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SENATE BILL 249

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO CONSTRUCTION INSPECTORS; AMENDING THE CONSTRUCTION INDUSTRIES LICENSING ACT REGARDING STATEWIDE INSPECTOR CERTIFICATION; ESTABLISHING CERTIFIED BUILDING OFFICIALS; REPEALING SECTION 60-13-43 NMSA 1978 (BEING LAWS 1967, CHAPTER 199, SECTION 51, AS AMENDED).

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

SECTION 1. Section 60-13-2 NMSA 1978 (being Laws 1967, Chapter 199, Section 2, as amended) is amended to read:

"60-13-2. GENERAL DEFINITIONS.--As used in the Construction Industries Licensing Act:

A. "division" means the construction industries division of the regulation and licensing department;

B. "trade bureau", ~~[means]~~ "jurisdiction" and "trade bureau jurisdiction" mean the electrical bureau, the

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1 mechanical bureau, the general construction bureau or the
2 liquefied petroleum gas bureau of the division;

3 C. "jurisdictional conflict" means [~~any~~] a conflict
4 between or among trade bureaus as to the exercise of
5 jurisdiction over an occupation or trade for which a license is
6 required under the provisions of the Construction Industries
7 Licensing Act;

8 D. "person" includes an individual, firm,
9 partnership, corporation, association or other organization, or
10 any combination thereof;

11 E. "qualifying party" means [~~any~~] an individual who
12 submits to the examination for a license to be issued under the
13 Construction Industries Licensing Act and who is responsible
14 for the licensee's compliance with the requirements of that act
15 and with the rules, regulations, codes and standards adopted
16 and promulgated in accordance with that act;

17 F. "certificate of qualification" means a
18 certificate issued by the division to a qualifying party;

19 G. "journeyman" means [~~any~~] an individual who is
20 properly certified by the electrical bureau or the mechanical
21 bureau, as required by law, to engage in or work at [~~his~~] the
22 certified trade;

23 H. "apprentice" means an individual who is engaged,
24 as [~~his~~] the individual's principal occupation, in learning and
25 assisting in a trade;

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1 I. "wages" means compensation paid to an individual
2 by an employer from which taxes are required to be withheld by
3 federal and state law;

4 J. "public use" means the use or occupancy of [~~any~~]
5 a structure, facility or manufactured commercial unit to which
6 the general public, as distinguished from residents or
7 employees, has access;

8 K. "bid" means a written or oral offer to contract;

9 L. "building" means [~~any~~] a structure built for use
10 or occupancy by persons or property, including manufactured
11 commercial units and modular homes or premanufactured homes
12 designed to be placed on permanent foundations whether mounted
13 on skids or permanent foundations or whether constructed on or
14 off the site of location;

15 M. "inspection agency" means a firm, partnership,
16 corporation, association or any combination thereof approved in
17 accordance with regulations as having the personnel and
18 equipment available to adequately inspect for the proper
19 construction of manufactured commercial units, modular homes or
20 premanufactured homes;

21 N. "director" means the administrative head of the
22 division;

23 O. "chief" means the administrative head of a trade
24 bureau;

25 P. "commission" means the construction industries

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1 commission;

2 Q. "manufactured commercial unit" means a movable
3 or portable housing structure over thirty-two feet in length or
4 over eight feet in width that is constructed to be towed on its
5 own chassis and designed so as to be installed without a
6 permanent foundation for use as an office or other commercial
7 purpose and that may include one or more components that can be
8 retracted for towing purposes and subsequently expanded for
9 additional capacity, or two or more units separately towable
10 but designed to be joined into one integral unit, as well as a
11 single unit, but that does not include any movable or portable
12 housing structure over twelve feet in width and forty feet in
13 length that is used for nonresidential purposes. "Manufactured
14 commercial unit" does not include modular or premanufactured
15 homes, built to a nationally recognized standard adopted by the
16 commission and designed to be permanently affixed to real
17 property; [~~and~~]

18 R. "code" means a body or compilation of provisions
19 or standards adopted by the commission that govern contracting
20 or some aspect of contracting; that provide for safety and
21 protection of life and health; and that are published by a
22 nationally recognized standards association;

23 S. "inspector" means a person certified by the
24 division and certified by one or more trade bureaus to conduct
25 inspections of permitted work to ensure that all work performed

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1 by a contractor or the homeowner complies with the applicable
2 code;

3 T. "statewide inspector's certificate" means a
4 certificate that enables an inspector to conduct inspections in
5 one or more trade bureau jurisdictions for the state or any
6 county, municipality or other political subdivision that has a
7 certified building official in its employ; and

8 U. "certified building official" means an employee
9 of any county, municipality or other political subdivision who
10 has a broad knowledge of the construction industry, holds a
11 current nationally recognized code organization certified
12 building official certificate and has:

13 (1) been a practicing inspector or practicing
14 contractor; or

15 (2) held a management position in a
16 construction-related company or construction organization for
17 at least five of the past ten years."

18 **SECTION 2.** Section 60-13-9 NMSA 1978 (being Laws 1978,
19 Chapter 73, Section 1, as amended) is amended to read:

20 "60-13-9. DIVISION--DUTIES.--The division shall:

21 A. approve and adopt examinations on codes and
22 standards, business knowledge, division rules and regulations
23 and on the Construction Industries Licensing Act recommended by
24 the commission for all classifications of contractor's
25 licenses;

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1 B. issue, under the director's signature,
2 contractor's licenses and certificates of qualification in
3 accordance with the provisions of the Construction Industries
4 Licensing Act;

5 C. submit a list of all contractor's licenses,
6 statewide inspector's certificates and certificates of
7 qualification issued by the division to the commission for
8 review and approval;

9 D. resolve jurisdictional conflicts by assigning
10 specific responsibility to the appropriate bureau for preparing
11 examinations and for certifying and inspecting each occupation,
12 trade or activity covered by the Construction Industries
13 Licensing Act;

14 E. establish and collect fees authorized to be
15 collected by the division pursuant to the Construction
16 Industries Licensing Act;

17 F. adopt all building codes and minimum standards
18 as recommended by the trade bureaus and approved by the
19 commission so that the public welfare is protected, uniformity
20 is promoted and conflicting provisions are avoided;

21 G. with approval of the superintendent of
22 regulation and licensing, employ such personnel as the division
23 deems necessary for the exclusive purpose of investigating
24 violations of the Construction Industries Licensing Act,
25 enforcing Sections 60-13-12 and 60-13-38 NMSA 1978 and

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1 instituting legal action in the name of the division to
2 accomplish the provisions of Section 60-13-52 NMSA 1978;

3 H. approve, disapprove or revise the recommended
4 budget of each trade bureau and submit the budgets of those
5 bureaus, along with its own budget, to the regulation and
6 licensing department;

7 I. approve, disapprove or revise and submit to the
8 regulation and licensing department all requests of the trade
9 bureaus for emergency budget transfers;

10 J. make an annual report to the superintendent of
11 regulation and licensing and develop a policy manual concerning
12 the operations of the division and the trade bureaus. The
13 report shall also contain the division's recommendations for
14 legislation it deems necessary to improve the licensing and
15 technical practices of the construction and LP gas industries
16 and to protect persons, property and agencies of the state and
17 its political subdivisions;

18 K. adopt, subject to commission approval, rules and
19 regulations necessary to carry out the provisions of the
20 Construction Industries Licensing Act and the LPG and CNG Act;

21 L. maintain a complete record of all applications;
22 all licenses issued, renewed, canceled, revoked and suspended;
23 and all fines and penalties imposed by the division or
24 commission and may make that information available to certified
25 code jurisdictions;

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1 M. furnish, upon payment of a reasonable fee
2 established by the division, a certified copy of any license
3 issued or of the record of the official revocation or
4 suspension thereof. Such certified copy shall be prima facie
5 evidence of the facts stated therein; and

6 N. publish a list of contractors, with their
7 addresses and classifications, licensed by the division. The
8 list shall be furnished without charge to such public
9 officials, public bodies or public works and building
10 departments as the division deems advisable. The list shall be
11 published annually, and supplements shall be provided as the
12 division deems necessary. Copies of the list and supplements
13 shall be furnished to any person upon request and payment of a
14 reasonable fee established by the division."

15 SECTION 3. Section 60-13-24 NMSA 1978 (being Laws 1967,
16 Chapter 199, Section 27, as amended) is amended to read:

17 "60-13-24. CERTIFICATES OF QUALIFICATION--STATEWIDE
18 INSPECTOR'S CERTIFICATES--CAUSES FOR REVOCATION OR
19 SUSPENSION.--Any certificate of qualification or statewide
20 inspector's certificate shall be revoked or suspended by the
21 commission for the following causes:

22 A. misrepresentation of a material fact by the
23 individual in obtaining the certificate;

24 B. violation, willfully or by reason of
25 incompetence, of any provision of the Construction Industries

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1 Licensing Act or any code, minimum standard, rule or regulation
2 adopted pursuant to that act; or

3 C. aiding, abetting, combining or conspiring with a
4 person to evade or violate the provisions of the Construction
5 Industries Licensing Act or any code, minimum standard, rule or
6 regulation adopted pursuant to that act."

7 SECTION 4. Section 60-13-41 NMSA 1978 (being Laws 1967,
8 Chapter 199, Section 49, as amended) is amended to read:

9 "60-13-41. INSPECTORS--DESIGNATED INSPECTION
10 AGENCIES.--

11 A. State inspectors shall be employed by the
12 director.

13 B. Qualifications [~~and job descriptions~~] for
14 inspectors [~~for the state, municipalities and all other~~
15 ~~political subdivisions~~] shall be prescribed by the commission.
16 Inspectors shall meet the minimum continuing education
17 requirements as prescribed by the nationally recognized code
18 organization for each trade bureau jurisdiction and provide
19 proof of such credits to the division upon application for or
20 renewal of certification.

21 C. The division shall certify and issue a statewide
22 inspector's certificate to any person who meets the
23 requirements established by the nationally recognized code
24 organization for certification. The certificate shall list all
25 trade bureaus for which the inspector is certified to inspect

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1 and shall be valid for a term of three years.

2 D. An inspector shall be employed by a county,
3 municipality or other political subdivision in order to inspect
4 permits issued in the trade bureau for which the inspector is
5 certified; provided that the county, municipality or other
6 political subdivision has a certified building official in its
7 employ and has adopted the current minimum code standards as
8 established by the commission.

9 E. Except as provided in Subsection F of this
10 section, the state or its agent shall conduct all inspections
11 if a county, municipality or other political subdivision does
12 not have a certified building official in its employ.

13 F. A county, municipality or other political
14 subdivision may enter into a memorandum of understanding to
15 share a certified building official and inspectors operating
16 under that certified building official with another county,
17 municipality or other political subdivision; provided that the
18 certified building official is employed in the same county, in
19 an adjacent county, within one hundred miles of the county,
20 municipality or other political subdivision or as approved by
21 the division.

22 G. A person currently acting in the capacity of a
23 certified building official may continue to act in that
24 capacity and shall have five years from the effective date of
25 this 2013 act to become a certified building official as

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1 prescribed by the Construction Industries Licensing Act. When
2 a certified building official leaves the employ of a county,
3 municipality or other political subdivision, the plan review,
4 permitting and inspections overseen by that certified building
5 official shall transfer to the state unless the county,
6 municipality or other political subdivision, within sixty days
7 or a longer period as approved by the division, replaces that
8 certified building official or enters into a memorandum of
9 understanding pursuant to Subsection F of this section.

10 [G.] H. The division may appoint inspection
11 agencies to inspect the construction, installation, alteration
12 or repair of manufactured commercial units, modular homes and
13 premanufactured homes, including those manufacturers whose
14 business premises are without the state, to ensure that the New
15 Mexico standards of construction and installation are adhered
16 to and that the quality of construction meets all New Mexico
17 codes and standards. If the inspection agency has no place of
18 business within the state, it shall file a written statement
19 with the secretary of state setting forth its name and business
20 address and designating the secretary of state as its agent for
21 the service of process.

22 ~~[D. The division may enter into reciprocal~~
23 ~~agreements with other jurisdictions having comparable codes,~~
24 ~~standards and inspection requirements for the inspection of the~~
25 ~~construction, alteration or repair of modular homes,~~

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~~premanufactured homes and manufactured commercial units.~~

E.] I. The division ~~[may]~~ shall, with the approval of the commission, establish qualifications for inspectors certified to inspect in more than one bureau's jurisdiction.

J. The director shall assign an investigator to investigate the merits of every complaint brought against an inspector and report to the commission within thirty days."

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