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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/21/11  
**LAST UPDATED** 03/08/11    **HB** \_\_\_\_\_

**SPONSOR**    Sanchez, B.

**SHORT TITLE**    Construction Commission Inspector Authority    **SB** 262/aSCORC

**ANALYST** Wilson

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY11	FY12	FY13		
	NFI			

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB 168 & SB 61

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Municipal League (NMML)  
 Regulation & Licensing (RLD)

### SUMMARY

#### Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee Amendment to Senate Bill 262 amends the bill's title and delete language that repealed Section 60-13-43 NMSA 1978.

#### Synopsis of Original Bill

Senate Bill 262 amends the Construction Industries Licensing Act (CILA), NMSA 1978, §§ 60-13-41, 42. SB 262 removes the State's exclusive authority to certify building inspectors who are used by local building programs to inspect new construction. SB 262 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 bill repeals state certification.

## FISCAL IMPLICATIONS

SB262 will probably increase the number of local building programs which will reduce state revenue generated by residential and commercial building currently under the State's jurisdiction. However, the Construction Industries Division (CID) will still be responsible for providing statewide building code enforcement services in all areas where no other jurisdiction performs these services.

## SIGNIFICANT ISSUES

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. SB 262 will 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 will 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. Small local building programs can be successful if:

- There is consistent technical oversight of the permitting and inspections process. In the past this has lead 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 (CIC) has authority to revoke a state certification.
- 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 absences permanent or temporary may disable the program

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 will be available to perform inspections.

According to RLD, SB 262 will repeal statewide regulation of building inspections and create a checkerboard of building code enforcement without uniformity or state oversight.

RLD provided the following:

SB 262 will repeal the minimum standards required for building inspectors. Without being required to demonstrate knowledge of New Mexico specific codes or have minimum practical experience, inspectors will not be required to demonstrate any

knowledge or have had the experience required of the licensee contractors whose work they will inspect.

This legislation directly conflicts with the express purpose of the CILA, 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 will 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.

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 will facilitate local inspections and better support local building programs without compromising the quality of code enforcement in New Mexico.

The NMML states:

Some building permits that would otherwise be issued by the state might now will be issued by local entities because smaller entities that do not operate “full-service” inspection offices will be permitted to band together and establish shared services.

Adoption of this bill will result in rules that are uncertain. If the Legislature could force reconsideration, amendment or repeal of rules adopted by administrative agencies, there will be no permanency to any agency rules.

There should be some oversight over local inspectors, whether it comes from the state or the local entity itself. The change proposed in section two of the bill is very important. It has long been the position of local governments that CID cannot control and should not be able to control the “localities where ‘he’ is authorized to make inspections” as the language is currently written. If the CIC certifies an individual as a building inspector, that certification should be valid anywhere in the state. This language has provided the CID with an argument that it can control the location in which a person performs his/her labor, and this has become potential constitutional issues.

## **ADMINISTRATIVE IMPLICATIONS**

RLD claims that the provisions of this bill will cause CID to lose revenues, but they will still have many of the same responsibilities they have now.

**RELATIONSHIP**

NMML notes the major issue that is not addressed in this bill is the requirements for local inspectors. If the authority to prescribe qualifications is removed from the CIC the question becomes who or what will establish criteria for local inspectors. One possible solution, discussed in SB 61 is to permit individuals to perform building inspections if they possess a certification issued by a national certification authority. It is currently a requirement that building inspectors obtain national certification in their field within one year of obtaining a New Mexico certification so this requirement will not be an undue burden.

Under HB 168 all state supervision is removed and there are no grounds for the discipline of inspectors who abuse or neglect their authority. HB 168 can be expected to increase the number of small, general building and one-inspector programs.

DW/mew