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SENATE BILL 61

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Clinton D. Harden

AN ACT

RELATING TO LOCAL GOVERNMENT; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE NMSA 1978 TO PROVIDE FOR POWERS AND DUTIES OF
LOCAL GOVERNMENT CHIEF BUILDING OFFICIALS; CHANGING THE
CONSTRUCTION INDUSTRIES COMMISSION AUTHORITY OVER LOCAL
GOVERNMENT INSPECTORS; PROVIDING FOR MUNICIPALITIES AND
COUNTIES TO CONTRACT FOR CONSTRUCTION CODE COMPLIANCE
INSPECTORS; PROVIDING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 3-17-6 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-16-5, as amended) is amended to read:

"3-17-6. CODES ADOPTED AND ENFORCED BY REFERENCE--
AVAILABILITY.--

A. A municipality may adopt by ordinance the
conditions, provisions, limitations and terms of:

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- 1 (1) an administrative code;
- 2 (2) an air pollution code;
- 3 (3) a building code that includes provisions
- 4 for plan review, permitting and inspections for general,
- 5 electrical, mechanical and plumbing construction;
- 6 (4) an elevator code;
- 7 (5) a fire prevention code;
- 8 (6) a health code;
- 9 (7) a housing code;
- 10 (8) a traffic code; or
- 11 (9) any other code not in conflict with the
- 12 laws of New Mexico or valid regulations issued by any board or
- 13 agency of New Mexico authorized to issue regulations.

14 Any code so adopted shall provide for minimum requirements
15 at least equal to the state requirements on the same subject.

16 B. An ordinance adopting any such code need only
17 refer to the proper title and date of the code, without setting
18 forth the code's conditions, provisions, limitations and terms,
19 and may include any exception or deletion to the code by
20 setting forth the exception or deletion to the code. The
21 ordinance shall further specify at least one place within the
22 municipality where the code, so adopted, is available for
23 inspection during the normal and regular business hours of the
24 municipal clerk. A copy of the code shall be available upon
25 request and payment of a reasonable charge.

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1 C. Any amendment to such a code may be adopted in
2 the same manner as other ordinances are adopted.

3 D. If a municipality adopts a building code that
4 includes provisions for plan review, permitting and inspections
5 for general, electrical, mechanical and plumbing construction
6 compliance services, a chief building official shall be
7 designated by the governing body. The chief building official
8 shall supervise and be responsible for building code compliance
9 functions of the municipality, including compliance with
10 standards for all public and private buildings within the
11 municipality's jurisdiction or within other jurisdictions with
12 which the municipality has a current agreement to provide
13 compliance enforcement.

14 E. The chief building official shall use for code
15 compliance only persons holding a current, valid certification
16 in one or more of the construction disciplines from an
17 appropriate national code compliance certifying organization.
18 The person shall be authorized to provide construction
19 compliance services in all trades for which that person is
20 certified by an appropriate national code compliance certifying
21 organization.

22 F. In order to hear and decide appeals of orders,
23 decisions or determinations made by the chief building official
24 relative to the application and interpretation of building or
25 fire codes, the municipality shall create a board of appeals

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1 consisting of construction industry members who are qualified
2 by experience and training to act on matters pertaining to
3 building construction and who are not employees of the
4 jurisdiction."

5 SECTION 2. A new section of Chapter 5 NMSA 1978 is
6 enacted to read:

7 "[NEW MATERIAL] CONSTRUCTION CODE COMPLIANCE--PENALTY.--

8 A. Municipalities and counties may retain
9 independent construction code compliance entities to supplement
10 their code compliance staff to perform, by contract, some or
11 all of the construction code compliance duties in their
12 jurisdiction.

13 B. Construction code compliance entities shall:

14 (1) use only persons holding a currently valid
15 certification in one or more of the construction trades from a
16 national code compliance certifying organization;

17 (2) carry a minimum of one million dollars
18 (\$1,000,000) in errors and omissions or liability insurance on
19 behalf of the client municipality or county; and

20 (3) upon the request of the chief building
21 official of the municipality or county, submit each code
22 compliance worker to a field proficiency test conducted by the
23 chief building official to determine the person's
24 qualifications for performing construction code compliance
25 duties.

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1 C. Each code compliance inspector used by an entity
2 on behalf of a municipality or county may, during reasonable
3 hours, enter any building or go upon any premises in the
4 discharge of official duties for the purpose of making an
5 inspection of work performed or for the purpose of testing any
6 installation authorized by the chief building official of the
7 municipality or county.

8 D. The code compliance inspector used by an entity
9 on behalf of a municipality or county may disconnect or order
10 the discontinuance of any service to any installation, device,
11 appliance or equipment found to be dangerous to life or
12 property or where the installation may interfere with the work
13 of a fire department because it is defective or is incorrectly
14 installed. The order shall be effective until the
15 installation, device, appliance or equipment is made safe and
16 is approved by the chief building official of that municipality
17 or county.

18 E. A notice shall be attached by the code
19 compliance inspector to the installation, device, appliance or
20 equipment that is disconnected stating the reason for the
21 disconnection. A person who removes the notice or uses the
22 installation, device, appliance or equipment without
23 authorization is guilty of a petty misdemeanor and is
24 punishable pursuant to Section 31-19-1 NMSA 1978.

25 F. The powers granted by this section to any code

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1 compliance inspector used by an entity on behalf of a
2 municipality or county may be exercised by the inspector only
3 in a municipality or county in which the code compliance entity
4 is contracted to make inspections.

5 G. The code compliance inspector used by an entity
6 on behalf of a municipality or county shall be permitted to
7 inspect work of a construction trade for which the inspector is
8 certified by an appropriate national code compliance certifying
9 organization."

10 SECTION 3. Section 60-13-41 NMSA 1978 (being Laws 1967,
11 Chapter 199, Section 49, as amended) is amended to read:

12 "60-13-41. INSPECTORS--DESIGNATED INSPECTION AGENCIES.--

13 A. State inspectors shall be employed by the
14 director.

15 B. Qualifications and job descriptions for
16 inspectors for the state [~~municipalities and all other~~
17 ~~political subdivisions~~] shall be prescribed by the commission.

18 C. The division may appoint inspection agencies to
19 inspect the construction, installation, alteration or repair of
20 manufactured commercial units, modular homes and
21 premanufactured homes, including those manufacturers whose
22 business premises are without the state, to ensure that the New
23 Mexico standards of construction and installation are adhered
24 to and that the quality of construction meets all New Mexico
25 codes and standards. If the inspection agency has no place of

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1 business within the state, it shall file a written statement
2 with the secretary of state setting forth its name and business
3 address and designating the secretary of state as its agent for
4 the service of process.

5 D. The division may enter into reciprocal
6 agreements with other jurisdictions having comparable codes,
7 standards and inspection requirements for the inspection of the
8 construction, alteration or repair of modular homes,
9 premanufactured homes and manufactured commercial units.

10 E. The division may, with the approval of the
11 commission, establish qualifications for inspectors certified
12 to inspect in more than one bureau's jurisdiction."

13 SECTION 4. Section 60-13-42 NMSA 1978 (being Laws 1967,
14 Chapter 199, Section 50, as amended) is amended to read:

15 "60-13-42. AUTHORITY OF INSPECTORS--LIMITATION.--

16 A. A state [~~certified~~] inspector may, during
17 reasonable hours, enter any building or go upon any premises in
18 the discharge of [~~his~~] the inspector's official duties for the
19 purpose of making an inspection of work performed or for the
20 purpose of testing any installation authorized within the
21 jurisdiction of [~~his~~] the inspector's trade certification.

22 [~~He~~] The inspector may cut or disconnect, or have cut or
23 disconnected in cases of emergency, [~~any~~] an installation or
24 device when necessary for safety to life or property or where
25 the installation may interfere with the work of a fire

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1 department.

2 B. The inspector may disconnect or order the
3 discontinuance of ~~[any]~~ service to any installation, device,
4 appliance or equipment found to be dangerous to life or
5 property because it is defective or is incorrectly installed,
6 until the installation, device, appliance or equipment is made
7 safe and is approved by the inspector.

8 C. The inspector may order the correction of any
9 defects or any incorrect installation ~~[which]~~ that prompted the
10 disconnection and discontinuance of service.

11 D. In all cases where disconnection is made, a
12 notice shall be attached by the inspector to the installation,
13 device, appliance or equipment disconnected, which notice shall
14 state that the same has been disconnected by or on order of the
15 inspector and the reason for the disconnection. It is unlawful
16 for ~~[any]~~ a person to remove the notice or to use the
17 installation, device, appliance or equipment without
18 authorization of an inspector.

19 ~~[E. The powers granted by this section to any
20 municipal inspector may be exercised by him only in the
21 localities where he is authorized to make inspection.~~

22 ~~F.]~~ E. The division shall by regulation adopt
23 official inspection stickers or medallions for the purpose of
24 identifying those modular homes and premanufactured homes
25 ~~[which]~~ that have been inspected and found to comply with all

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1 requirements of the state codes and standards. State
2 inspection and acceptance for use of modular homes and
3 premanufactured homes shall exclusively apply to the use and
4 occupancy of such dwellings in the state and in any of its
5 political subdivisions, subject to the requirements of local
6 planning and zoning ordinances and ordinances requiring permits
7 and inspections for foundations, electrical and mechanical
8 hookups or other safety or sanitary requirements."

9 SECTION 5. REPEAL.--Section 60-13-43 NMSA 1978 (being
10 Laws 1967, Chapter 199, Section 51, as amended) is repealed.