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## FISCAL IMPACT REPORT

**SPONSOR** SCORC                      **ORIGINAL DATE** 2/06/07  
**LAST UPDATED** 3/8/07                      **HB** \_\_\_\_\_  
**SHORT TITLE** Dental Building Nitrous Oxide Standards                      **SB** 366/SCORCS/aHHGAC  
**ANALYST** C. Sanchez

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Regulation and Licensing Department (RLD)

### SUMMARY

#### Synopsis of Amendment

The House Health and Government Affairs Committee Substitute for Senate Bill 366 strikes “other facilities” focusing the bill on dental offices only.

#### Synopsis of Bill

The Senate Corporations and Transportation Committee Substitute for Senate Bill 366 would add a new section to the Construction Industries Licensing Act, NMSA 1978, Section 60-13-1 et seq., mandating that dental offices and other facilities intending to administer non-halogenated nitrous oxide comply with a lower standard than the current standard adopted by the State for the type of vacuum/evacuation system required.

The bill would also mandate that local jurisdictions, including home rule municipalities, not impose a more restrictive standard.

### FISCAL IMPLICATIONS

The bill would require CID to engage in the rulemaking process, which has associated costs in

staff time, notice, and publications of the proposed and final rule. These costs, however, are incurred in the normal course of CID's business and can be absorbed in CID's 2007 budget.

The rule proposed by the bill would have no other fiscal implications.

## **SIGNIFICANT ISSUES**

This bill mandates a standard that has not been adopted by the NFPA. The reference cited is to a proposed tentative interim amendment (TIA) to the current NFPA 99 Standard for Health Care Facilities. This proposed amendment has not been adopted by the NFPA. The current NFPA standard is the minimum standard for all state and local building programs.

The bill would allow the bill's lower standard to be used in any facility, not just dentists' offices. This proposal was not considered or advocated in the NFPA TIA.

According to the Construction Industries Division, this bill would set a precedent that would undermine the safety and welfare of New Mexico's building codes and standards because it does not require technical expertise in setting standards. For example, this bill sets a lower standard for the management of a flammable gas, nitrous oxide, without input from technical experts who can advise on the life safety issues it presents.

The bill would mandate a specific building standard by statute. This is contrary to existing law, which requires that building codes and standards be adopted through rule making process. The bill mandates a building standard without input or other comment from the Construction Industries Division, the Construction Industries Commission, the construction industries, or the public.

- Currently, the law requires that all building codes and standards be adopted by rule (NMSA 1978, Section 60-13-9 F). Before a proposed standard can be adopted it must go to public hearing (see NMSA 1978, Section 61-1-29). Before the standard can be adopted, the CIC must approve it (see NMSA 1978, Section 60-13-6 E.).
- This bill would require CID to enforce a standard that is not based on a nationally adopted code. The law defines a code as a compilation of standards "adopted by the Commission" that are "published by a nationally recognized standards association." (see NMSA 1978, 60-13-2 R.)

## **PERFORMANCE IMPLICATIONS**

The rule change this substitute bill proposes does not present significant performance issues for the Division. Upon adoption of the new standard, inspections of dental offices would be conducted in accordance with the new standard without significant impact on the performance of this service.

## **ADMINISTRATIVE IMPLICATIONS**

The rule change proposed does not present administrative issues for the Division. Upon adoption of the new rule, CID would conduct training of state certified inspectors on the new standard. Because CID regularly conducts code and other inspector trainings, thus there would be little

administrative impact on the Division.

This new statutory standard could require a change in licensing exams as well.

### **OTHER SUBSTANTIVE ISSUES**

This bill apparently conflicts with NMSA 1978, Section 3-17-6, which provides that local jurisdictions may adopt building codes as long as they are not less restrictive than the state codes. Therefore, this bill could result in a local jurisdiction adopting a standard that is lower than the standard in the bill. There could be no minimum standard at the local level for the management of this flammable gas.

### **TECHNICAL ISSUES**

Statutes mandating building standards and codes would be difficult to amend or update. For example, this bill could result in a standard that may be proven to be unsafe. If so, it could not be changed for two years.

### **ALTERNATIVES**

CID reports beginning the rulemaking process necessary to make the standards change required by this legislation.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo.

### **POSSIBLE QUESTIONS**

Could the similar results be achieved without legislation?

CS/mt