee, not to exceed \$250;
- state and national criminal background check fee, not to exceed \$100;
- three-year license fee, not to exceed \$750;
- reactivation fee, not to exceed \$200;
- reinstatement fee, not to exceed \$200; and
- duplicate license fee for a lost or destroyed license, not to exceed \$50.

It is possible the board may collect an estimated \$176 thousand the first year based on the initial required fees (application, background check and three-year license fees) collected from the approximate 160 potential home inspector licensees as provided by the Regulation and Licensing Department (RLD). This bill establishes a three-year licensing cycle for licensees, so revenues realized in the years following the initial year of licensure would be significantly lower as indicated in the above Estimated Operating Budget Impact chart. The RLD comments that the initial costs for establishing the board under the RLD would be \$14.9 thousand, and recurring operating costs would be \$56.7 thousand annually.

SIGNIFICANT ISSUES

The House Business and Industry Committee Substitute for House Bill 362 enacts the Home Inspector Licensing Act; creates a new board with powers and duties as outlined; provides for licensure requirements, fingerprinting and background checks, continuing education and penalties; and allows for reciprocity. The HBIC Substitute for HB 362 also creates a Home Inspector Fund to be funded by statutorily specified fees. Funds incurred are to be used by the board in the enforcement of the Home Inspector Licensing Act; any remaining fees are to remain in the fund. This bill also provides for injunctive relief relating to civil and criminal penalties.

Section 1 creates the title Home Inspector Licensing Act.

Section 2 provides definitions. A “home inspector” is a person who performs home inspections for compensation. This inspector is licensed in accordance with the new provisions of this bill and may inspect “residential real property”. This means an inspection may be on any real property or manufactured or modular home for either a single-family dwelling, duplex, triplex, quadplex or condominium unit.

Section 3 creates the “New Mexico home inspectors board” and as administered by the Regulation and Licensing Department (RLD). As proposed the board will consist of five members, appointed by the governor, who have been residents of the state for at least three consecutive years immediately prior to their appointment. Three members must be current licensed home inspectors, one member will be a licensed real estate qualifying or associate broker, and one member will be an unlicensed public member. Board members will serve for five years or until their successors are appointed and qualified. Annual elections for officers and chair of the board shall be held. The governor may remove members with or without cause and appoint members to fill vacant unexpired terms. Staggered terms are set for initial appointees to the board.

Section 3 tasks the board with adopting rules; adopting a code of ethics and standards of practice. Additionally the board will oversee all levels of licensure from issuance to revocation. This bill requires the rules define the list of specific residential real property components and systems to be inspected. This board must also address standards for training, experience, and continuing education.

Uniquely, Section 4 presents a disclaimer. All pre-inspection agreements must state that a “home inspector will not determine and the report provided upon completion of the home inspection will not contain a determination of whether the home or components and/or systems of the home that have been inspected conform to local or state building code requirements.”

Sections 5 through 12 outline new licensure requirements; expands the responsibilities of the board; and sets minimum standards of licensee education. Applicants must submit all documentation required by the board; be a legal U.S. citizen at least 18 years old; provide fingerprints for a criminal background check; provide proof of continuous insurance coverage; complete 80 hours of classroom training; pass a national home inspector licensing examination; and complete 80 hours of field training. Applicants have the right to inspect records if licensure is denied. Records are to be kept confidential. Additionally, licenses are valid for no more than three years. As proposed, a license may be issued to a foreign home inspector if the applicant’s resident state license requirements are similar to those in the Home Inspector Licensing Act. This bill allows the board to negotiate agreements with other states or licensing jurisdictions to allow for reciprocity regarding licensure. Conditions for denial, suspension, or revocation of a license are outlined.

Notably, Section 12 allows the board to solicit sealed, competitive proposals from insurance carriers to provide a group insurance policy for licensees with errors and omissions coverage and professional liability coverage. As proposed all licensees and their employers must either contract with the group policy provider or carry their own errors and omissions insurance and professional liability insurance at all times.

Section 13 outlines fees the board must establish charge and collect for licensure. The fees will be deposited into a non-reverting “home inspector fund” administered by the board.

Section 14 denotes the appropriate use of “licensed home inspector” in advertising for business.

Section 15 creates the “Home Inspector Fund”. The fees outlined in Section 13 shall be deposited into the fund as held at the state treasurer’s office. Funds are to be used by the board to meet necessary expenses incurred in carrying out and enforcing Home Inspector Licensing Act.

Section 16 provides for civil and criminal penalties. As outlined, the Attorney General or a district attorney may prosecute those in violation of the Home Inspector Licensing Act. Violations are considered petty misdemeanors pursuant to the Sentencing Authority for Misdemeanors (Chapter 31-19-1 NMSA 1978). A recoverable civil penalty is set at \$1,000 for attorney fees and costs for each violation.

ADMINISTRATIVE IMPLICATIONS

The Office of the Attorney General (OAG) notes the Open Government Division and Litigation Division would need to devote resources in providing legal counsel and administrative prosecution to the Home Inspectors Board. The OAG further notes that although the jurisdiction of the OAG for pursuing criminal prosecution is provided, an appropriation is not. This may affect other budget performance measures.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 431 and SB 352 amend the Construction Industries Licensing Act allowing for companies to provide private inspectors for governments, contractors and homeowners. This legislation requires the employment of certified building officials; sets for licensure and certification requirements, provides penalties; limits employment of inspectors; provides new definitions; and expands inspection services and responsibilities for third-party inspection companies. This legislation specifically tasks licensed private inspection companies and licensed contractors in enforcing building safety and ensures contractor compliance with laws, codes and standards.

The HBIC Substitute for HB 362 presents a conflict with HB 431 and SB 352 with the creation of the “Home Inspector Licensing Act”. The provisions of the HBIC Substitute for HB 362 overlap existing actions and proposed law in HB 431 and SB 352. Notably, there is no requirement a homeowner must work with a home inspector as outlined in the HBIC Substitute for HB 362. Licensure is further complicated in the event these bills pass as the HBIC Substitute for HB 362 notes the terms “home inspector”, “certified home inspector”, “registered home inspector”, “licensed home inspector” or “professional home inspector” may only be used by those licensed through the “Home Inspector Act”. This conflicts with the terms such as “inspector” used in HB 431 and SB 352 for inspectors.

The HBIC Substitute for HB 362 makes clear, through the required disclaimer for all contracts, that the home inspector will not determine compliance or conformity with local or state building code requirements. This bill also creates new licensure for home inspection; and creates a new board with powers and duties as outlined. The HBIC Substitute for HB 362 requires all home inspection fees be deposited into a newly created “Home Inspector Fund” held at the state treasurer’s office to be administered by the board.

OTHER SUBSTANTIVE ISSUES

It is difficult to gauge the impact on the safety of home construction, the timing of construction development or delay as result of this proposed home inspector, and the overall effectiveness of addressing solely home inspection. There appears to be no requirement for a home owner to engage with a home owner inspector. The means by which engineers, architects, contractors and other trades are to work with a home inspector is also unclear. The HBIC Substitute for HB 362 does make clear, through the required disclaimer for all contracts, that the home inspector will not determine compliance or conformity with any local or state building code requirements.

The RLD notes that typically a board member appointed by the governor serves at the pleasure of the governor. HB 362 provides removal of a board member may only be for cause without providing a hearing procedure.

The Office of the Attorney General indicates Section 3 regarding the responsibilities to establish the amount and administer fees for examinations, licensure and other activities conflicts with Section 13. As outlined in Section 13, amounts and fees are statutorily set forth.

The OAG also notes that it may be more appropriate to use “approved by the board” instead of “prescribed” in Section 6(A)(6) and in Section 6(A)(5). To ensure the requirement in Section 8 line 10, the OAG suggests replacing the word “may” with “shall”.

ALTERNATIVES

The RLD notes that in the course of its work with the working group of Senate Memorial 2 from the 2011 legislative session the working group considered a self-regulating certification act as an alternative to state licensing. This alternative would set standards for certification, provide consumer access to registration, information via a public website, require minimum general liability insurance and a surety bond, and provide for a criminal penalty for violations. Complaints regarding certified home inspectors would be directed to the Consumer Protection Division of the Attorney General’s Office.

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