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FISCAL IMPACT REPORT

ORIGINAL DATE 01/25/11

SPONSOR Harden LAST UPDATED _____ HB _____

SHORT TITLE Local Government Building Inspectors SB 61

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		
(\$1,500,000)	(\$3,000,000)	(\$3,000,000)	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Municipal League (NMML)
Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 61 amends sections of and adds provisions to the Municipal Code, NMSA 1978, §3-17-6 and repeals and amends the Construction Industries Licensing Act (CILA), NMSA 1978, §§ 60-13-41, 42, and 43. SB 61 removes the State's exclusive authority to certify building inspectors who are used by local building programs to inspect new construction. SB 61 removes State oversight of construction inspection performed by these local programs.

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:

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- 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.

The SB 61 also:

- Removes public buildings from State jurisdiction and gives it 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 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.

Senate Bill 11 amends the Municipal Code to provide that municipalities that adopt a building code must also provide for the position of Chief Building Official. The bill also removes the current limitation on the locations where a local building inspector may conduct inspections.

FISCAL IMPLICATIONS

1. Reduce State revenue. SB 61 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. SB 61 would repeal State jurisdiction over public buildings and give it to local programs. In addition, SB 61 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 SB 61 becomes law.

However, the state would still be responsible for providing statewide building code enforcement services in all areas where no other jurisdiction performs these services.

2. 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.

3. Redirect revenue from the State to local governments. By enabling more local governments to issue building permits, SB 61 redirects revenue from the State to local governments by using:

- inspectors who have national certifications and have not been certified by the State. National certifications are not as rigorous and not specialized to the building conditions in a particular state.
- freelance, for-profit private companies
- inspectors who have less governmental oversight
- inspectors who cannot be disciplined for malfeasance

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 – less-qualified individuals would be available to perform inspections. This would enable local governments to initiate smaller building permit programs, diverting the State revenue those permits generate to local use without meeting minimum standards for performance and professionalism that have been established by the Legislature.

4. Small jurisdictions require State subsidization. Historically small 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. SB 61 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.

5. 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.

Local governments may incur additional expenses by being required to retain a Chief Building Official as a condition of adopting a local building code.

SIGNIFICANT ISSUES

The effect of SB 61 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.

This bill will require local jurisdictions to designate a Chief Building Official whenever a municipality adopts a building code. That person will be responsible for building code compliance functions within the municipality for both public and private buildings within the municipality or any other municipality where there is an agreement to share or otherwise provide for compliance enforcement. The Chief Building Official shall be responsible for retaining and supervising the appropriate inspectors required to carry out code enforcement activities. The bill sets forth criteria for individuals acting as code enforcement personnel based upon national testing and certification standards.

According to CID, SB 61 would permit municipalities and counties to retain independent construction code compliance entities to supplement their code compliance staff for some or all of the code enforcement responsibilities. The bill sets forth the bond and insurance requirements of any entity providing such independent code enforcement services.

The bill repeats the enumerated powers and authority of local building code inspectors as a new

section of Chapter 5 and makes those powers and responsibilities applicable to in-house as well as contract code enforcement personnel.

The bill removes from the Construction Industries Division (CID) and Construction Industries Commission (CIC), the authority to certify and otherwise regulate the qualifications of municipal code enforcement personnel.

PERFORMANCE IMPLICATIONS

According to the Regulation and Licensing Department (RLD), SB 61 would repeal statewide regulation of building inspections and create a “checkerboard” of building code enforcement without uniformity or State oversight.

ADMINISTRATIVE IMPLICATIONS

According to the municipal league, there is currently an uncertainty concerning building inspector certification and deployment issues between local governments and the CID and CIC.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

According to RLD, SB 61 conflicts with the express 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 express 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.

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.

This legislation would dismantle the uniformity and professional standards provided in the Construction Industries Licensing Act that were designed to serve this legislative purpose.

TECHNICAL ISSUES

1. SB 61 would reduce the standards required for building inspectors. Without being required to demonstrate knowledge of New Mexico specific codes or have minimum practical experience, inspectors authorized under this legislation would not be required to demonstrate as much knowledge or have had as much experience as the licensee contractors whose work they would inspect.

2. 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.

3. SB 61 would legalize freelance, for-profit, private inspection companies to act in lieu of State certified or licensed inspectors and even in lieu of locally employed governmentally authorized inspectors. This approach to building inspection has been very problematic when attempted in some states. In others states, it 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 SB 61.

OTHER SUBSTANTIVE ISSUES

According to the Construction Industries Division (CID), small local building programs have historically had a number of weaknesses.

- There is no technical oversight of the permitting and inspections process in small local building programs because there is no one other than the inspector who has the technical knowledge to oversee the plan review and inspections in that jurisdiction. In the past this has lead to incorrect code interpretation and application and even corruption.
- Historically, 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 SB 61 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.
- In some local governments, 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 absences permanent or temporary may disable the program. SB 61 can be expected to increase the number of small, general building, one-inspector programs.

ALTERNATIVES

CID has met frequently with representatives of local building programs over the last two years, and have 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 CID and CIC will continue to be the entities that oversee the municipal building inspection certification program.

CS/bym