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FISCAL IMPACT REPORT

SPONSOR <u>Pirtle</u>	LAST UPDATED _____
	ORIGINAL DATE <u>3/6/23</u>
SHORT TITLE <u>Independent Construction Inspectors</u>	BILL NUMBER <u>Senate Bill 281</u>
	ANALYST <u>Anderson</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$81.8-\$327.2	\$81.8-\$327.2	\$163.6-\$654.4	Recurring	General Fund CID operating impacts

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Relates to Senate Bill 111, Senate Bill 247
Conflicts with HB 233
Relates to appropriation in the General Appropriation Act

Sources of Information

LFC Files
Responses Received From
Regulation Licensing Department (RLD)
Office of the Attorney General (NMAG)
Board of Licensure for Professional Surveyors and Engineers
Board of Examiners for Architects

SUMMARY

Synopsis of Senate Bill 281

Senate Bill 281 amends Chapter 60, Article 13 NMSA 1978, the Construction Industries Licensing Act to allow the Construction Industries Division (CID) of the Regulation and Licensing Department (RLD) to certify independent contractors as inspectors not employed by the state, county, municipality or other political subdivision, to inspect construction work performed by licensed contractors for code compliance.

Section 1 adds a definition for an “independent inspector” to include certification of contractors as independent inspectors and removes the requirement that inspectors be employed by the state, county, municipality, or other political subdivision.

Section 2(A) adds a new section to the act that requires the division to establish a program for the licensing of independent inspectors to be approved by the commission.

Section 2(B) requires the commission to prescribe the qualifications for independent inspectors to include that the independent inspector be (1) licensed in the trade for which they are applying for an independent inspector certificate; (2) have worked at least five years immediately prior to applying for the independent inspector certificate; and (3) maintain a bond.

Section 2(C) requires the division to issue an independent inspector's certificate to anyone who meets the requirements for the certificate.

Section 2(D) authorizes independent inspectors to have the same powers and authority as state-certified inspectors.

Section (2E) grants independent inspectors the same authority as state-certified inspectors pursuant to the act.

Section 3 adds a new section to the act that allows for the automatic passing of inspections for any project when a statewide inspector or an independent inspector fails to inspect the work within seven days after a request for inspection.

This bill does not contain an effective date, and as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed.

FISCAL IMPLICATIONS

Operating expenses may be incurred by the Construction Industries Division of RLD, as well as the Construction Industries Commission, related to developing the regulatory framework necessary for determining initial qualifications and licensing the proposed independent inspectors. RLD reports additional time and expenses would be incurred in developing regulatory systems and functions necessary to verify independent inspectors performing duties to an adequate standard while ensuring compliance with ongoing training requirements. This will involve creating initial licensure and renewal application forms. SB281 contains no appropriation to address costs. HAFCS/HB2 appropriates an operating budget of \$11.6 million to the division.

SIGNIFICANT ISSUES

States like North Carolina now permit licensed professionals (architects and engineers) to perform inspections in lieu of municipal code enforcement departments. Some states, including Colorado, Georgia, and South Carolina allow each municipality to decide whether to accept third-party inspections. North Carolina is in its infancy of third-party inspections and has charged its state board of Code Officials and Qualifications board to discipline code enforcement officials with certifying and disciplining inspectors.

https://www.americanbar.org/groups/construction_industry/publications/under_construction/2019/spring/third-party-inspectations/

RLD reports SB281 contradicts the Construction Industries Licensing Act by allowing

contractors to choose who they hire to inspect permitted construction work. Allowing contractors to hire an independent inspectors could create a conflict of interest between the contractor and the independent inspector since both parties have a shared monetary interest in the outcome of inspections. SB281 does not authorize the division or commission to take action against an independent inspector for violations of the licensing act, leaving independent inspectors largely unregulated, said the department.

The department did not provide an estimate for additional operating costs but provided other data:

There (are) 121,590 square miles in New Mexico with a population of approximately 2,115,877. There are approximately 27 local building departments located in 17 of New Mexico’s 33 counties. The division provides plan review, permitting and inspection for both residential and commercial building projects for 58 counties and municipalities where there are no local building departments. The division is also responsible for providing plan review and inspection services to local building departments (that) become unable to provide those services.

20,183 total inspections were performed by the (Construction Industries) division during the combined months of October, November and December of 2022.

... the division’s inspector salary on average is \$27.03, however, this is a temporary pay increase from \$23.60 and is only effective until July 1, 2023.

CID had a 36.3 percent vacancy rate at the beginning of FY23 and budgets 113 FTE. The average cost per FTE at CID is \$81.8 thousand.

The Office of the Attorney General (NMAG) suggested it may be advisable to add provisions regarding conflicts of interest, as independent inspectors would be conducting inspections on other businesses within their area of practice. NMAG further commented:

...there may be unintended consequences of the provision at P. 7, ln. 3-7, providing that if an inspection is not conducted within seven days of a request for inspection, “the subject of the inspection request shall be considered approved.”

PERFORMANCE IMPLICATIONS

According to data from the department (Attachment) CID’s inspections between September 1 through November 30, 2022 tend to average less than five days for general building, electrical, mechanical and plumbing but LP Gas tends to take closer to 10 days. Below are CID’s recommended FY24 performance measures.

Performance Measures:		2020-21 Actual	2021-22 Actual	2022-23 Budget	2023-24 Request	2023-24 Recommend
Output	Time to final action, referral or dismissal of complaint, in months	7	8	8	8	8
Outcome	Percent of commercial plans reviewed within ten working days	90%	90%	92%	92%	92%
Outcome	Percent of residential plans reviewed within five working days	90%	80%	95%	95%	95%

Efficiency	Percent of all construction inspections performed within three days of inspection request	85%	75%	95%	95%	95%
Efficiency	Percent of all installation of manufactured home inspections performed within seven days of request	80%	80%	95%	95%	95%

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB111 would create a temporary suspension of initial license fees for a period of three years for certain specified professions, including those licensed pursuant to the Construction Industries Licensing Act.

SB247 would amend the Uniform Licensing Act both procedurally and substantively, providing amendments such as adding provisions for probationary periods, changing the maximum fine amounts for unauthorized practice, and providing clarity regarding the “discovery” of an alleged violation for purposes of the two year statute of limitations period under the Uniform Licensing Act. The Uniform Licensing Act would apply to instances in which CID would conduct disciplinary action against independent inspectors. *See* Section 61-1-2(A)(1) NMSA 1978.

HB233 would remove both the Construction Industries Division and the Manufactured Housing Division from under the Regulation and Licensing Department.

OTHER SUBSTANTIVE ISSUES

RLD states SB281 contains no language specifying the authority of the division or the Construction Industries Commission to impose a licensing fee (either for initial licenses or renewal of licenses) for the contemplated independent inspectors. If the division or commission were able to assess a fee for the issuance or renewal of an independent inspector license, SB281 includes no provision addressing the state fund to which those fees would be deposited. An appropriation from the general fund would be required before a portion of the fees collected could be directed back to the division for the operation of these new licensing and regulatory responsibilities being placed on the division and commission.

ALTERNATIVES

NMAG commented:

It may be advisable to include provisions regarding how independent inspectors may be retained by the division and provide statutory authority for the division to utilize independent inspectors. As currently written, it is unclear what person or entity would make the decision to utilize an independent inspector.

It may be advisable to address to what extent CID employees may engage in the business of independent inspections and to address any conflict of interest issues arising therefrom.

Attachment

1. CID Plan Reviews

GA/al/ne

CID Plan Reviews 09/01/2022-11/30/2022
Total Plan Reviews

Commercial		
	Total Plan Reviews 9/1/2022- 11/30/2022	Average Days to Completion
Electrical	645	5
General Building	783	6
Mechanical/Plumbing	46	6
Modular	61	10

Residential		
	Total Plan Reviews 9/1/2022- 11/30/2022	Average Days to Completion
Electrical including Solar	1065	5
General Building	1097	4
Mechanical/Plumbing	29	3
Modular	10	6

Public Schools		
	Total Plan Reviews 9/1/2022- 11/30/2022	Average Days to Completion
General Building	21	4
Mechanical/Plumbing	4	4

CID Permits 09/01/2022-11/30/2022

Bureau ↑	Issue Date →	September 2022 Record Count	October 2022 Record Count	November 2022 Record Count	Total Record Count
General Building		745	715	654	2114
Modular		20	21	27	68
Electrical		1517	1333	1257	4107
Mechanical/Plumbing		648	722	660	2030
LP Gas		306	231	402	939
Total		3236	3022	3000	9258

CID Inspections 09/01/2022-11/30/2022

	Total Inspections	Average Days to Completion
General Building	4887	3.14
Electrical	10200	4.79
Mechanical/Plumbing	4903	3.02
LP Gas	1036	8.26