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FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/12

SPONSOR Eichenberg LAST UPDATED _____ HB _____

SHORT TITLE Home Inspection Licensing Act SB 48

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	NFI*	NFI*	NFI*	Recurring	Home Inspector Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 48 enacts the Home Inspector Licensing Act (HILA), which requires a license to conduct home inspections. Home inspection means a non-invasive, non-destructive inspection of the interior and exterior components of residential property for the purpose of providing a professional written opinion of the condition of a residential building, its carports and garages, and reasonably accessible installed components and building systems. The definition also includes the examination of the property's heating, cooling, plumbing and electrical systems and the operational condition of the systems' controls that are normally operated by a property owner.

The HILA establishes a five member regulatory board, administratively attached to RLD, including one public member, one member who is active in a licensed profession related to the real estate industry, and three members who are home inspectors with five years' experience in the field and have passed a proctored national home inspection examination administered by the examination board of home inspectors. The initial members shall be nominated by the working group established in Senate Memorial 2 of the 2011 legislature (the SM2 working group) and approved for appointment by the Governor, who shall appoint members thereafter. The members shall serve staggered five year terms, may not serve more than two full terms on the board, and are subject to removal for cause by the governor.

The board is authorized to perform oversight responsibilities, including promulgating rules, issuing and renewing licenses, conducting disciplinary proceedings in conformance with the Uniform Licensing Act which may result in the suspension, revocation or denial of a license, and establishing and administering fees.

A person must be licensed under the HILA to conduct home inspections, develop a report or otherwise engage in the business of home inspection, including the use of any title that suggests the person is a licensed home inspector. Every home inspector employed by a business which provides home inspections must be licensed.

The HILA exempts from coverage professionals working within the scope of other professional licenses from licensure as a home inspector, including building code enforcement officials, engineers, architects, real estate brokers, real estate appraisers, electricians, contractors, plumbers, heating and air conditioning technicians, persons who perform energy audits, warranty evaluations, and safety inspections of utility equipment, and persons hired by the owner or lessor of residential real property for the purpose of preparing a bid or estimate for performing construction.

The HILA creates two methods of qualifying for a three year license. The first requires the submission of fingerprints and other information for state and national criminal background checks, completion of 40 hours of field training, 80 hours of classroom instruction, passing a proctored national examination, and evidence of continuing insurance coverage. The second allows a currently practicing home inspector to be licensed if the inspector has been actively and lawfully engaged in home inspections for at least 36 months prior to January 1, 2013, has provided fingerprints and other information necessary for state and criminal background checks, has passed a proctored national home inspector examination administered by the examination board of professional home inspectors, and is licensed to conduct home inspections in another state, U.S. territory, or in the District of Columbia. The HILA also provides for reciprocity with other licensing jurisdictions and licensure of a non-resident applicant. In order to renew a license, the licensee must submit updated fingerprints and other information necessary for criminal background checks, plus proof of 30 hours of continuing education.

The HILA authorizes the denial, suspension or revocation of a license, or issuance of a conditional license, if the person has been convicted of a felony, has falsely or fraudulently obtained a license, or has acted improperly as defined in the act, including making substantial misrepresentations, acting unprofessionally (as defined by rule) or in a fraudulent manner, has violated any provision of the HILA, has conducted an inspection for a fee in spite of a conflict of interest or when a fee is based on results, is not in good standing in another licensing jurisdiction for conduct that would lead to disciplinary action under the HILA, or has failed to cooperate in the course of an official investigation by the board.

The HILA requires all active licensees carry errors and omissions insurance, the coverage requirements to be set by the board. It sets fees for applications, criminal background checks, initial license and renewal fees, a reactivation fee, a duplicate license fee, and authorizes additional fees to cover reasonable and necessary administrative expenses. These fees are to be deposited into the “home inspector fund” created in the HILA, to be used by the board to meet necessary expenses in enforcing the provisions of the act. Balances in the fund do not revert.

The HILA also provides civil and criminal penalties for and authorizes injunction relief in the event of its violation.

FISCAL IMPLICATIONS

The operations of the Home Inspector Licensing Board would be funded by licensing and other fees paid by home inspector licensees and administrative overhead support provided by the RLD, and as a result likely would have no impact on the state General Fund.

The RLD reports that revenues to be generated by license and other fees are uncertain because the specific number of potential home inspector licensees, estimated between 110 and 160 statewide, is unknown at this time. Those revenues would be deposited in the newly created Home Inspector Licensing Fund to be used for administering the provisions of the HILA.

Continuing Appropriations language (if applicable)

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities.

SIGNIFICANT ISSUES

New Mexico is one of only 16 states that do not license home inspectors. As the RLD observes, property condition issues are integral to a decision to purchase real estate. Consumers rely on property inspection reports in making informed decisions about such purchases, and the RLD believes consumers deserve the same degree of protection in purchasing home inspection services that exists for virtually all other aspects of a residential real estate transaction.

Both the AGO and the RLD maintain that the HILA is overly restrictive in that the only persons qualifying for licensure at the onset are existing home inspectors with at least 3 years of experience, since the alternative method of qualifying requires 80 hours of classroom training the content of which must first be established by board rule.

The RLD also points out that, although home inspectors have no code training, the HILA does not restrict home inspections for code-related issues. It suggests language be added restricting code interpretations as part of an inspection and reports. In the same vein, the RLD questions whether newly constructed or remodeled homes should be included in any home inspection program, since the code authority having jurisdiction would have just completed inspections.

The AGO calls attention to the absence of an effective date, as well as not providing any grace period for existing home inspectors to come into compliance with the HILA. Further, the AGO suggests the provisions allowing the board to negotiate reciprocity agreements with other home inspector licensing jurisdictions may expose the board to arbitrary actions.

ADMINISTRATIVE IMPLICATIONS

The RLD advises that since the proposed board would be administratively attached to RLD, it likely would be housed at the offices of the Real Estate Commission (REC). Existing Commission staff would perform administrative, licensing, and enforcement functions within its

operating budget. The establishment of a baseline of revenues generated by home inspector licensing fees would form the basis for future budget requests to support the Home Inspector Licensing Act. The RLD notes that if this was attached to CID the administrative impact would be significant.

In view of the fact that the Commission currently licenses and renews the licenses of approximately 10,000 real estate brokers, absorbing an additional 110 to 160 home inspector licensees into its licensing system would have little administrative impact once rules are in place. The three-year renewal cycle for home inspectors coincides with the REC's licensing cycle.

TECHNICAL ISSUES

On page 4, line 17, the phrase “shall be approved for” as to the governor's appointment of initial board members may not be consistent with the governor's usual power of appointment.

OTHER SUBSTANTIVE ISSUES

The RLD reports this bill is the product of a working group created pursuant to Senate Memorial 2, passed during the 2011 session. The working group included two home inspectors, a real estate broker, and staff members of the Real Estate Commission and the Realtors Association of New Mexico. Over an eight-month period, that group conducted public hearings in Albuquerque, Las Cruces and Santa Fe to gather input from home inspectors, real estate brokers and members of the public.

The RLD also advises that SB 48 is closely modeled after other New Mexico professional and occupational licensing laws, including the real estate license law, and laws from some of the 34 states that currently license home inspectors.

ALTERNATIVES

The RLD reports that in the course of its work, the SM 2 working group considered a self-regulating certification act as an alternative to state licensing. This alternative would set standards for certification, provide consumer access to registration information via a public web site, require minimum general liability insurance and a surety bond, and provide for a criminal penalty for violation of the Act. Complaints regarding certified home inspectors would be directed to the Consumer Protection Division of the Attorney General's Office. A certification act would not provide for RLD oversight of home inspector. The SM 2 working group voted unanimously to report to the Interim Legislative Mortgage Finance Authority Act Oversight Committee the draft Home Inspector Licensing Act that has become SB48.

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