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FISCAL IMPACT REPORT

ORIGINAL DATE 03/03/11

SPONSOR Doyle LAST UPDATED _____ HB 594

SHORT TITLE Construction Industries Division Rulemaking SB _____

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 594 would amend the Regulation and Licensing Department Act to remove the exception for the bureau chiefs of the construction industries division trade bureaus to be exempt from the State Personnel Act. The bill would amend the Construction Industries Licensing Act and the LPG and CNG Act to transfer rulemaking authority from the Construction Industries Commissions created under this act to the Regulation and Licensing Department (RLD).

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

Section 1 amends the following sections of the RLD Act

- §9-16-8 Removes the requirement for CID Trade Bureau Chiefs, appointed by Superintendent of RLD, be covered positions under the Personnel Act. Currently all trade bureau chiefs are classified employees and will remain classified employees.

Section 4 amends the following sections of the Construction Industries Licensing Act

- §60-13-6 – Construction Industries Commission (CIC)
 - Attaches the CIC administratively to RLD

- Shifts the CIC role from rule making approval role to recommending rule adoption to the division
- Shifts the CIC's role from to establishing licensure classifications and to recommending licensure classification for adoption by the division

Section 5 amends the following sections of the Construction Industries Licensing Act

- §60-13-7 – Construction Industries Division Director, Appointment and Qualifications
 - Increases the experience requirements for the Director of CID from 5 years to 10

Section 6 amends the following sections of the Construction Industries Licensing Act

- §60-13-9 – Construction Industries Division Duties
 - Adds rule making authority to the CID, subject to approval of the Superintendent of RLD
 - Shifts CIC approval authority for building code adoption
 - Removes the requirement for CID to submit individual trade bureau budgets to RLD as RLD's administrative services department currently fulfills this obligation.
 - Removes the division's responsibility to provide copies of the publish list of contractors upon request.

Section 7 amends the following sections of the Construction Industries Licensing Act

- §60-13-10 – Division Standards to Accommodate Solar Collectors
 - Language changes to track with the shift CIC's role as an advisory entity.

Section 9 amends the following sections of the Construction Industries Licensing Act

- §60-13-13 License Applications
 - Shifts authority on license application form and content to the division with CIC recommendations

Section 10 amends the following sections of the Construction Industries Licensing Act

- §60-13-14 License Issuance
 - Designate the division as the rulemaking authority on license application qualifications
 - Shifts authority over reciprocal contractor licensing agreements between New Mexico and other states to the division and with consent from the Superintendent of RLD
 - The CID director, will now determine the amount of additional license fees assessed against an applicant who has engaged in unlicensed contracting before applying for a license

- The division will now be responsible for reporting incidents of non-licensed contracting work to the taxation and revenue department.

Section 11 amends the following sections of the Construction Industries Licensing Act

- §60-13-16 Division Qualifying Party Examination Certification
 - CID will now be responsible for the development of contractor license exam criteria

Section 12 amends the following sections of the Construction Industries Licensing Act

- §60-13-18 License renewal
 - Shifts to CID, the authority establishing rules governing licensing renewal based on CIC recommendations

Section 13 amends the following sections of the Construction Industries Licensing Act

- §60-13-38 Certification of Competence Examination Journeymen
 - Allows for CID to develop journeymen certification exam criteria as recommended by CIC

Section 14 amends the following sections of the Construction Industries Licensing Act

- §60-13-41 Inspectors, Designated Inspection Agencies
 - CIC will recommend building inspector qualifications which will be adopted by the division

Section 15 amends the following sections of the Construction Industries Licensing Act

- §60-13-43 Qualifications of Municipal and County Inspectors
 - Shifts the responsibility to the division to address complaints against municipal and county building inspectors

Section 16 amends the following sections of the Construction Industries Licensing Act

- §60-13-44 Trade Bureaus Standards Conflicts
 - The trade bureaus will now recommend rules governing building code to the division for consideration by CIC

Section 17 amends the following sections of the Construction Industries Licensing Act

- §60-13-45 Trade Bureaus Permits
 - Designated CID as the authority establishing rules governing building trade bureau permits recommended for adoption by CIC

Section 21 amends the following sections of the LP Gas and CNG Act

- §70-5-3 Rules for Design, Construction, Assembling, Equipping and Installation of Containers and Equipment
 - Shifts rule making authority for LP Gas or CNG containers and equipment to CID

Section 22 amends the following sections of the LP Gas and CNG Act

- §70-5-4 Acts Concerning LP Gas or CNG Subject to Rules
 - Provides rule making authority for LP Gas or CNG distribution equipment to CID

Section 23 amends the following sections of the LP Gas and CNG Act

- §70-5-5 Power to Adopt and Promulgate Rules, Exceptions to Act
 - Allows for the CIC to recommendation of rules for the LP Gas and CNG Act to be promulgated by CID

Section 24 amends the following sections of the LP Gas and CNG Act

- §70-5-6 License, Exceptions
 - Moves the authority for the development of licensure criteria for those engaging in the manufacture, sale, transportation, dispensing or storage of LP gases from the CIC to CID

Section 30 amends the following sections of the LP Gas and CNG Act

- §70-5-18 Civil Penalty for Failure to Comply with Act or Any Order or Rule
 - Removes authority from the CIC to enact penalties relating to the LP Gas and CNG Act

Section 34 amends the following sections of the Solar Energy Development Act

- §71-6-7 Construction Standards to Accommodate Solar Collectors
 - Delete reference to the CIC in the joint promulgation of rules governing the standards for installation of solar collectors

Section 37 is a provision which make the effective date of this act July 1, 2011

FISCAL IMPLICATIONS

No significant fiscal impact is identified.

SIGNIFICANT ISSUES

HB 594 increases the qualifications needed to become a Construction Industries Division Director. The bill also shifts the Construction Industries Commission’s current authority to “adopt” rules to “recommend” rules. The bill restricts the Commission’s authority because it provides that consumer complaints shall now be filed with the Division only, and that only the Division may enforce the Act in state district court.

HB 594 would require Bureau Chiefs to be subject to the Personnel Act. According to the Regulation and Licensing Department (RLD), it takes many years for even the most experience building trades person to become familiar enough with building codes, to effectively act as a building official.

According to the Attorney General’s Office, the bill shifts the Commission’s current authority to “adopt” rules to “recommend” rules. This is confusing to the current model of the Commission

acting as the oversight body for the Division. With HB 594, the Division will be the oversight body for the Commission.

OTHER SUBSTANTIVE ISSUES

According to RLD, HB 594 will provide the construction industries division director authority and responsibility for the regulations, creating a clear path for code adoption. Currently the Construction Industries Commission has no administrative tie to any agency confusing the lines of communication and reporting.

ALTERNATIVES

RLD recommends repeal 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

Status Quo

CS/bym