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FISCAL IMPACT REPORT

ORIGINAL DATE 3/07/19

SPONSOR Cervantes **LAST UPDATED** _____ **HB** _____

SHORT TITLE Non-Licensee Mechanics Liens **SB** 523/ec

ANALYST Glenn

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
See Fiscal Implications			Recurring	Current School Fund
See Fiscal Implications			Recurring	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	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to and Conflicts with: HB 344, HB 456, SB 105

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 523 amends Section 60-13-52 of the Construction Industries Licensing Act (CILA), which governs criminal penalties for violations of the Act, by:

- Providing that a contractor who acts without a license issued by the Construction Industries Division (CID) of RLD and a person who represents that the person is able to contract or act as a sales representative of or consultant to an unlicensed contracting entity is strictly

liable and guilty of a misdemeanor as defined in the Criminal Code. On conviction, the bill provides that if the value of the contracting work is \$10 thousand, the sentence is imprisonment for a term of less than one year, a fine of not more than \$1,000, or both. If the value of the contracting work is more than \$10 thousand, the bill increases the sentence under existing law to imprisonment for a term of less than one year, and leaves the fine under the existing law unchanged.

- Prohibiting a person who provides a service without a license required by CILA from filing or claiming a mechanic's lien for the service.

- Providing a contractor who falsely reports an employee is an independent contractor or who, for purposes of a program administered by a state agency, intentionally and willfully lists an unqualified employee as an independent contractor is guilty of a misdemeanor and subject to imprisonment for a term of less than one year, a fine of \$5,000, or both.

- Precluding a person from being prosecuted for a violation unless the complaint is filed within three years from the time the alleged crime was committed.

- Providing CID employees who are certified by the Law Enforcement Academy have the power of a peace officer with respect to arrests and enforcement of CILA.

SB523 contains an emergency clause and would become effective immediately upon signature by the governor.

FISCAL IMPLICATIONS

The bill increases the criminal fines imposed for violations of CILA. Article IX, Section 4, of the New Mexico Constitution requires that all fines collected under general laws be credited to the "current school fund." At the end of each month, balances in the current school fund are transferred to the public school fund. Money in the public school fund is distributed to appropriations for public schools, including the state equalization guarantee distribution and other categorical appropriations. Balances remaining in the public school fund revert at the end of the year to the general fund. Because appropriations for public schools are primarily from the general fund and funding levels far exceed balances in the public school fund, receipts earmarked for the common school fund have no effect on increasing funding for public schools.

SIGNIFICANT ISSUES

According to RLD, the bill is intended to address confusion stemming from prior amendments to Section 60-13-52 and its predecessors over whether violations of the contractor licensing requirements are punishable as misdemeanors or petty misdemeanors and the applicable limitations period. The statute of limitations under existing law is one year for a petty misdemeanor, and two years for a misdemeanor, and three years for a misdemeanor outside the criminal code. RLD states, by making clear that violations constitute a misdemeanor with a three-year limitations period, fewer cases will be dismissed as untimely and will enable the Investigations and Enforcement Unit of CID to bring more prosecutions for unlicensed contracting.

RLD notes the bill also is intended to make sure that courts, licensees, and members of the public

are aware and acknowledge that CID investigators, all of whom are certified by the Law Enforcement Academy, have the same authority as other certified peace officers to make arrests and enforce CILA. As certified peace officers, the investigators have authority to prosecute misdemeanor violations of the act in magistrate, metropolitan, and municipal court, except when a jury trial is requested. *See* Rules 6-108(A), 7-108(A) and 8-111(A) NMRA.

Subsection E added by the bill appears similar to Section 60-13-3.1(C), (E) of CILA, which also addresses contractors who misrepresent an employee's status as an independent contractor and imposes criminal penalties. The two provisions include conflicting language; most significantly, Section 60-13-3.1, in contrast to SB 523, refers to a contractor that "intentionally and willfully" reports an unqualified employee is an independent contractor and imposes a prison term not to exceed six months. Section 60-13-3.1 should be amended to delete the conflicting language or otherwise reconciled with Subsection E so the two provisions reach the same conduct and impose the same penalty for violations.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to and conflicts with HB 344 Failure to Pay Subcontractors as a Felony, HB 456 Notice and Fees of Mechanics' Liens, and SB 105 Rename Construction Industries Licensing Act, which also amend 60-13-52 NMSA 1978.

TECHNICAL ISSUES

The bill's amendment of Section 60-13-52(A) refers to a person who acts in the capacity of a contractor without a license and "any person who represents that the person is able to contract or act in the capacity of a sales representative of or consultant to a contracting entity, which contracting entity is without a license...." (Page 2, lines 1-8.) This language raises two issues. First, the language "person who represents that the person is able to contract" is confusing because it is unclear whether it refers to a contractor or a person who contracts with a contractor to act as a sales representative or consultant. Second, it is not clear that a "contracting entity" is different than a "contractor," as defined in Section 60-13-3 of CILA, or refers to a contractor that contracts with a person for sales representative or consulting services. Either way, the language might be rewritten or explained in more detail to avoid confusion about the meaning of the term and possible misinterpretation.

BG/sb/al