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F I S C A L I M P A C T R E P O R T

SPONSOR Cervantes **ORIGINAL DATE** 2/17/09
LAST UPDATED 2/18/09 **HB** 685

SHORT TITLE Farm & Ranch Construction Electrical Permits **SB** _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown See Below	Unknown See Below		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Regulation & Licensing (RLD)

SUMMARY

Synopsis of Bill

House Bill 685 clarifies certain licensing and permit exemptions in the Construction Industries Licensing Act (Act) in sections 60-13-2, 60-13-3 and 60-13-45.

The bill adds a new definition to Section 60-13-2, adding the term “employee.” The Act does not currently define employee, but it does create an exception from licensing for those who work for wages. The new definition will clarify the exemption.

The bill also amends the exemption from the definition of contractor persons who make repairs or alterations on farms and ranches by adding that the farm or ranch must be “taxed as an agricultural enterprise.” This change may narrow the number of farms and ranches that will qualify for the contractor exemption in that not all are taxed as agricultural enterprises.

The bill also creates an electrical permit exemption for the installation of electrical wiring for those persons who own or occupy farms and ranches as well as their employees. The exemption pertains to the “installation of electrical wiring that is not connected to electrical energy supplied from a power source outside the premises” of the farm or ranch. In other words, it appears that the installation of electrical wiring on an internal power source of a farm and ranch is exempt from Construction Industries Division (CID) permit requirements. This exemption was moved

from the contractor section of the Act to the electrical bureau permit section of the Act.

FISCAL IMPLICATIONS

This bill will facilitate the enforcement of the unlicensed contracting laws by reducing the ability of unlicensed individuals to confuse the courts and hearing officers with claims of exemptions that are difficult to interpret and apply. It appears the bill has no fiscal impact.

SIGNIFICANT ISSUES

The AGO provided the following:

The bill clarifies the defined terms and adds a new term, “employee.” In addition, it changes who is not considered a “contractor” under NMSA 1978, Section 60-13-3. The bill adds “employee[s]” to the list of those persons not considered contractors while removing “a person who acts on his own account to build or improve a single-family residence for his own personal use. By removing the latter from the list, CID could potentially regulate individuals who are making improvements to their own homes.

Nevertheless, Sections (D)(10) and (D)(11) of the Section 60-13-3 seem duplicative in that section 10 already exempts individuals who build or makes installations, alterations or repairs in or to a single-family dwelling owned and occupied or to be occupied by the person making the repairs. House Bill 685 retains (D)(10) and it seems individuals making repairs to their own home are exempted.

RLD provided the following:

- Because the current exemption for “an individual who works only for wages” is not clear, unlicensed individuals who are actually independent contractors try to use the exemption to defend against charges of unlicensed contracting. Deleting the old exemption and substituting the defined term “employee” will clarify the criteria for the exemption and will make it easier for the division, the public, courts and hearing officers to understand when the exemption applies and when it does not.
- The Act currently provides that owners or operators of farms and ranches are not required to be licensed to perform construction work on their property. The exemption applies to commercial agricultural construction because it does not expose the public to the risks associated with un-inspected construction. However, this exemption is often claimed for work on construction that is not on commercial agricultural property - but on dude ranches, boys and girls camps, retreat facilities and other similar buildings that are located in rural, ranch-like settings but are more akin to hotels than farms. The primary purpose of such operations is to house the public; therefore, the exemption should not apply. These structures should be built by licensed contractors whose work is subject to the permitting and inspections process just as hotels are. By clarifying this term to apply to large agricultural operations only, the bill will make it easier for the public, the division, and courts to understand when it applies and when it does not.
- This definition currently contains a provision relating to permitting requirements for electrical wiring on farms and ranches. This provision is irrelevant to the definition of a

farm, is not pertinent to the exemption, and is difficult to understand. This amendment moves the provision to the section of the act that covers required permits, Section 60-13-45, and revises it so that it is easier to understand.

- This bill will support the fair and unambiguous application of the licensing requirements. It will provide the clarification necessary for to the public, the division, the judiciary and hearing officers, know when an exemption applies to a farm or ranch and to those parties in an employment relationship.

ADMINISTRATIVE IMPLICATIONS

The Construction Industries Division (CID) of RLD should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities. In fact the clarifications in the bill should save time and resources.

CONFLICT

Section 60-13-3.1 provides criteria for independent contractors which may conflict with the definition of employee provided in this bill. CID has put forward a legislative initiative that will recompile the independent contractor provisions and place them in the Labor Act.

TECHNICAL ISSUES

Section 60-13-3 D. (18) is deleted by this bill because CID is working on new rules affecting licensing classifications and permit types that will apply to repair and maintenance work.

Add the words “and freestanding storage buildings and other improvements located on the same property” after the words “the individual” at line 14 on page 9. The deletion of this language in subsection (11) was made with the understanding that exemption (10) will revised to include it.

ALTERNATIVES

RLD suggests that the words “taxed as an agricultural enterprise” may include small back-yard agri-type businesses, such as laying-chicken operations, small fruit orchards and small breeding operations. If so, clarification is required to ensure that only owners of large farm and ranch type operations are exempted by this provision. Specifying that the tax referred to is a property tax or, alternatively, providing that a county assessor’s treatment of the property will be determinative, will adequately clarify the exemption.

DW/mt