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FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/11

SPONSOR Little LAST UPDATED _____ HB 168

SHORT TITLE Municipal Chief Building Officials SB _____

ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	(\$3,000.0)	(\$3,000.0)	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
Total		(\$2,000.0)	(\$2,000.0)	(\$4,000.0)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing, Construction Industries Division (RLD/CID)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 168 amends two statutes. First, it amends Section 3-17-6 to allow municipalities that have adopted a building code to appoint a chief building official to supervise and be responsible for building code compliance functions. This official would only utilize persons holding a certification in one of the construction disciplines to assure code compliance. Second, it would delete Section 60-13-43 of the Construction Industries Licensing Act in its entirety. This section required that all municipality inspectors be approved by the construction industries division and receive certification. It also allowed for all complaints regarding inspectors to be reported to the construction industries commission for action within 30 days of the division receiving the complaint.

RLD summarizes the bill as follows: "... HB 168 changes the State's exclusive authority to certify building inspectors hired by local building programs to inspect new construction. HB 168 authorizes a municipal chief building official to be responsible for building code compliance for all public and private buildings within the municipality."

"The effect of HB 168 is to eliminate State authority to inspect for code compliance in certain local jurisdictions and proposes that code application and interpretation issues that arise in a local jurisdiction be resolved by a board of appeals rather than the State. Such boards would be composed of individuals who would not be required to have inspections or code interpretation training but would be empowered to make code decisions."

FISCAL IMPLICATIONS

HB 168 would reduce state revenue by reducing the number of building permits issued by the State. For example, public building permits currently account for approximately a third of the permit fees received by Construction Industries Division (CID) annually, or approximately \$2,000,000. HB 168 would repeal State jurisdiction over public buildings and give it to local programs. In addition, HB 168 will most likely increase the number of local building programs which would further reduce State revenue generated by residential and commercial building currently under the State's jurisdiction. In all, CID estimates a \$3,000,000.00 reduction in State revenue if HB 168 becomes law.

Offsetting the decrease in revenue will be a decreased workload for the CID inspectors. Eventually, through attrition, staffing levels will decrease to the number of inspectors required to inspect all public and private buildings in jurisdictions that do not elect to hire municipal building inspectors. It is assumed here that CID building permit fees are roughly related to the amount of inspection work required for the permit and that this relationship is about \$2 in costs for \$3 in fees.

SIGNIFICANT ISSUES

RLD/CID comments extensively on this proposal as follows:

"Under current law, inspectors must be certified by the State and must be employed by a specific local governmental program in order to perform building inspections. The new law repeals State certification. Under current law an applicant must:

- demonstrate knowledge of the New Mexico Building Codes
- demonstrate a certain level of field experience
- be certified by a national code organization"

"Under the new law national certification is required."

"HB 168 also:

- Removes public buildings from State jurisdiction and gives the responsibility and authority to local building programs.
- Allows local programs to use private, freelance, for-profit inspection companies in lieu of government employed and authorized inspectors.
- Vests in private individuals the same police powers currently exercised only by State

inspectors certified under the Construction Industries Licensing Act (CILA). These powers include authority to enter any structure for the purpose of enforcing building codes and to disconnect utilities and equipment which pose a danger to life or property.”

“Authority for code compliance over public buildings is statutorily assigned to the State’s General Building Bureau Chief. See NMSA 1978, §60-13-44.E. Presumably this was to ensure that public buildings were all held to the same building standards and local situations did not influence enforcement of those standards. If jurisdiction of public buildings is assigned to local programs and inspections are performed by inspectors who do not meet the current minimum standards for inspection, the uniform and objective enforcement of building standards currently afforded on public buildings cannot be ensured.”

“HB 168 would allow private inspection companies to act in lieu of State certified or licensed inspectors and in lieu of locally employed governmentally authorized inspectors. This approach to building inspection has been problematic in some other states. In others states, the use of private inspection companies works but only when the requirements for the registration of the private company by the State are extensive and well enforced. In these programs the requirements for private inspection companies far exceed the arrangement outlined in HB 168. HB 168 potentially sets up different code standards for different parts of the State. CID believes that the state building code should be the minimum standards statewide and would support a local government adopting ordinances that are in addition to the statewide code.”

“Small local building programs can be successful if:

- There is consistent technical oversight of the permitting and inspections process. In the past this has led to incorrect code interpretation and application and even corruption.
- The State has the authority to oversee local inspection performance proactively through qualification prerequisites and code determination review. Currently the Construction Industries Commission has authority to revoke a State certification. Under HB 168 for those local government programs, all State supervision is removed and there are no grounds for the discipline of inspectors who abuse or neglect their authority.”

“On the other hand, a small building program will be unsuccessful if:

- All the revenue generated by a building program is used for other governmental functions rather than being returned to the building program. As consequence, small programs remain small and under-supported. For example, because there are so few inspectors, often only one, inspector permanent or temporary absences may disable the program. HB 168 can be expected to increase the number of small, general building, one-inspector programs.”

“Under current law, building inspections can only be performed by inspectors who meet State qualifications and are subject to State supervision and discipline. By repealing this State authority and minimizing standards for building inspectors to the national standards, potentially less qualified individuals would be available to perform inspections.”

“Historically small local programs inspect only general building, not electrical, mechanical or plumbing construction. This is because general building permits generate significantly more revenue than trade permits and in effect subsidize the trade permit and inspections process. Small general building programs effectively transfer the subsidization of their electrical, mechanical or plumbing permits and inspections to the State while retaining the revenue that supports this

function. HB 168 would result in an increase of small local programs, further burdening the State with this subsidy. As a result, very little resources are saved, because CID would still be responsible for maintaining offices statewide to perform these services.”

“Because small local programs are not sufficiently established, they may burden the State if they fail. For example, in the last two years, programs in Alamogordo, Belen, Truth or Consequences, Sunland Park, Gallup, Chavez County, Artesia, Hobbs and Ruidoso have failed and CID has assumed code enforcement operations in those areas. This bill can be expected to increase these small programs.”

PERFORMANCE IMPLICATIONS

RLD/CID also notes performance implications of this bill. “HB 168 would repeal statewide regulation of building inspections and create a checkerboard of building code enforcement without uniformity or State oversight. (See also Technical and Fiscal Implications.)”

ADMINISTRATIVE IMPLICATIONS

See Technical and Fiscal Implications.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with Senate Bill 61. SB 61 establishes qualifications for private inspection companies and provides for a municipal board of appeals.

TECHNICAL ISSUES

The AGO reviewer notes that “HB 168 does not raise significant legal issues with its amendment to Section 3-17-6, allowing municipalities to create a chief building official. The legal issue involves amending Section 60-13-43, which removes all oversight of the licensing authority of inspectors, and leaving no entity responsible for receiving and acting on complaints. In the area of code violations, it would seem necessary to have an entity, able to and responsible for, handling complaints. Without such an entity, the municipality would be exposed to legal issues and litigation.”

RLD/CID has identified a conflict with current legislation: “This legislation conflicts with the purpose of the Construction Industries Licensing Act, which states “the purpose of the Act is to promote the general welfare of the people of New Mexico by providing for the protection of life and property by adopting *and enforcing* codes and standards for construction . . .” Further, the legislative intent of the CILA is to: “. . . ensure or encourage the highest quality of performance and to require compliance with approved codes and standards and be, to the maximum extent possible, uniform in application, procedure and enforcement.” NMSA 1978, §60-13-1.1.”

OTHER SUBSTANTIVE ISSUES

RLD/CID has identified another problem with this proposal. This is discussed in the FIR for SB 61. The bill has the potential to increase the cost of construction in New Mexico. The State’s building permit costs are substantially lower than local building permits. Many local building permits cost three times more than State permits.

This legislation would repeal State oversight and certification of building inspectors in jurisdictions that have a local program. This affects the State's ability to enforce uniform codes. If the State's authority over inspectors, which is the only mechanism for enforcing building codes, is repealed, a conglomerate of local requirements will replace statewide uniformity of inspection standards and qualifications. There will be no State oversight of inspection performance. Local programs will proliferate and private, for-profit business will be authorized to exercise police power.

ALTERNATIVES

CID has met frequently with representatives of local building programs over the last two years, and has collaborated on a number of proposed rule changes to address issues raised by local programs. In an effort to address the local jurisdictions' concerns, CID is still working on proposed rules changes and is investigating statutory changes that would facilitate local inspections and better support local building programs without compromising the quality of code enforcement in New Mexico.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The State will retain statewide oversight of construction code compliance.

LG/mew