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FISCAL IMPACT REPORT

ORIGINAL DATE 02/04/09
 LAST UPDATED 03/19/09 HB 478/HJCS/aSJC

SPONSOR HJC

SHORT TITLE Construction License Revocation & Penalties SB _____

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
None	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Regulation and Licensing Department (RLD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment on page 10, line 13, after the word "who" inserts "knowingly".

Synopsis of HJC Substitute

The House Judiciary Committee's Substitute to House Bill 478 amends the Construction Industries Licensing Act (CILA) with regard to license revocation and penalties.

According to the AGO, this bill generally consolidates prohibitions and penalties against certain unlicensed contracting activities into NMSA Section 60-13-52. However, the amendments to NMSA Section 60-13-52A imposing misdemeanor penalties against a person convicted of acting as a contractor without a necessary license or certificate regardless of how many times they have been convicted appear to conflict with the amendments enacting a new subsection 60-13-52C, which provide for felony penalties for the second or subsequent conviction for violating that prohibition. The burden of proof is established in *State v. Jenkins*, 108 N.M. 669 (Court of Appeals 1989).

According to the AGO, the bill also allows the Division to grant a license to a person, even if they have been convicted of the crime of unlicensed contracting, if that person has complied with all court orders and sentencing requirements.

The bill also deletes the current provision in NMSA Section 60-13-14E which allows an unlicensed contractor to “settle the claims against him without becoming licensed” if the claims arise from their first offense and upon payment of an administrative fee. Presumably the current provision would allow an unlicensed contractor to complete or repair unlicensed contracting work without becoming licensed. The bill does not enact a similar provision, and generally imposes criminal sanctions against all unlicensed contracting activity. It is uncertain as to the effect this may have on the completion of unfinished contracting work.

FISCAL IMPLICATIONS

According to RLD, the administrative penalties allowed by the repealed provision will no longer be collected in the administrative settlement process. However, penalties imposed by the court pursuant to the sentencing provisions of the criminal code will increase revenue to the courts. Additionally, the division will request court-ordered restitution to victims harmed by unlicensed contractors, providing some consumer protection for these victims that is not available under the CILA administrative process.

SIGNIFICANT ISSUES

According to the AGO, the House Judiciary Committee Substitute for House Bill 487 makes a number of changes to the original bill. The first significant change is the reinstatement of the original statutory language to NMSA 1978, 60-13-23 (J), page 6, lines 12 – 18. This language allows the Construction Industries Commission to revoke or suspend a license for “aiding, abetting, combining or conspiring with a person to evade or violate the provisions of the Construction Industries Licensing Act by allowing a contractor’s license to be used by an unlicensed person or acting as agent, partner, associate or otherwise in connection with an unlicensed person, with the intent to evade the provisions of the Construction Industries Licensing Act.” This will allow the Commission to take action against a licensee even if he or she has not been convicted of a Section 60-13-52 crime as required under the original bill.

The AGO also notes that, the House Judiciary substitute makes a similar change to NMSA 1978, Section 60-13-24(C), page 7, lines 10 – 13. This Section deals with the Commission’s authority to suspend or revoke certificates of qualification. The substitute reinstates the same “aiding, abetting” language. Therefore, the Commission will be able to take against a certificate holder even if he or she has not been convicted of a Section 60-13-52 crime.

The House Judiciary substitute makes a similar change to NMSA 1978, Section 60-13-36(C) (3), page 8, lines 11 – 14. This Section deals with the Commission’s authority to suspend or revoke a certificate of competence for cause. The substitute reinstates the same “aiding, abetting” language. Therefore, the Commission will be able to take action against a certificate holder even if he or she has not been convicted of a Section 60-13-52 crime.

ADMINISTRATIVE IMPLICATIONS

The original bill deleted the “aiding and abetting” language that is restored by this bill. “Aiding and abetting” is most often used against a licensee who lets an unlicensed person use his/her license. CID supported deletion of the “aiding and abetting” language because it is vague and requires proof of intent. It is also redundant. Existing provisions such as the general prohibitions against violations of the Act in all three sections can be the basis of revocation for unauthorized “lending” or “transfer” of a license to an unlicensed person. The change in the bill that makes this practice a crime, and the new provision making a conviction of this crime grounds for revocation, renders the “aiding and abetting” language moot. Thus, CID does not oppose its inclusion in the substitute.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Some of the changes proposed mirror changes in HB 254 regarding eligibility for license after revocation.

TECHNICAL ISSUES

Provide that a person who acts as, or represents himself or herself as a sales representative of, an unlicensed person is committing unlicensed contracting, punishable under NMSA 60-13-52.

OTHER SUBSTANTIVE ISSUES

According to RLD, because the CILA allows administrative settlement of unlicensed contracting cases, the courts often “defer” a case to allow a defendant to pursue an administrative settlement, and no conviction is entered. Thus, there is often no record of a prior offense. By increasing the criminal penalties for second and subsequent offenses, HB 478 could improve the chances of violations getting prosecuted. This bill should also increase the deterrent effect against serial violators of the contractor licensing provisions.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/mt:svb