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FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/09
 LAST UPDATED 03/11/09 **HB** 362/aHENRC

SPONSOR Irwin

SHORT TITLE Mandatory Night Sky Act Enforcement **SB** _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Attorney General’s Office (AGO)
 Regulation & Licensing (RLD)

No Response Received From
 Environment Department (ED)

SUMMARY

Synopsis of HENRC Amendment

The House Energy and Natural Resources Committee amendment to HB 362 adds that RLD shall enforce the Night Sky Protection Act as it pertains to public buildings subject to permit and inspection under the Construction Industries Licensing Act.

In its analysis of this amendment RLD states that this amendment resolves all of the fiscal implications and significant issues presented by the Construction Industries Division in the original bill. They will be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities.

Synopsis of Original Bill

House Bill 362 will repeal subsection 11 of NMSA 1978, Section 74-12-1, The Night Sky Protection Act, and enact a new subsection requiring Construction Industries Division (CID) of RLD and political subdivisions to “fully enforce” the provisions of the Night Sky Protection Act. Currently, the Act provides that a governing body of a political subdivision may enforce the Act.

FISCAL IMPLICATIONS

CID is not currently staffed or budgeted to administer a statewide enforcement program for the Night Sky Protection Act. The scope of the Act is sweeping: it regulates existing outdoor lighting used for illumination or advertising, including searchlights, spotlights and floodlights, whether for architectural lighting, parking lot lighting, landscape lighting, billboards or street lighting statewide. It also requires public and private outdoor recreational facilities to cease illumination after 11:00 pm, with certain exceptions. The penalty for violation of the Act is a warning or \$25.00 charge from which the cost of replacing the offending fixture is deducted.

CID currently investigates licensed and unlicensed contractor complaints, statewide, with a combined staff of 10 FTE. The total number of cases managed annually by these FTEs is approximately 2,000, and the approximate annual cost of the program operation is \$890,000.

The number of violations of the Night Sky Protection Act can be expected to greatly exceed licensing violations because the opportunity for violation is present on virtually every residence and commercial structure in the State - as well as on all streets, parking lots and recreational facilities. The department notes that it is not possible for CID to enforce the Act with existing personnel, and it will require no less than 10 new FTE to do so. Even at this minimum staffing, the resulting minimum operating budget increase will be \$890,000 annually, and start up costs of approximately \$250,000 for vehicles, computers and office equipment.

SIGNIFICANT ISSUES

CID provided the following:

- The Construction Industries Licensing Act does not give CID jurisdiction over existing buildings except to the extent they are undergoing new construction or remodels.
- The Construction Industries Licensing Act does not give CID jurisdiction over individuals who are not licensed or certified by CID unless they are engaged in unlicensed contracting. CID does not currently have jurisdiction to impose disciplinary action on individuals who violate the Night Sky Protection Act.
- CID is already enforcing the Night Sky Protection Act. CID has incorporated the Act's requirements into its electrical code and requires all new construction on public buildings to comply with the Act's requirements. Failure to comply subjects the licensee or contractor to disciplinary action including fines or suspension or revocation of license under the Construction Industries Act. Failure to comply with the code requirements can also result in work stoppage on the project until compliance with the Act is achieved.
- The bill does not have adequate disincentives. The enforcing agency can only issue a warning, and failure to comply results in only a \$25 penalty per fixture, less the price of replacing the fixture. This may be seen as an affordable cost relative to the cost of compliance.

The AGO states that current law is unclear about who is mandated to enforce the penalties as provided for in Section 74-12-10. This bill will correct the problem.

ADMINISTRATIVE IMPLICATIONS

CID does not have sufficient staff or resources to enforce the provisions in this bill.

ALTERNATIVES

RLD suggests making a violation of the Act a criminal infraction and have the State Police and local law enforcement agencies cite violators. Require local building programs to require compliance with the Act on all construction through their planning and permitting programs.

DW/mc:svb