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FISCAL IMPACT REPORT

ORIGINAL DATE 02/08/13

SPONSOR Garcia, M.H. LAST UPDATED _____ HB 319

SHORT TITLE Home Inspector Licensing Act SB _____

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$130.0			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

New Mexico Environment Department (NMED)

SUMMARY

Synopsis of Bill

House Bill 319 (HB 319) creates a new act, The Home Inspector Licensing Act.

Section 2 states the purpose of the Home Inspector Licensing Act is to provide for regulation and supervision of the business of home inspection and evaluation, including assessing the condition of residential real estate, providing a report containing comprehensive analysis of the condition of property and providing necessary evidence of the condition to clients.

Section 3 provides the definitions of terms used in the Act including:

- "home inspection" means a noninvasive, nondestructive examination by a licensee of the interior and exterior components of a residential real property, including the property's structural components, foundation and roof, for the purposes of providing a professional written opinion regarding the site aspects and condition of the property and its carports, garages and reasonably accessible installed components. Also included is the examination of the property's heating, cooling, plumbing and electrical systems, including the operational condition of the systems' controls that are normally operated by a property owner;

- "home inspector" means a person who has a license pursuant to the Home Inspector Licensing Act and who engages in the business of performing home inspections and generates reports pursuant to a written preinspection agreement.

Section 4 creates the "home inspector licensing board". The board is administratively attached to the Regulation and Licensing Department (RLD) and consists of five members: (1) one member shall be a public member; (2) one member shall be a member who is active in business in a licensed profession related to the real estate industry; and (3) three members shall be home inspectors who. The initial members of the board shall be nominated for appointment by the members of the working group established pursuant to Senate Memorial 2 of the first session of the fiftieth legislature and then be approved for appointment by the governor. Subsequent members are by the governor for five-year terms. Members may be removed for cause and no member is to serve more than two full terms.

Section 5 outlines the board powers and duties including adopting rules, issuing licenses and establishing education and experience standards and fees.

Section 6 establishes that the board is covered by the Per Diem and Mileage Act.

Section 7 requires that the home inspection report include a statement that the report is based solely on observations. In addition, the report will note if the inspector is licensed by the state to determine if a building conforms to state code or if not licensed to do so.

Section 8 prohibits a person or business from portraying itself as an inspector if not licensed. The Act does not apply to other licensed home service providers if acting within the scope of their profession.

Section 9 provides for the terms related to application process and qualifications for a license.

Section 10 defines license renewal procedures.

Section 11 provides for continuing education requirements.

Section 12 establishes reciprocity with other states and responsibilities of a nonresident practitioner.

Section 13 outlines cause for denial, suspension or revocation of a license.

Section 14 requires the inspector carry error and omission insurance.

Section 15 provides for fees and fee limits.

Section 16 allows for placing a license on inactive status.

Section 17 provides for penalty for violation of the Act of a fourth degree felony punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for not more than eighteen months, or both.

Section 18 creates the Home Inspector Fund" and is administered by the board. All fees received shall be deposited in the fund. Income earned on investment of the fund shall be credited to the fund. Money in the fund shall be used by the board to meet necessary expenses incurred in the enforcement of the provisions of the Home Inspector Licensing Act, in carrying out the duties imposed by the Home Inspector Licensing Act and for the promotion of education and standards for home inspectors. Payments from the fund shall be pursuant to vouchers issued and signed by the person designated by the board and upon warrants drawn by the department of finance and administration. All unexpended or unencumbered balances remaining at the end of a fiscal year shall remain in the home inspector fund for use in accordance with the provisions of the Home Inspector Licensing Act.

FISCAL IMPLICATIONS

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.

The RLD projects the bill would require an increase in FTEs and in the absence of a general fund appropriation fees would need to be adequate to compensate for the services being conducted. The Home Inspectors Board would need a minimum of 2 FTE's for the supplementary services being conducted at an estimated cost of \$110,768 for personal services and benefits. A minimum of \$26,453 would need to be appropriated for other services to cover the cost of supplies, computer equipment, funding to notice meetings and publish rules and rule hearings. It is anticipated initially these funds would need to be appropriated from the general fund as enrollment and fees could not be adequate to cover FY14 costs. In subsequent years an appropriation from the general fund would be necessary if fee revenue was not adequate to cover the estimated annual expenditures.

With a basic renewal fee of \$500 for three years (\$166 annually) it would require approximately 780 licensees to meet the basic projected annual expenditure requirement of \$130,000. It is unknown how many persons are conducting home inspections presently. However, The International Association of Certified Home Inspectors (InterNACHI), advertised as the world's largest, non-profit inspection association, lists 51 certified inspectors in New Mexico. If this is anywhere near the total that would be licensed under the new Act, it would produce far less revenue than what The RLD describes as its estimated expenditure requirement, leaving a recurring appropriation from the general fund necessary or far higher fees. However, if there are so few licensees, then costs may be reduced as well.

SIGNIFICANT ISSUES

The RLD notes that:

All persons inspecting to the New Mexico building code standards are already regulated and established by the Construction Industries Licensing Act. It is unnecessary to create an additional 'home inspector' to inspect for building code when this is a requirement for all structures to obtain a certificate of occupancy. Furthermore, the duplication of this effort is unsafe, as it does not require the persons employed as 'home inspectors' meet the standards clearly set forth in the Construction Industries Licensing Act.

The creation of a ‘home inspector board’ is unnecessary. Persons certified by the State of Mexico to inspect building code are regulated by the Construction Industries Commission’s standards.

The New Mexico Environment Department (NMED) expresses concern regarding the definition of home inspection:

The definition of “home inspection” in HB 319 appears to be broad enough to include inspection of onsite wastewater “liquid waste” systems. N.M. Liquid Waste Regulation, 20.7.3.904(B) NMAC provides qualification requirements for third-party inspectors of liquid waste systems. These qualification requirements include specific knowledge of liquid waste systems that most building inspectors do not have. Building inspectors are not given reciprocity for inspecting liquid waste systems.

If HB 319 is enacted, persons who have obtained the necessary training and experience and are qualified under N.M. Liquid Waste Regulation, 20.7.3.904(B) NMAC to inspect liquid waste systems will be required to obtain additional certification as a home inspector. This dual licensing requirement would create additional costs for the small businesses that perform inspections of liquid waste systems.

Additionally, if licensing as a home inspector is interpreted to include liquid waste systems, with no other certification required, enactment of HB 319 could result in liquid waste systems being inspected by persons who have no specific training or experience in liquid waste systems or who are not qualified under N.M. Liquid Waste Regulation, 20.7.3.904(B) NMAC.

TECHNICAL ISSUES

P.19, L17, strike “used” and insert “appropriated by the legislature for use”

MW/svb