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FISCAL IMPACT REPORT

SPONSOR: Stapleton DATE TYPED: 3/10/03 HB 437/aHf1#1/aSCORC
 SHORT TITLE: Amend Construction Industries Licensing Act SB _____
 ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

SOURCES OF INFORMATION

Responses Received From
 Construction Industries Division, Regulation and Licensing Department

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amended House Bill 437 to correct a technical error in the House Floor amendment. The House Floor, amendment failed to strike Paragraph K, another provision potentially directing a specific association’s practices in the code review process and, therefore, demonstrating a preference for a particular national code to be adopted in New Mexico. This amendment makes a necessary correction.

Synopsis of HF1 #1 Amendment

House Bill 437 was amended on the floor of the House for the purposes of eliminating certain language that *could* be construed as being taken directly from, and therefore demonstrating a preference for, *a particular national building code*. The amendment strikes “hot words” that were believed to be directing the adoption of a specific national building code for New Mexico, rather than allowing the Construction Industries Division and Commission the necessary latitude to evaluate all national codes, and to select that code for adoption in New Mexico that would best promote safety and the unique building environment, methods and styles of the state.

- The amendment provides that code(s) to be considered for adoption in New Mexico need to have been reviewed through an “open and balanced” process. It should not be a review involving only building officials or only industry, or a review required to be conducted in accordance with a particular construction asso-

ciation's practices (such as ANSI, ICBO, or IC code review and adoption practices).

- It should be a process that is open to all persons (building officials, public officials, licensed and unlicensed persons, general construction contractors, electrical contractors, interested members of the general public, architects, engineers, fire officials, etc.).

Synopsis of Bill

House Bill 437 strikes references to specific/named nationally recognized codes from the Construction Industries Licensing Act (Act).

The bill adds language requiring the codes adopted in New Mexico be developed in a "voluntary consensus process", and ties this new terminology to being compliant with "requirements and standards recommended by the American National Standards Institute".

Significant Issues

1. Given the safety issues at hand for the public, allowing the Construction Industries Division and Commission greater flexibility in identifying potential codes for adoption is sound and responsible. The code selection process should allow and encourage New Mexico's construction experts to consider any and all possibilities.
2. Some occupations / trades within the construction industry believe that the codes and standards adopted directly impact the cost of construction.
3. Currently, the Construction Industries Licensing Act defines "code" as a standard approved by a nationally recognized standards association, and states that the term code "includes the Uniform Building Code, the National Electrical Code, the Uniform Plumbing and Mechanical Code, the LP Gas Code, and any other codes adopted by the Commission."
4. It has been argued within the Construction Industries Division and various sectors of the construction industry that, because the Act identifies some specific codes by name, those are codes the Division must adopt.

This argument is not *entirely* accurate.

While the Act specifies that certain codes are included in the definition of "code", the Act does not state that those are the codes that must be adopted by the Construction Industries Commission. Also, while the Act states that New Mexico's codes shall be in "substantial conformity" with particular named codes, as published by identified national building organizations, use of the term "substantial conformity" means that other codes may be adopted in New Mexico, but that a benchmark standard is set.

According to the Division, this argument aside, striking the references to specific codes would be beneficial in that the Act references some codes that are no longer in print.

5. The addition of the terminology “voluntary consensus process” may become problematic at some point. All nationally recognized codes are developed through a consensus process, but the processes may look very different. For instance, one publisher of a reputable national code uses a “governmental consensus process”.

FISCAL IMPLICATIONS

1. There is no appropriation tied to HB 437. The code review and adoption process is a routine, statutory function of the Construction Industries Division and Commission that is conducted within the Division’s existing staff and budget.
2. The code review and adoption process is long and time-intensive. It is a process requiring the cooperation and dedication of Division staff, Commission members and various industry occupations, trades and associations. Typically, it takes 18 months or more to adopt a code, making it a costly process.
3. Some sectors of the construction industry assert that different building codes affect the cost of construction. This, however, cannot serve as a controlling factor for determining which code to adopt. The focus must remain on the safety of the public.

POSSIBLE QUESTIONS

- If there is concern regarding naming specific codes, should there be concern regarding naming a specific institute (American National Standards Institute) with which any code qualifying for adoption in New Mexico must comply with regard to the consensus process?
- Are there codes New Mexico may want to consider that were developed through a consensus process that is not the American National Standards Institute’s process?

SJM/njw:sb