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## FISCAL IMPACT REPORT

SPONSOR: King DATE TYPED: 2/12/03 HB HJM 50/aHJC  
 SHORT TITLE: Study Regulation of Construction Industry SB \_\_\_\_\_  
 ANALYST: Maloy

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Indeterminate		

### SOURCES OF INFORMATION

LFC Files  
Responses Received From  
 Regulation and Licensing Department, Construction Industries Division

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendments are as follows:

1. The first amendment strikes language that states that the existing law’s financial responsibility requirement “runs in favor of” the state, and “does not protect or benefit the consumer”.
2. The second amendment adds the “the associated general contractors of America and the New Mexico home builders association”, to the study group.

#### Synopsis of Original Memorial

House Joint Memorial 50 requests the Construction Industries Division (CID) work with the Attorney General’s Office to study New Mexico’s construction laws to determine what may be done to improve regulation of the industry so that consumers are better protected.

Significant Issues

HJM 50 sets forth the following factors for consideration:

1. The intent of the Legislature in enacting laws that govern the examination, licensing and certification of occupations and trades in the construction industry is to ensure the highest quality of performance, to require compliance with approved codes and standards, to provide uniform procedures for application and enforcement, and to require those working in the industry furnish and maintain evidence of “responsibility”.
2. The Construction Industries Commission has responsibility for establishing policy for the Division. The Division has responsibility for developing codes, standards, rules and regulations to govern the industry, subject to the adoption the Construction Industries Commission.
3. In spite of the Division and Commission’s joint efforts, there have been, and continue to be, “far too many instances in which a member of the consuming public has suffered financial and other damages because of violations” of the laws intended to regulate this industry.
4. Several aspects of New Mexico’s construction laws in favor the government system, and do not necessarily benefit or protect the public. This includes the requirement that licensed contractors furnish and maintain proof of responsibility.

When contractors advertise that they are licensed and bonded, it is misleading to the consumer. The bond is not insurance for a consumer where they may seek compensation or reimbursement. The bond is a “licensing bond”. It is a bond the state may use to guarantee payment of permit fees, inspection fees, fines and penalties. It does not protect the consumer.

5. The sanctions for violation of the laws, rules and codes established by the Division and Commission do not necessarily deter repeated violations, and do not provide consumers with an effective remedy.

**FISCAL IMPLICATIONS**

The fiscal implications for the Attorney General’s Office and the Regulation and Licensing Department for the time and staff resources needed to conduct this study are indeterminate.

**OTHER SUBSTANTIVE ISSUES**

1. **The regulation of this industry should be focused on safety**, on ensuring that through the adoption of codes, plan review and inspections, New Mexico’s families are safe in their homes, children are safe in their schools, and employees and the public are safe in public structures and places of employment.
2. **The codes currently in place, and under consideration for future adoption, are solid and promote safety.** The Commission and the Division rely on na-

tional, uniform standards in determining New Mexico's codes. They do this keeping New Mexico's unique environmental conditions and building traditions and style into consideration.

3. **The problem is really enforcement and a lack of consequences for violating the laws and standards.**

- The problem is enforcement of licensing requirements and having a meaningful process for responding to those who refuse to get licensed. The laws for addressing unlicensed contracting lack teeth, and the courts have not historically taken unlicensed contracting (as a criminal misdemeanor) seriously. At this time, most unlicensed contracting cases are resolved through a "Stipulated Agreement" in which the Division agrees to forego criminal charges against an unlicensed contractor if he will agree to pay a penalty fine and agree to get licensed. While this is good for *future* consumers because requiring licensure pulls the individual under the jurisdiction of the Division and Commission, it does little for the existing injured homeowner(s).

At this time, the Division has three investigators assigned to addressing unlicensed contracting for the entire state. This staffing is inadequate to make a meaningful impression on the industry and to curb unlicensed behavior.

- The problem is also enforcement of the codes with licensed contractors. Non-compliance with the state's building codes and standards means a gap in safety for the consumer. The Division must have a comprehensive, effecting permitting system and a well-staffed, thorough inspection process. Thereafter, the Division must be readily capable of responding to complaints and identified non-compliance in a strong and decisive manner that makes the consequences for the licensee who declines to correct identified problems in his construction practices significant and expected.

At this time, licensees do not fear the Division's code enforcement efforts. The Division no longer works with the Attorney General's Office toward the administrative prosecution of licensees who fail to correct code violations. Three years ago, CID cases were the Attorney General's Litigation Division's greatest case load. Now, CID has pulled the handling of these cases in-house, and as a result, administrative hearings have come to a virtual halt. Code issues are resolved through a settlement agreement between the licensee and the Division.

## POSSIBLE QUESTIONS

1. What are possible incentives / penalties that will deter unlicensed work? Unlicensed contracting is currently a criminal misdemeanor.
2. What are possible incentives / penalties that will more effectively pressure licensed contractors into correcting violations of the codes?

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3. Will the Attorney General's Office consider re-assuming the handling the CID's administrative prosecutions?
4. Should the Commission participate in this discussion? Should any of the industry groups, such as the Associated General Contractors, Home Builders Associations, Unions, a consumer group? The industry must "buy into" any recommendations for change if they are to be effective.

SJM/prr