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FISCAL IMPACT REPORT

ORIGINAL DATE 02/09/11

SPONSOR Bandy LAST UPDATED _____ HB 242

SHORT TITLE Transfer of Duties to RLD SB _____

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	\$6.0	\$6.0	Recurring	General Fun

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Regulation and Licensing Department (RLD)
 Public Schools Facilities Authority (PSFA)

SUMMARY

Synopsis of Bill

House Bill 242 would amend the Construction Industries Licensing Act, The Professional Athletic Competition Act and the LP and CNG Act to transfer rulemaking authority from the board and commissions created under these acts to the Regulation and Licensing Department (RLD). The rulemaking authority for the Construction Industries Division (CID) and the Manufactured Housing Division (MHD) would be vested in the respective divisions. The bill would also transfer the authority for disciplinary action against a CID license to the Director. The Manufactured Housing Committee would retain disciplinary authority over licensees. The Athletic Commission, its executive secretary and the medical advisory board would be eliminated.

The following is a summary of the proposed amendments of these three acts. The section numbers refer to the sections of the bill.

Section 2 amends the following sections of the RLD Act

- §9-16-12 and 13 remove the following exemptions from the authority of the Superintendent of RLD: rulemaking and permitting authority under the CILA (sections 60-13-10, 45 and 55) and rulemaking authority under LPG Act (70-3-3)

Sections 4 - 6 amend the following sections of the Athletic Competition Act

- §60-2A-2: strike the definitions of “board” and “commission” and to provide that RLD rather than the Athletic commission will recognize amateur boxing organizations.
- §60-2A-7 to eliminate the medical advisory board and commission approval of standards for examinations of contestants removed
- §60-2A-20 to eliminate the presence of the executive secretary of the commission at weigh-ins.

Sections 7 - 20 amend the following sections of the Construction Industries Licensing Act

- §60-13-1 – CILA definitions
 - Subsection Q to refer to modular construction codes adopted by CID not CIC
 - Subsection R to definition of building “code” to be the provisions and standards adopted by CID not CIC
 - Subsection D (18) is changed to refer to CID not CIC as the entity which adopts the building codes
- §60-13-6 – Construction Industries Commission (CIC)
 - to remove rule approval from the CIC
 - to remove the CIC’s authority to take disciplinary action on licenses.
- §60-13-9 Division Duties - to remove CIC authority over rulemaking and vests it exclusively in CID
- §60-13-10.2 Solar Collectors - to remove CIC authority over rules governing solar collector construction and installation
- §60-13-13 License Applications - removes CIC rulemaking authority on license application form and content
- §60-13-14 –License Issuance
 - removes CIC rulemaking authority on license application qualifications
 - removes CIC authority over reciprocal contractor licensing agreements between New Mexico and other states

- removes CIC authority, and gives it to the CID director, over the amount of additional license fees assessed against an applicant who has engaged in unlicensed contracting before applying for a license and makes minor grammatical changes
- §60-13-15 – Commission Review of Issued Licenses
 - Deletes reference to the CIC and inserts CID as the authority establishing rules governing licensing.
 - Changes references to “committee” to “commission”
- §60-13-18 – License Renewal - Deletes reference to the CIC and inserts CID as the authority establishing rules governing licensing.
- §60-13-27 – Complaints - Deletes reference to the CIC and inserts CID as the authority establishing rules governing informal hearings and resolution of complaints against licensees.
- §60-13-33 – Powers of Trade Bureaus - Deletes reference to the CIC and inserts CID as the authority establishing rules governing building code adoption.
- §60-13-38 – Journeyman Certification - Deletes reference to the CIC and inserts CID as the authority establishing rules governing the content of and pre-qualifications for taking examinations for certification of journeymen.
- §60-13-44 – Building codes - Deletes reference to the CIC and inserts CID as the authority establishing rules governing building code adoption.
- §60-13-45 – Permits - Deletes reference to the CIC and inserts CID as the authority establishing rules governing issuance of building permits and makes minor corrections.

Sections 21 through 29 amend the Manufactured Housing Act

- §60-14-4 Manufactured Housing Division - Deletes reference to the Manufactured Housing Committee (MHC) and inserts the Manufactured Housing Division as the authority establishing rules governing manufactured housing construction, repair, tie-down, hookup and sale, and any other rules necessary to carry out the provisions of the MHD Act and the adoption of the federal HUD rules applicable to manufactured housing in the State.
- §60-14-5 Manufactured Housing Committee - removes approval of rulemaking from the MHC but the MHC retains disciplinary authority over licenses issued by MHD.
- §60-14-6 – Bonding Requirements
 - removes approval of rules governing dealers, brokers, sellers, manufacturers, repairers and installers from the MHC and makes it advisory to MHD.
 - MHD is made the authority for rulemaking and administration of the consumer bond process.

- §60-14-7, 8, 9 and 10 – Licensing - The MHC is removed and MHD is made the authority for rulemaking and administration of the licensing processes under the MHD Act.
- §60-14-12 makes changes to clarify that rulemaking under the MHD Act is the responsibility of MHD not MHC.
- §60-14-19 to refer orders of MHD rather than of MHC in the administration of penalties against licensees under the MHD Act.

Sections 30 through 39 amend the LPG Act

- §70-5-3 through 5 removes rule making authority from the CIC and transfers it to CID.
- §70-5-11 gives the authority for setting liability insurance carried by a licensee of the LPG Act to b CID rather than CIC.
- §70-5-12 adds provision making an order of CID grounds for refusal by the Commission to grant, suspend or revoke a license issued under the LPG Act
- §70-5-12 to clarify that CID not the CIC has rulemaking authority under the LPG Act
- §70-5-18, 20 and 21 to clarify that CID not the CIC has rulemaking authority under the LPG Act.
- §71-6-7.1 to delete reference to the CIC in the joint promulgation of rules governing the standards for installation of solar collectors.

Section 41 is a temporary provision which gives the regulation and licensing department shall assume all rulemaking authority for the CIC and the MHC commencing on July 1, 2011.

Section 42 is a temporary provision which gives the regulation and licensing department shall assume all rulemaking authority for the athletic commission commencing on July 1, 2011.

Section 43 is a temporary provision which transfers all contracts of the athletic commission and the medical advisory board to RLD, RLD will assume all duties of the commission and the board and all references in the law to the commission and the board and the chairman and executive director shall be deemed references to the superintendent of RLD, or a designee.

FISCAL IMPLICATIONS

The bill would make the Construction Industries Commission (CIC) advisory. The costs to the Regulation and Licensing Department associated with a meeting of the CIC are on average \$2,000.00 per meeting. The CIC meets a minimum of six times a year totaling an annual expense of approximately \$12,000. If the CIC has only an advisory function, they should meet less often.

SIGNIFICANT ISSUES

HB 242 is centralizing rule making authority in the hands of the regulation and licensing department. It is also stripping the commissions of some of the powers and duties granted to them by the legislature.

HB 242 eliminates the Construction Industries Commission and the Manufactured Housing Commission from rulemaking authority and transfers this authority to the Regulation and Licensing Department. HB 242 also completely eliminates the New Mexico Athletic Commission and the Medical Advisory Board and transfers their authority to RLD.

HB 242 will provide the construction industries division director authority and responsibility for the regulations. Consistent with due process, any decision on the building code or other rules must be made on the record before the decision-maker. HB 242 will streamline the rulemaking process and provide more accountability for the CID division director.

The bureau chiefs report to the director, either directly or through a deputy. The transfer of authority proposed in HB 242 will allow the division director and the construction industries division to be accountable for rulemaking and carry out the rules that are adopted. HB 242 clarifies the chain of command for ensuring that public safety is protected in the construction industry.

According to the Regulation and Licensing Department (RLD), the CID division director is not required to have technical expertise in building codes or standards. These codes can be complex and technically difficult to understand. Perhaps a friendly amendment would be to require the construction industries division director have a background in the construction trades.

PERFORMANCE IMPLICATIONS

According to the Regulation and Licensing Department (RLD), if the amendment to the LPG Act: “The chief [~~and~~] of the inspectors of the bureau or the bureau may issue citations...” is intended to remove the authority of the LPG inspectors from issuing citations in the field it will require a new administrative process for issuing citations. However, our interpretation of the language “or the bureau” would allow the inspectors in field to continue issuing citations. Currently there is only one in-office LPB employee to handle all the clerical and reporting functions for the bureau. That workload is already supported by field inspectors who come into the office to assist with permit and other processes. One additional value of issuing citations in the field is that there is an immediate consequence for a violation.

ADMINISTRATIVE IMPLICATIONS

According to the Construction Industries Division (CID), on page 19 – 20, lines 19 – 7, the language seems to eliminate the authority of the CIC from taking disciplinary actions on license and certifications. However, other amendments consistent with that are not in HB 242. Locating disciplinary authority in the Division has potential for creating various conflicts in that the Division would be responsible for both investigating a complaint and for taking disciplinary action. The separation between the investigation and the authority to impose discipline in the current law may have been intended to minimize this kind of conflict.

RELATIONSHIP

HB 242 is related to SB 61, SB 262 and HB 168.

TECHNICAL ISSUES

According to CID, on page 19 – 20, lines 19 – 7, the language seems to eliminate the authority of the CIC from taking disciplinary actions on license and certifications. However, other amendments consistent with that are not in HB 242. For example NMSA 1978, §60-13-23 – Revocation or suspension of license by the commission – is not amended in HB 242.

The Uniform Licensing Act (NMSA 1978, Section 61-1-1, et seq.) provides that the “board” shall follow the due process requirements of the ULA in exercising its disciplinary authority. The ULA may have to be amended to agree with the transfer of disciplinary authority provided in this bill. The ULA also establishes rulemaking procedures for CID and MHD. Similar changes may be required in these provisions.

OTHER SUBSTANTIVE ISSUES

RLD recommends adding a provision repealing Section 60-13-3.1 of the Construction Industries Licensing Act. This provision was added to the CILA by the compiler, but the Supreme Court has ruled that it is not a law that is enforced by CID. The statute itself says that it is to be enforced by the Labor Department [sic]. The provision is confusing and irrelevant to the application of the CILA.

RLD also recommends repealing NMSA 1978, §§ 9-16-12 and 9-16-13 in their entirety to give more authority and accountability to the Superintendent of the Regulation and Licensing Department.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The bureau chiefs within CID will continue to go directly to the CIC without any policy input from the CID division director or the Superintendent.

CS/svb