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## FISCAL IMPACT REPORT

SPONSOR Baldonado/McQueen/  
Fajardo/Montoya/ ORIGINAL DATE 2/07/19 433/aHAFC/aSJC/  
Ivy-Soto LAST UPDATED 3/14/19 HB aSFI#1

SHORT TITLE Home Inspector Licensing Act SB \_\_\_\_\_

ANALYST Daly

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
	\$88.0	\$0-80.0	Recurring	Home Inspector Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			Unknown	Unknown	Recurring	RLD Operating Budget

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation & Licensing Department (RLD)

New Mexico Attorney General (NMAG)

### SUMMARY

#### Synopsis of SFI#1 Amendment

The Senate Floor Amendment #1 to House Bill 433 as twice amended strikes the Senate Judiciary Amendment 1, which struck the phrase “MAKING AN APPROPRIATION” from the title of the bill. It also adds language to make a continuing appropriation of the money in the home inspector fund to the board to meet necessary expenses. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to House Bill 433, as amended, strikes the phrase “MAKING AN APPROPRIATION” from the title of the bill, which appears to be consistent with the earlier HAFC amendment striking the \$200 thousand appropriation from the general fund. However, Section 15 creates a new fund and earmarks fees received under this Act to cover necessary expenses of the board in performing its duties. Such earmarking has been ruled by the courts to constitute an appropriation.

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee Amendment to House Bill 433 strikes Section 17, which contained a \$200 thousand appropriation from the general fund to the home inspector fund. The appropriation table that appeared in the original FIR has been deleted consistent with this amendment.

Synopsis of Original Bill

House Bill 433 enacts the Home Inspector Licensing Act. It creates a new board with powers and duties and provides for licensure requirements, fingerprinting and background checks, continuing education, and reciprocity. The board is authorized to deny licensure in specified instances and to impose discipline on licensees, which may result in suspension or revocation of a license. HB 433 creates a Home Inspector Fund to be funded by statutorily authorized fees. Funds incurred are to be used by the board in the enforcement of the Home Inspector Licensing Act; any remaining fees are to remain in the fund. This bill also provides for injunctive relief and allows for the imposition of civil and criminal penalties.

Under Section 2, a “home inspector” is defined as a person who performs, for compensation, a home inspection of the interior and exterior components of “residential real property”, including structural components and heating, cooling, plumbing and electrical systems and their controls. “Residential real property” means any real property or manufactured or modular home that is used as a single-family dwelling, or duplex, triplex, quadplex or condominium unit used for residential purposes.

Section 3 creates the “New Mexico home inspectors board”, administered by the Regulation and Licensing Department (RLD). The board consists of five members appointed by the governor, who have been residents of the state for at least three consecutive years immediately prior to their appointment. Three members must be current licensed home inspectors, one member a licensed real estate qualifying or associate broker, and one member an unlicensed public member. Board members will serve for five years or until their successors are appointed and qualified. Annual elections for officers and chair of the board shall be held. The governor may remove members with or without cause and appoint members to fill vacant unexpired terms. Staggered terms are set for initial appointees to the board.

Section 3 also tasks the board with adopting rules, a code of ethics and standards of practice; and overseeing all levels of licensure from issuance to revocation. The board must also address standards for training, experience, and continuing education, among other duties.

Section 4 requires the use of a disclaimer in all pre-inspection agreements. It states that a “home

inspector will not determine and the report provided upon completion of the home inspection will not contain a determination of whether the home or components and/or systems of the home that have been inspected conform to local or state building code requirements.”

Sections 5 through 12 outline new licensure requirements; expand the responsibilities of the board; and set minimum standards of licensee education. An applicant must submit all documentation required by the board; be a legal U.S. citizen at least 18 years old; provide fingerprints for a criminal background check; provide proof of continuous insurance coverage; complete 80 hours of classroom training; pass a national home inspector licensing examination; and complete 80 hours of field training. Applicants have the right to inspect records if licensure is denied; but generally, records are confidential. Licenses are valid for no more than three years. As proposed, a license may be issued to a foreign (defined as out-of-state) home inspector if the applicant’s resident state license requirements are similar to those in the Home Inspector Licensing Act. This bill allows the board to negotiate agreements with other states or licensing jurisdictions to allow for reciprocity regarding licensure. Conditions for denial, suspension, or revocation of a license are outlined.

Section 12 allows the board to solicit sealed, competitive proposals from insurance carriers to provide a group insurance policy for licensees with errors and omissions coverage and professional liability coverage. All licensees and their employers must either contract with the group policy provider or carry their own errors and omissions insurance and professional liability insurance at all times.

Section 13 outlines fees the board must establish, charge and collect for licensure. All fees shall be deposited into a non-reverting “home inspector fund” administered by the board, and created in Section 15. Those funds are to be used by the board to meet necessary expenses incurred in carrying out and enforcing the Act.

Section 16 provides for civil and criminal penalties. The Attorney General or a district attorney may prosecute unlicensed home inspectors who are practicing in violation of the Home Inspector Licensing Act. Violations are misdemeanors. In addition, a civil penalty in an amount not to exceed \$1,000 may be imposed by the Board, which also may assess administrative costs.

The effective date of this bill is January 1, 2020.

### **FISCAL IMPLICATIONS**

The appropriation of \$200 thousand contained in Section 17 of this bill is a recurring expense to the general fund for expenditure in FY 2020 and subsequent fiscal years. Any unexpended or unencumbered balance remaining at the end of each fiscal year shall not revert to the general fund.

In Section 15, this bill creates a new fund, the “home inspector fund”, to which all fees received by the board shall be deposited, and income earned on investment of the fund shall be credited to the fund. Money in the fund shall be used by the board to meet necessary expenses incurred in the performance of its duties under the Act, and all unexpended or unencumbered balances remaining at the end of a fiscal year shall not revert to the general fund.

RLD estimates the board may collect an estimated \$88 thousand the first year based on the maximum required fees set in HB 433 (application, background check and three-year license

fees) collected from 160 potential home inspector licensees. This bill establishes a three-year licensing cycle for licensees, so revenues realized in the years following the initial year of licensure would be significantly lower, as indicated in the Revenue table. RLD expresses concern that, since revenues in those years will be significantly lower, collected fees and any balance remaining from the \$200 thousand appropriation after the first year may not be sufficient to cover all responsibilities and administrative costs of the board in subsequent years. The amount of any such deficiency is unknown, as reflected in the Operating Budget Impact table.

### **SIGNIFICANT ISSUES**

RLD reports that a May 2006 study on home inspector licensure, done by Belmont Technical College for the Education and Research Advisory Committee of the Ohio Real Estate Commission, surveyed differences between three states with home inspector licensure (Arizona, Texas, and New Jersey) and three states without home inspector licensure (Michigan, Ohio, and Missouri). The study did not find any significant difference in the number of inspection reports rated inadequate by real estate agents between states with home inspection licensing and those without. The study also concluded, “There does not appear to be a difference between licensing and non-licensing states in real estate agents’ ratings of the number of buyers in 10 who report problems.”

NMAG notes that HB 433 carries an effective date of January 1, 2020. Section 5 provides that a license is required by the Board, and there is no grace period for individuals currently practicing in the profession of providing inspections as defined by HB 433 to obtain a license under the new practice act. This would likely create a practical problem because these individuals would have to wait for the board to form and then create rules and a process for applying for licensure before they would be able to be licensed and practice their profession. The rulemaking process under the State Rules Act and Default Procedural Rule for Rulemaking (promulgated by the NMAG) necessitates specific timelines for publication and public notice of proposed rules. These time requirements, along with the time needed for the board, its staff, and legal counsel to draft and review proposed rules will likely take many months, even under the best of circumstances.

### **ADMINISTRATIVE IMPLICATIONS**

RLD notes language in Section 3 stating the board would be administratively attached to that department, and its responsibilities would be limited to those provided pursuant to Section 9-1-7, NMSA 1978, unless additional budgeting, record-keeping and related administrative assistance by RLD is authorized by the board and provided by mutual agreement.

NMAG reports that its Open Government Division represents state boards and commissions, and likely would be assigned to provide legal counsel and representation to the Home Inspectors Board. This would require additional resources from the division, especially during the formative years of the board when specific legal assistance with the board’s rulemaking and other administrative assistance would be needed.

### **TECHNICAL ISSUES**

If it is the intent of this legislation to allow the board day-to-day use of the Home Inspector Fund, the language in Section 15 should be revised to clarify that those monies are appropriated to the board to meet necessary expenses incurred for the purposes specified in Subsection B of

that section.

Page 19, line 25, classifies unlicensed practice as a misdemeanor. RLD notes that there are two classes of misdemeanors. Pursuant to Section 13-18-13(D), any time a sentence is not specified for a crime, it constitutes a petty misdemeanor. It may provide clarity to insert the term “petty” before the term “misdemeanor” on that line.

NMAG suggests these changes:

Section 6(A)(5) states that the board will establish the “content” for classroom training. The part of the sentence that includes “content” should be changed to “approved by the board” unless the board intends to develop the curriculum.

Similarly, Section 6(A)(6) uses the term “prescribed”. “Approved by the board” may be more appropriate. Section 8 line 22 uses the term “may”. “Shall” should replace the word “may”. Section 10(A) uses the terms “same as or similar to”. “Equivalent” should be used instead.

## **OTHER SUBSTANTIVE ISSUES**

The May 2006 study reported by RLD and discussed in the Significant Issues section, also contained these findings:

Other questions to agents produced similar conclusions, indicating no difference on the following rankings:

- Agents’ ranking of the accuracy of the home inspection report
- Agents’ ranking of the inspectors’ knowledge of building construction
- Agents’ ranking of the professionalism of the inspection report
- Agents’ ranking of the satisfaction of the home inspection client

The survey of home inspectors produced results showing no significant difference between licensed inspectors and non-licensed inspectors in the following categories:

- Percentage of home inspectors who indicated home inspection as their primary occupation
- Number of inspections performed in a year
- Number of hours spent on a typical home inspection
- Number of hours of continuing education completed in the past year
- Percentage of inspectors who carry errors and omissions insurance

Ohio homeowners’ answers were compared to the real estate agent data in licensed states only and revealed no significant difference in the following questions:

- Rating of home inspector’s knowledge of building construction
- Rating of professionalism of home inspectors’ reports

The Ohio survey summary states: “The raw survey data show little overall difference between states with home inspection licensing and those without. The intention of this statistical analysis was to determine if the small difference that may exist is significant for comparable numeric data. In virtually every case, the difference was not significant.”

[http://com.ohio.gov/documents/real\\_2005.0001FinalPaper.pdf](http://com.ohio.gov/documents/real_2005.0001FinalPaper.pdf)

RLD also reports that Texas has set minimum requirements for their home inspectors as to training and experience which includes continuing education of core real estate inspection courses.

## AMENDMENTS

RLD reports that on page 9, lines 21-25, language exempting certain construction professionals from licensing under the Act incorrectly states the current status of those individuals, since the state is the only government entity which licenses these professions. Further, an HVAC person, same as any other professional, is a licensee. It suggests amending this language to read:

(D) (2) licensed by the state ~~or a political subdivision of the state~~ as an electrician, a general contractor, a plumber or a heating and air conditioning ~~technician~~ licensee, when acting within the scope of the person's license.

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