

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/08

SPONSOR Lujan, B LAST UPDATED 2/6/08 HB CS 199/aHFL

SHORT TITLE Construction Industry Proof of Responsibility SB _____

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of HFL Amendment

The House Floor amendments to the House Judiciary Committee Substitute for House Bill 199 provide that payments from the bond *shall* only be used to cure code violations caused by a licensee, certified by the Division and not corrected by the licensee.

The amendments also provide that claims against the bond shall be made within two years following final inspection *by the governmental entity having jurisdiction over code enforcement* or within two years of issuance of a certificate of occupancy for the construction project, whichever is earlier.

The amendments remove language requiring the Division to suspend a contractor's license for up to thirty days if the bond is canceled, expires or otherwise becomes ineffective during the period of a license, and provides that the Division shall notify the licensee that a new bond is required. The amendments alter the substitute bill to provide for license revocation if the licensee has not provided proof of a new bond before the fortieth day after the date of that notice.

Synopsis of Original Bill

The House Judiciary Committee Substitute for House Bill 199 would amend the Construction Industries Licensing Act, Section 60-13-49, NMSA 1978, to provide that a code bond of \$10,000 would satisfy the requirement that an applicant provide proof of responsibility before being eligible to be licensed as a contractor. Payments from the code bond would be used to cure building code violations. The amendment would also remove the existing methods of proving responsibility: a financial statement, a certificate of deposit, or a bond – each of which is for the sole purpose of securing payment of fines and penalties assessed by the Construction Industries Division.

Impact on the Agency. There is very little fiscal implication for the Division if this amendment is made. Currently, the Division seeks payment of fines directly from the contractor, rather than the bonding company, so that the cause and effect relationship between the contractor's mistake and the fine is reinforced. This legislation would not change this practice; therefore, the Division does not expect a significant impact on its ability to collect fines if the bond requirement in the current statute is repealed.

Impact on the Contractor. The majority of contractors currently satisfy the professional responsibility requirement with a bond. Assuming that the cost of the new bond would not be

significantly different from the bond currently required, the contractor would not be adversely affected by the change in bond type.

Impact on the Public. Under the current professional responsibility statute, the consumer of services provided by a licensed contractor has no assurance of the contractor's professional responsibility because none of the three options for demonstrating professional responsibility gives the consumer restitution for damages if the contractor fails to perform professionally or responsibly. This legislation would give the consumer recourse for code violation damage proven to be caused by a licensed contractor.

FISCAL IMPLICATIONS

NFI

SIGNIFICANT ISSUES

According to RLD, the existing professional responsibility requirement does not demonstrate or prove professional responsibility of CID licensees. It merely ensures that CID has a source for the payment of fines imposed by the Division, if the licensee does not pay them, and then only if the licensee elects the bond or cash collateral option. If a financial statement is selected, neither the division nor the public have any assurance of the contractor's performance.

The existing requirement creates a discrepancy in the discipline of licensees. Licensees whose bond or cash collateral becomes ineffective during the term of the license are subject to license suspension and revocation. Licensees who submit a financial statement are not subject to suspension or revocation, regardless of the financial condition of the licensee.

The existing statute does not ensure that a contractor will be responsible in performing the work undertaken. The statute limits the contractor's ability to permit individual projects based on the amount of the bond or cash collateral. For example, a bond in the amount of \$500 will authorize the licensee to permit work the value of which is not greater than \$25,000 *per project or permit*. However, there is no restriction on the number of \$25,000 projects that the licensee may permit at one time; therefore, contractors can, and do, over-extend regardless of the permit limitation imposed by the professional responsibility limit. Further, there is no value-per-project restriction at all on a licensee who uses a financial statement to satisfy the requirement.

PERFORMANCE IMPLICATIONS

Liquefied Petroleum Gas licensees are required to carry insurance and Manufactured Housing licensees are required to carry a bond. Requiring the same kind of proof of professional responsibility of CID licensees would treat these similarly situated licensees consistently and would ensure that CID's licensees would meaningfully demonstrate proof of professional responsibility.

ADMINISTRATIVE IMPLICATIONS

This legislation would not adversely affect CID's administration of the professional responsibility requirements. In fact, because there would be only one type of proof of professional responsibility, current procedures could be streamlined. In addition, because the bill simplifies the consequences and procedures when a bond becomes ineffective, it may be easier to explain to licensees the requirements and consequences of failing to comply. Bond attachment is expected to be processed by the bonding company in direct communication with the claimant, so little administrative impact is expected. If the bond attachment process does require administration by the Division, additional staff may be required.

ALTERNATIVES

Require liability insurance as an alternative form of proof of responsibility.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The inequities of the current professional responsibility requirements will continue to result in disparate treatment of CID licensees, and CID licensees will continue to be licensed without being required to demonstrate meaningful professional responsibility to the citizens of New Mexico.

CS/mt