

1 HOUSE BILL 367

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Randal S. Crowder

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9  
10 AN ACT

11 RELATING TO LICENSURE; AMENDING SECTIONS OF THE CONSTRUCTION  
12 INDUSTRIES LICENSING ACT; PROVIDING FOR AN EXCEPTION TO  
13 PENALTIES FOR THE DIRECTOR OF THE CONSTRUCTION INDUSTRIES  
14 DIVISION OF THE REGULATION AND LICENSING DEPARTMENT IF A DENIAL  
15 OF A LICENSE IS OVERTURNED BY THE CONSTRUCTION INDUSTRIES  
16 COMMISSION; PROVIDING FOR PERMANENT REVOCATION OF LICENSURE;  
17 PROVIDING FOR COST-BENEFIT ANALYSES BY TRADE BUREAUS.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 60-13-15 NMSA 1978 (being Laws 1977,  
21 Chapter 245, Section 177, as amended) is amended to read:

22 "60-13-15. LICENSE ISSUANCE--COMMISSION REVIEW.--

23 A. The commission shall review at its regular  
24 meetings all licenses issued by the division. The commission  
25 shall report to the superintendent of regulation and licensing

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1 and the attorney general any license issued to an applicant who  
2 fails to meet the requirements established by law and  
3 commission regulations for license issuance.

4 B. The signing of a license by the director for  
5 issuance by the division to an applicant who fails to meet the  
6 requirements established by law or [~~committee~~] commission  
7 regulations for issuance of licenses is a misdemeanor, and the  
8 director, if convicted by a court of law, shall be relieved of  
9 [~~his~~] the director's duties and shall be subject to civil  
10 damages as provided in Section 30-23-7 NMSA 1978. Failure by  
11 the [~~committee~~] commission or [~~any~~] a member of the [~~committee~~]  
12 commission to report the illegal issuance of a license is a  
13 petty misdemeanor and upon conviction shall result in  
14 termination of the appointment of the [~~committee~~] commission  
15 member so convicted. If the commission hears an appeal of a  
16 denial of a license to an applicant by the director and  
17 subsequently overturns the director's denial, the director  
18 shall not be subject to the penalties herein."

19 SECTION 2. Section 60-13-29 NMSA 1978 (being Laws 1967,  
20 Chapter 199, Section 32, as amended) is amended to read:

21 "60-13-29. [~~APPLICATION FOLLOWING~~] REVOKED LICENSE [~~OR~~  
22 ~~CERTIFICATE~~]~~--PERMANENT.--~~[~~A.~~ After] Revocation of any license  
23 or certificate issued pursuant to the Construction Industries  
24 Licensing Act [~~no person shall be eligible to apply for a new~~  
25 ~~license or certificate until a period of one year after the~~

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1 ~~date of the original order of revocation by the commission has~~  
2 ~~expired.~~

3 ~~B. Following the revocation of a contractor's~~  
4 ~~license or a qualifying party's certificate pursuant to the~~  
5 ~~Construction Industries Licensing Act, no license or~~  
6 ~~certificate may be issued to that contractor or qualifying~~  
7 ~~party by the division if the director finds that the contractor~~  
8 ~~or qualifying party has, during the period of revocation,~~  
9 ~~engaged in activity that constitutes a violation of any~~  
10 ~~provision of the Construction Industries Licensing Act] shall~~  
11 ~~be permanent."~~

12 SECTION 3. Section 60-13-44 NMSA 1978 (being Laws 1967,  
13 Chapter 199, Section 52, as amended) is amended to read:

14 "60-13-44. TRADE BUREAUS--STANDARDS--CONFLICTS.--

15 A. The electrical bureau shall recommend to the  
16 commission minimum standards for the installation or use of  
17 electrical wiring. The recommendations shall substantially  
18 embody the applicable provisions of an electrical code for  
19 safety to life and property promulgated by a nationally  
20 recognized association and developed through an open, balanced  
21 consensus process.

22 B. The mechanical bureau shall recommend to the  
23 commission minimum standards for the installation of all  
24 fixtures, consumers' gas pipe, appliances and materials  
25 installed in the course of a mechanical installation. The

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1 recommendations shall be in substantial conformity with codes  
2 and standards that are developed through an open, balanced  
3 consensus process. Manufacturers may choose the independent  
4 certification organization they wish to certify their products  
5 if the certification organization is accredited by the American  
6 national standards institute or other accreditation  
7 organization selected by the commission.

8 C. The general construction bureau shall recommend  
9 to the commission minimum standards for the construction,  
10 alteration or repair of buildings, except for those activities  
11 within the jurisdiction of the electrical bureau or the  
12 mechanical bureau. The recommendations shall substantially  
13 embody the applicable provisions of a nationally recognized  
14 building code that is developed through an open, balanced  
15 consensus process and shall give due regard to physical,  
16 climatic and other conditions peculiar to New Mexico. The  
17 standards shall include the authority to permit or deny  
18 occupancy of existing and new buildings or structures and  
19 authority to accept or deny the use of materials manufactured  
20 within or without the state. The general construction bureau  
21 may set minimum fees or charges for conducting tests to verify  
22 claims or specifications of manufacturers.

23 D. The general construction bureau shall recommend  
24 to the commission additional specifications for any public  
25 building constructed in the state through expenditure of state,

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1 county or municipal funds, bonds and other revenues, which  
2 specifications shall embody standards making the building  
3 accessible to persons who have a physical disability, and the  
4 specifications shall conform substantially with those contained  
5 in a nationally recognized standard for making public  
6 facilities accessible to persons with a physical disability  
7 that is developed through an open, balanced consensus process.  
8 All orders and rules recommended by the general construction  
9 bureau and adopted by the commission under the provisions of  
10 this section shall be printed and distributed to all licensed  
11 contractors, architects and engineers and to the governor's  
12 commission on disability. The orders and rules shall take  
13 effect on a date fixed by the commission, which shall not be  
14 less than thirty days after their adoption by the commission,  
15 and shall have the force of law.

16 E. The general construction bureau shall have the  
17 right of review of all specifications of public buildings and  
18 the responsibility to ensure compliance with the adopted  
19 standards.

20 F. All political subdivisions of the state are  
21 subject to the provisions of codes adopted and approved under  
22 the Construction Industries Licensing Act. Such codes  
23 constitute a minimum requirement for the codes of political  
24 subdivisions.

25 G. The trade bureaus within their respective

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1 jurisdictions shall recommend to the commission standards that  
2 are developed through an open, balanced consensus process for  
3 the installation or use of electrical wiring, the installation  
4 of all fixtures, consumers' gas pipe, appliances and materials  
5 installed in the course of mechanical installation and the  
6 construction, alteration or repair of all buildings intended  
7 for use by persons with a physical disability or persons  
8 requiring special facilities to accommodate the aged. The  
9 recommendations shall give due regard to physical, climatic and  
10 other conditions peculiar to New Mexico.

11 H. The trade bureaus within their respective  
12 jurisdictions shall recommend to the commission standards for  
13 the construction, alteration, repair, use or occupancy of  
14 manufactured commercial units, modular homes and  
15 premanufactured homes. The recommendations shall substantially  
16 embody the applicable provisions or standards for the safety to  
17 life, health, welfare and property approved by the nationally  
18 recognized standards association and developed through an open,  
19 balanced consensus process and shall give due regard to  
20 physical, climatic and other conditions peculiar to New Mexico.  
21 Wherever existing state codes or standards conflict with the  
22 codes and standards adopted by the commission under the  
23 provisions of this subsection, the provisions of the applicable  
24 New Mexico building codes adopted pursuant to the Construction  
25 Industries Licensing Act and the LPG and CNG Act in effect at

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1 the applicable time shall exclusively apply and control, except  
2 for codes and standards for mobile housing units.

3 I. Modular homes and premanufactured homes in  
4 existence at the time of the effective date of the Construction  
5 Industries Licensing Act shall have their use or occupancy  
6 continued if such use or occupancy was legal on the effective  
7 date of that act; provided that such continued use or occupancy  
8 is not dangerous to life. Any change in the use or occupancy  
9 or any major alteration or repair of a modular home or  
10 premanufactured home shall comply with all codes and standards  
11 adopted under the Construction Industries Licensing Act.

12 J. The commission shall review all recommendations  
13 made under the provisions of this section and shall by rule  
14 adopt standards and codes that substantially comply with the  
15 requirements of this section that apply to the recommendations  
16 of the trade bureaus.

17 K. Notwithstanding any of the provisions set forth  
18 in this section, no new code, standard or specification shall  
19 be recommended to the commission without the inclusion of a  
20 full cost-benefit analysis provided by the individual trade  
21 bureau making the recommendation. This analysis shall reflect  
22 a true and accurate cost of construction to the residents of  
23 New Mexico. Estimates shall also be made of fiscal impacts of  
24 implementing the change for state and local governments. The  
25 analysis shall be submitted with any recommended change to the

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1 commission prior to the commission approving the proposed  
2 change for public hearing."

3 SECTION 4. Section 60-13-49 NMSA 1978 (being Laws 1967,  
4 Chapter 199, Section 57, as amended) is amended to read:

5 "60-13-49. PROOF OF RESPONSIBILITY.--

6 A. No applicant for a contractor's license or for  
7 renewal of a contractor's license shall be issued a license  
8 until the director determines that the applicant furnishes  
9 proof of responsibility pursuant to Subsection B of this  
10 section.

11 B. Proof of responsibility shall be a bond of ten  
12 thousand dollars (\$10,000) acceptable to the director and  
13 underwritten by a corporate surety authorized to transact  
14 business in New Mexico. Such bond shall meet the following  
15 conditions:

16 (1) payments from a bond required pursuant to  
17 this section shall only be used to cure code violations caused  
18 by a licensee, certified by the division and not corrected by  
19 the licensee. Claims by the division against the bond shall be  
20 made within two years following final inspection by the  
21 governmental entity having jurisdiction over code enforcement  
22 or within two years of issuance of a certificate of occupancy  
23 for the construction project, whichever is earlier;

24 (2) the total aggregate liability of the  
25 surety for all claims shall be limited to the face amount of

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1 the bond;

2 (3) the bond carrier shall provide to the  
3 division and to the licensee thirty days' prior written notice  
4 of intent to cancel a bond required pursuant to this section.  
5 The surety for such a bond shall remain liable under the  
6 provisions of the bond for all obligations of the principal  
7 pertaining to bond terms that occur before the bond is  
8 canceled, expires or otherwise becomes ineffective;

9 (4) failure to maintain the bond for the  
10 period required by law is cause for revocation of the license;  
11 and

12 (5) if the bond is canceled, expires or  
13 otherwise becomes ineffective during the period of a license,  
14 the division shall notify the licensee that a new bond is  
15 required. If the licensee has not provided proof of a new bond  
16 before the fortieth day after the date on which the bond was  
17 canceled, expired or otherwise became ineffective, the licensee  
18 shall be subject to revocation for failure of proof of  
19 responsibility."