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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/11

SPONSOR Little LAST UPDATED \_\_\_\_\_ HB 320

SHORT TITLE Construction License and Regulations SB \_\_\_\_\_

ANALYST Sanchez, C.

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$75.0)	(\$75.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$75.0	\$75.0	\$150.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 320 would amend the Construction Industries Licensing Act (CILA), NMSA 1978, Section 60-13-14, by deleting subsection D. This section allows the Director of CID to issue licenses to applicants who have engaged in unlicensed activity during the 12 month period before applying for a license on payment of an additional license fee. Subsection D also allows CID to administratively settle with unlicensed actors who choose not to become licensed upon payment of a fine.

The bill would amend NMSA 1978, Section 60-13-23 of the CILA to provide that conviction under NMSA 1978, Section 60-13-52 is a ground for assessing an administrative penalty against a licensee, or suspending or revoking a license.

The bill would amend Section 60-13-24 of the CILA to provide that a conviction under Section 60-13-52 is a ground for assessing an administrative penalty against a certificate holder, or suspending or revoking a license.

The bill would also amend Section 60-13-52 of the CILA to provide:

- that anyone convicted of unlicensed contracting would be sentenced under the criminal sentencing codes rather than the CILA
- that a licensee or certificate holder who uses an unlicensed actor or who allows an unlicensed actor to use his or her license or certificate would be guilty of a misdemeanor and sentenced upon conviction under the criminal sentencing codes
- Anyone convicted under this section, would not be eligible to apply for or renew a license or certificate unless CID is provided with proof of compliance with all court orders and sentencing requirements.

## **FISCAL IMPLICATIONS**

According to RLD, HB 320 would result in a loss of revenue to the general fund. The additional license fees assessed and paid under subsection D of 60-13-14 in the last nine months total approximately \$75,000.00. In past years, these fees have reached and exceeded \$500,000.00 annually. If this bill becomes law, these fees will no longer be assessable by CID. Any penalties under the new bill would be assessed by and paid to the judiciary, not to the general fund.

## **SIGNIFICANT ISSUES**

HB 320 amends the Construction Industries Licensing Act to increase penalties for a person acting as a contractor without a license or to increase penalties for a person who is licensed under the Act, which uses the services of a person that is not licensed. A first violation of acting as a contractor without a license is a misdemeanor, and a second or subsequent violation is a fourth degree felony.

According to the Attorney general's Office (AGO), there are no significant legal issues raised by HB 320 because while it makes it much harder for a person to get a license if they have been convicted of practicing without a license, the new language provides for license eligibility when the person has complied with all terms and conditions imposed by a court after a conviction.

According to Regulation and Licensing Department (RLD), the repeal of non-criminal resolution section of the bill, Section 60-13-14 D, is an efficient way to handle violations of the act by out-of-state companies who inadvertently violate the licensing requirements. An example of this is a company that bids a large commercial job not realizing that a license is required before bidding. As soon as the violation is realized, the company often self-reports and applies for a license. This kind of violation has occurred on such economically important projects as the uranium enrichment plant in Eunice, New Mexico. In such cases unlicensed bidders have paid fines to the general fund under 60-13-14 D; but, had criminal charges been filed, the process would have been complicated by the fact that the violators were out-of-state corporate entities over which is it difficult to get New Mexico criminal jurisdiction. Further these kinds of companies are usually represented by sophisticated attorneys. Unlicensed misdemeanors are handled by CID's investigators who are non-attorney prosecutors and who are at a distinct disadvantage in such cases.

## **ADMINISTRATIVE IMPLICATIONS**

According to RLD, the bill would create a double process for revocation or other discipline of a licensee who violates the licensing laws. The bill would make conviction a prerequisite for taking disciplinary action against a licensee who uses an unlicensed actor or “loans” his or her license to an unlicensed actor. Under current law discipline for this violation can be administered without having first to acquire a conviction of the licensee.

## **TECHNICAL ISSUES**

The bill would make it a misdemeanor for a certificate holder to use an unlicensed actor or to “loan” his or her certificate to an unlicensed actor. However, certificate holders cannot perform contracting without a license; therefore, this provision is ineffective and unnecessary.

According to the Construction Industries Division (CID), the bill may create a “loop” in that it prohibits anyone convicted under Section 60-13-52 from being licensed unless proof of compliance with sentencing requirements – including deferred sentencing – is provided to the Division. Deferred sentencing for unlicensed activity has historically and regularly been used by New Mexico courts to allow offenders to become licensed. If such an order issues (See NMSA 1978, Section 31-20-6.F which allows the court to order the defendant to satisfy any other conditions reasonably related to the defendant’s rehabilitation), the defendant will neither be able to become licensed nor meet the deferred sentencing requirements.

## **OTHER SUBSTANTIVE ISSUES**

According to RLD, unlicensed contracting is difficult to prosecute in part because it is often viewed as a minor matter by the courts. Deferred sentencing under the current statute is frequently used by the courts as way to divert the case and avoid conviction. There is virtually no judicial follow-up to ensure that the defendant complies with the requirements of the deferral. Deferral for licensing should not be allowed.

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

Status Quo

CS/bym