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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/09  
 SPONSOR Cervantes LAST UPDATED 2/27/09 HB 689/aHBIC  
 SHORT TITLE Construction Licensing Statute of Limitations SB \_\_\_\_\_  
 ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Indeterminate See Below	Indeterminate See Below		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 313

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of HBIC Amendment

The House Business & Industry Committee amendment amends and clarifies that the Construction Industries Commission shall not initiate a punitive action pursuant to the Construction Industries Licensing Act later than two years after the earlier of:

(1) the date of cessation of work, if the person who is the subject of the action ceases to perform work on the construction site that is the basis for the action for 90 days or more; or

(2) the date a certificate of occupancy is issued pursuant to Subsection C of Section 60-13-45 NMSA 1978 in relation to the conduct that would be the basis for the action.

#### Synopsis of Original Bill

House Bill 689 amends the limitations provision of the Uniform Licensing Act (Act) to add a new paragraph which provides that the Construction Industries Commission (CIC) shall not initiate an action under the Act that will result in any of the disciplinary actions of such as license

limitation, revocation, suspension and imposition of fines later than two years after the date of substantial completion as defined in Section 37-1-27 NMSA 1978 or issuance of that will be the basis for the action.

The bill also makes technical changes in and clarifies the more general two year limitation of Paragraph A by providing that for construction license cases, the two year period is triggered specifically by substantial completion or issuance of a certificate of occupancy.

### **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions, which might result in appeals to court of administrative decisions. Alternatively, if the clarification of the two-year limitation period cuts off CIC actions that might be proceeding under the current statute, the effect could actually be fewer appeals to courts. On the other hand, cases could increase as parties dispute the meaning and application of the term substantial completion in any given factual context. The issuance of a certificate of occupancy will seem to be less subject to interpretation; either a certificate was issued on a certain date or there is no certificate. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

### **SIGNIFICANT ISSUES**

The AGO provided the following:

Section 37-1-27 defines substantial completion as:

The date when construction is sufficiently completed so that the owner can occupy or use the improvement for the purpose for which it was intended, or the date on which the owner does so occupy or use the improvement, or the date established by the contractor as the date of substantial completion, whichever date occurs last.

However, this definition is found within the paragraph setting forth the ten-year statute of limitation on actions for defective or unsafe conditions. This may cause confusion, as House Bill 689 does not distinguish between the types of actions that may trigger the lesser, two-year time limitation.

Furthermore, the definition of substantial completion may conflict with the second option, which will commence the time limitation when a certificate of occupancy is issued. Section 60-13-45(C) states that if a permit has been issued for construction of a new residential building, that residential building shall not be occupied until a certificate of occupancy has been issued certifying compliance with all codes and standards. However, the definition of substantial completion within Section 37-1-27 merely states that the date on which the owner does so occupy or use the improvement. As such, occupancy under substantial completion does not appear to require a certificate.

**ADMINISTRATIVE IMPLICATIONS**

The affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities

**RELATIONSHIP**

HB 689 relates to HB 313 creates a Construction Crimes Bureau within the Construction Industries Division of the RLD

DW/mt