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FISCAL IMPACT REPORT

ORIGINAL DATE 2/2/09

SPONSOR Stapleton LAST UPDATED _____ HB 324

SHORT TITLE Construction Industries Annual Permits. SB _____

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non- Rec	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate		General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)
 Department of Finance and Administration (DFAO)
 Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 324 would repeal the annual permit option in NMSA Section 60-13-46 of the Construction Industries Licensing Act (NMSA Chapter 60, Article 13). House Bill 324 would repeal the law that currently allows the Trade Bureaus of the Construction Industries Division of the Regulation and Licensing Department to issue an annual permit, in lieu of an individual project permit, to any person, commercial or industrial plant or enterprise, governmental agency or political subdivision of the state that regularly employs one or more certified journeymen for

installation, alteration, maintenance or repair on premises owned or occupied by the applicant for the permit.

FISCAL IMPLICATIONS

No major fiscal implication is anticipated. Annual permits allow for maintenance and repair work at public facilities owned or occupied by the applicant for the permit. In lieu of requiring the annual permit by statute, CID proposes to address maintenance and repair permitting requirements by rule, similar to other permits. Currently, CID charges a \$25.00 fee for a 12-month annual permit. Under the annual permitting process, CID inspectors conduct follow-on inspections of completed work to ensure that safe and proper techniques and materials have been utilized. Inspection fees for this service are typically required, and the fees are established based on the scope of work.

It is understood that CID plans to revise the annual permit criteria to require a 6-month “maintenance” permit in lieu of a 12-month annual permit. The fee for the new maintenance permit has yet to be confirmed, but it is anticipated to remain at \$25.00. Agencies, such as K-12 public school districts, that perform maintenance and repair activities in public buildings, would then be required to obtain maintenance permits every six (6) months. For districts that have pulled annual permits in the past, their fees will nominally increase. The districts would also be subject to any inspection fees, which are undefined at this time.

SIGNIFICANT ISSUES

Current law provides for the issuance of individual permits prior to *any* construction, installation, alteration, repair or addition to or within any building, structure or premises, with exceptions, by the Trade Bureaus of the Construction Industries Division. NMSA Section 60-13-45. However, the following section of law, NMSA Section 60-13-46, which is repealed by this bill, also authorizes the issuance of an “annual permit”, in lieu of an individual permit for each project, to certain individuals and entities employing journeymen for electrical or mechanical construction or repair of premises owned or occupied by the applicant for the permit. The term “journeyman” is defined in NMSA Section 60-13-2G as “any individual who is properly certified by the electrical bureau or the mechanical bureau, as required by law, to engage in or work at his trade.”

Rule 14.5.2.19 NMRA issued by the Construction Industries Division also provides for the issuance of an “annual permit” and requires that journeymen performing construction be full-time employees of the annual permit holder.

This bill will effectively require industries in New Mexico which have ongoing expansion or construction needs to obtain a permit prior to each individual construction project being undertaken. Annual permit holders include Intel and state colleges and universities.

PERFORMANCE IMPLICATIONS

According to CID, HB324 would give RLD more clarification as to inspections performed pursuant to new procedures and would follow a more consistent protocol, all of which may result in increased compliance with applicable codes and safer structures.

The Public Education Department has been working with CID to develop a certification program for K-12 public school maintenance personnel to allow parts exchange of existing systems and not new construction. This work is addressed under a provision of the Public School Capital Outlay Oversight Task Force’s proposed Public School Capital Outlay Omnibus bill, which would require CID to work with PED in development and implementation of a school maintenance certification program. Under this program, a comprehensive training program is planned to raise the skill level of school maintenance personnel. The intent is for all K-12 public school maintenance and repair work to be performed by certified maintenance technicians, using proper techniques and materials, to safely complete work necessary to keep schools operating. Four separate categories of maintenance certification are currently envisioned: Electrical; Plumbing; Heating, Ventilation, Air Conditioning (HVAC); and General. It is unclear if K-12 public school districts employing maintenance technicians with any or all of these proposed certifications will be eligible and be required to apply for the new maintenance permits. It is unclear if separate maintenance permits should be required for parts exchange if there is a certification, and if a separate maintenance permit would be required for each of the four certified maintenance categories.

ADMINISTRATIVE IMPLICATIONS

According to CID, if the statute is repealed, the new rules can become effective in a matter of weeks. If the statute remains, it will have to be amended in the legislative process which is more time consuming and expensive than rulemaking. Rulemaking also has the advantage of presenting the proposed changes at public hearings focused on the specific issue. Public comment is invaluable to the division and is much more accessible in the rulemaking hearings than it is in the legislative process.

The current CID criterion for obtaining an annual permit requires that an agency, such as a school district, employ or hire certified journeyman technicians to perform alteration, installation, maintenance and repair activities. Few public school districts are large enough to employ certified journeyman tradesmen, and contracted work is more expensive and takes time to procure, thus few public school districts have heretofore obtained annual permits. Most K-12 public school districts thus perform maintenance and repair work without a permit, and this work has typically not been inspected by CID.

OTHER SUBSTANTIVE ISSUES

The annual permit process outlined in Section 60-13-46 is outdated. It does not adequately provide for the maintenance and repair needs of industrial permit holders such as Intel, New Mexico’s large educational institutions, or for school districts. As a result, the statute has become virtually unenforceable. CID is in the process of rules drafting to address these deficiencies, but cannot move forward as long as the current statute is in place.

Repeal of NMSA 60-13-46 will also eliminate an inconsistency in the Construction Industries Licensing Act. Section 60-13-45 provides that “The commission shall make rules and regulations pertaining to the issuance of permits and the setting of reasonable fees to be paid by the applicant for a permit.” All permit types, except the annual permit, are issued by the division pursuant to rule. There is nothing in the administration of annual permits that requires it to be in statute instead of rule; therefore, this section of the Act should be repealed so that all permit types can be handled uniformly in rule.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico state law will not provide for an annual construction permit.

CS/mt