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FISCAL IMPACT REPORT

SPONSOR Munoz **ORIGINAL DATE** 2/20/19
LAST UPDATED _____ **HB** _____

SHORT TITLE Rename Construction Industries Licensing Act **SB** 105/ec

ANALYST Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
Indeterminate	Indeterminate	Indeterminate	Recurring	Compliance Recovery Fund/General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 122, HB 344, and HB 456

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 Administrative Office of the Courts (AOC)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 105 constitutes a comprehensive 30-year update to the Construction Industries Licensing Act, which it renames the Construction Inspection and Licensing Act to better reflect the responsibilities of the Construction Industries Division (CID). The bill significantly reorganizes the structure of the act to make it more cohesive and user friendly by consolidating

related information under the same sections. (Currently duties of CID and the Construction Industries Commission appear in multiple sections within the act, which is true for contractor obligations and responsibilities as well.) Substantive changes made to the act include creating three new funds (discussed infra in Fiscal Implications); adding additional grounds for taking disciplinary action against licensees, qualifying parties, certified building officials and those holding journeyman certificates; amending, clarifying, and adding new definitions; and establishing increased fines as well as new fees.

In particular, Sections 6 and 7 reassign duties between the commission and CID, making CID responsible for handling violations by unlicensed contractors, issuing licenses, and proposing rules and codes for final approval by the commission, the body that also imposes discipline and penalties on journeymen, qualifying parties, and inspectors. One new ground for discipline is for failing to pay subcontractors and materialmen upon a judicial determination to that effect. Section 31 clarifies that misdemeanors for certain violations of the act are not petty but full misdemeanors and increases the penalties for unlicensed contracting and the false reporting of employees as independent contractors. Any penalty assessed by a court when the division prosecutes the complaint shall be paid to the educational outreach and investigations fund. Sections 35 through 42 create the compliance recovery fund and provide a procedure for correcting code violations or compensating a complainant for the cost of that correction, as well as procedures for the possible suspension or revocation of licenses as a result of those violations. Payment from the fund to correct code violations is limited to \$25 thousand for a single contract or \$50 thousand in the aggregate per licensee. Any such payment requires a final judgment from a court of competent jurisdiction. In addition, the license and qualifying party certificate shall be summarily suspended and a hearing set within 90 days from that payment to determine further disciplinary action up to and including revocation.

SB105 contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

New Funds

Section 11 of SB105 creates the division publications revolving fund: Money collected by the division from the sale of publications and information related to the licensing and regulatory provisions are credited to the fund. Money in the fund is appropriated to the division and shall be used for printing and maintenance of publications and information related to the licensing and regulatory provisions of and issues arising under the act. Money in the fund shall not revert at the end of the fiscal year.

Additionally, Section 35 creates the compliance recovery fund: It is funded by compliance recovery fees collected by the division. The fund is appropriated to the division to correct code violations or to compensate complainants. The division shall administer the fund. Amounts exceeding \$5 million at the end of a fiscal year shall revert to the general fund

Continuing Appropriations

In Section 11 and 35, this bill creates two new funds and provides for continuing appropriations. 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.

Section 12 creates yet a third fund, the educational outreach and investigations fund: All civil penalties, costs of investigation, and other administrative assessments collected by the division pursuant to the division's enforcement actions are deposited into the fund, along with income from investment of the fund and money that otherwise accrues to it. Money in the fund shall be used to pay costs of the division associated with the investigations and enforcement of complaints against licensed or unlicensed contractors and to educate the public. Money in the fund shall not revert at the end of a fiscal year. This fund is not appropriated to the division; funds must be appropriated by the Legislature to authorize expenditure.

Revenues

Section 36 imposes a compliance recovery fee. Initially, a prorated fee is charged to every licensee. On renewal, a fee of \$200 is collected, which amount shall be adjusted every three years based on expenses incurred in satisfying claims previously paid to ensure sufficient funds to pay future claims; the adjusted fee is subject to a \$250 cap. RLD provides no estimates as to the amount to be generated by this new fee, which is why this revenue source is shown as indeterminate.

Operating Budget Impact

RLD reports no fiscal impact to the state. NMAG notes currently it is only responsible to investigate and prosecute licensees' alleged violations of the act, but Section 14(W) of SB105 expands that responsibility to include investigation and prosecution of certificates issued in violation of the act. NMAG provides no estimate of the impact of that change on its budget. Similarly, AOC warns increasing penalties in this bill could result in more defendants invoking their rights to trial, including jury trials, which would require additional judge time, courtroom staff time, courtroom availability and jury fees, the costs of which cannot be qualified. Both of these agency costs are reflected in the operating budget impact table as unknown.

SIGNIFICANT ISSUES

RLD comments, the many different areas of CID's responsibility are currently spread throughout the Act, making it difficult and unwieldy for contractors and customers to understand and locate specific provisions when seeking to determine appropriate and necessary action for compliance. It explains that, based on employees' difficulties in explaining provisions for contractor and customer understanding, SB105 relocates all provisions pertaining to a particular topic into one statutory section. Additionally, statutes no longer relevant have been removed and others have been repealed and then included in other sections of the act for cohesiveness.

RLD advises the educational outreach and investigations fund is created in recognition of the need to educate the public as to its ability to take action in reference to contracted work and to provide monies for investigation and enforcement of both civil complaints and unlicensed criminal activity; the construction industry has made it clear that such prosecutions are critical to its livelihood.

Additionally, RLD explains the bonding requirements currently in effect historically have not offered relief to the public. The compliance recovery fund recognizes that requiring bonds does not afford relief to members of the public damaged by licensed contractors not competently completing work. According to RLD, the construction industry and the bonding companies themselves recognize that, increasing the amount of a bond is frequently not feasible due to the inability of a large segment of contractors to meet bonding requirements for a larger bond. RLD reports it conducted research looking for alternatives and determined that states with recovery funds have had long-term success. RLD believes implementing the recovery fund in lieu of the bond requirement allows for reduced costs to contractors and will significantly reduce administrative time and costs. Compensation from the fund is allowed both for code violations as well as to satisfy a judgment from a court of competent jurisdiction in favor of a customer, materialman or subcontractor. RLD maintains this approach is significantly more beneficial to the public as a consumer protection tool. Payment from the fund also constitutes a grounds for discipline of a contractor whose actions result in such a payment. RLD notes that a contractor's failure to reimburse the fund could result in loss of licensure, which would remove bad players from the industry.

RLD also calls attention to provisions in Section 22 that provide for enforcement for violations of journeyman ratio requirements. It also adds two violations that could result in discipline should a contractor fail to properly compensate materialmen and sub-contractors when material and work has been placed in a project and not timely paid for by the contractor. It notes that the Prompt Payment Act (Sections 57-28-1 through 57-28-11, NMSA 1978) does not apply to construction projects for residential property containing four or fewer dwelling units. Section 22 will fill the gap in existing law regarding a contractor's failure to timely pay materialmen and subcontractors, especially with regard to smaller residential projects. Additionally, Section 31 updates the misdemeanor penalty provision in the Act to clarify that unlicensed contracting is a full, not a petty, misdemeanor. RLD reports this change reflects the concern raised by the construction industry that unlicensed contracting is a significant problem in the state. Section 31 also clarifies the limitations period to prosecute these types of violation to be two years, rather than one year.

AOC points out a conflict between one section of the bill and another existing law. Section 31(D) prohibits a person who provides a service without a required license from filing or claiming a mechanic's lien for that service. However, Section 48-2-2 NMSA 1978 provides that every person providing labor on, providing, or hauling equipment, tools, or machinery for or furnishing materials to be used in construction, alteration, or repair has a lien on the same for the work or labor done.

Finally, although Section 31(G) directs any criminal fine imposed for contracting without a license be paid into the educational outreach and investigations fund if CID prosecutes the complaint, Article. XII, Section. 4 of the New Mexico Constitution appears to require such fines go to the current school fund.

ADMINISTRATIVE IMPLICATIONS

According to RLD, requiring payment of fees into a recovery fund in place of the existing bonding requirement will result in a more efficient process that will save significant administrative time.

CONFLICT

This bill conflicts with SB122, which amends 60-13-1.1 NMSA 1978 and repeals other statutory sections within the Construction Industries Licensing Act when authorizing private construction inspections. It also conflicts with HB344 and HB456, both of which amend 60-13-52 NMSA 1978 in differing ways: HB343 makes failure to pay a subcontractor a felony (a full misdemeanor in SB105), and HB456 establishes a three year statute of limitations (SB105 sets a two-year limitations period).

TECHNICAL ISSUES

NMAG notes that in Section 17, Subsection (B) and (E) duplicate each other. Similarly, Subsections (C) and (F) are virtual duplicates, except that (F) provides a citation to another section of law.

MD/sb/al