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## FISCAL IMPACT REPORT

ORIGINAL DATE 03/11/09

SPONSOR HBIC LAST UPDATED \_\_\_\_\_ HB 599/HBICS

SHORT TITLE Local Government Adoption of Building Codes SB \_\_\_\_\_

ANALYST Sanchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General's Office (AGO)

Department of Finance and Administration (DFA)

Regulation and Licensing Department (RLD)

### SUMMARY

The House Business and Industry Committee ("HBIC") substitute for House Bill 599, reinstates the language of the original Construction Industries Act ("CILA") in NMSA 1978, 60-13-44(F) which reads, "All political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act. Such codes constitute a minimum requirement for the codes of political subdivisions." It also adds a new subsection G which reads, "Nothing in this section shall be construed to confer the authority granted to a municipality pursuant to Section 3-17-6 NMSA 1978 or to a county pursuant to Section 4-37-1 NMSA 1978 to any other political subdivision of the state."

According to the AGO, the Bill as originally proposed would have changed the CILA to read, "The codes of the commission constitute a minimum requirement for the codes of political subdivisions that may adopt codes pursuant to Section 3-17-6 or 4-37-1 NMSA 1978. A political subdivision not otherwise authorized by law, shall not adopt additional codes."

The House Health and Government Affairs Committee ("HHGAC") amended the Section to read, "The codes and standards adopted pursuant to the Construction Industries Licensing Act constitute a minimum requirement for the codes of political subdivisions that may adopt codes pursuant to Section 3-17-6 or 4-37-1 NMSA 1978. No other political subdivision shall adopt codes, unless specifically authorized by law."

According to the AGO the changes proposed by the HBIC substitute would limit the adoption of building codes to municipalities and counties. Therefore, other political subdivisions (land grants, water and sanitation districts, etc.) would not be able to adopt building codes. The amendment from HHGAC allowed for other political subdivisions to adopt codes if they were “specifically authorized by law.” The AGO believes the HBIC substitute leaves the door open for other political subdivisions to adopt codes if they have the specific statutory authority to do so. The new language is merely stating that nothing in NMSA 1978; Section 60-13-44 should be construed to confer the authority to adopt building codes to “any other political subdivision of the state.” In other words, while Section 60-13-44 does not confer the power to adopt building codes to other political subdivisions of the state, there is nothing in the substitute that precludes the legislature from passing a statute to allow other political subdivisions of the state to adopt building codes.

### **FISCAL IMPLICATIONS**

According to RLD, building code uniformity has a strong positive impact on economic development. Where states and localities have adopted the same codes and standards, it reduces confusion and costs associated with building standards that change from one jurisdiction to another.

RLD believes statewide enforcement of uniform codes is critical to state economic development. A recent national report on the fiscal impact of code uniformity finds that uniformity allows products manufacturers to aggregate their markets, which can reduce costs through volume production.

“Aggregation has been especially successful where states and their localities have adopted the same model building codes with few (if any) technical amendments.” (The National Conference of States on Building Codes & Standards, Report to the National Governors Association: Enhancing Public Safety and the States’ Role in the Global Economy through Uniform Construction Codes and Standards, page 30)

The economy of aggregation applies to both residential and commercial construction. Where there is uniformity, work follows the same pattern all over the state, and builders of all types know how to estimate costs, how to develop critical path schedules, how and who to hire to perform the work, and which materials and methods will meet code.

According to RLD, without building code uniformity, new business could be repulsed by unpredictable costs and complicated, inconsistent regulatory requirements.

New Mexico has enjoyed the benefits of uniformity since the Construction Industries Licensing Act was enacted decades ago. It may also account, in part, for our relatively low unemployment rate. Except for the state and federal governments, the construction industries employ more people in New Mexico than any other employer. The benefits of uniformity have surely supported and facilitated that employment base.

## **SIGNIFICANT ISSUES**

The HBIC substitute to this bill would:

- Restore the original language of section 60-13-44 F to read:  
“All political subdivisions of the state are subject to the provisions of codes adopted and approved under the Construction Industries Licensing Act. Such codes constitute a minimum requirement for the codes of political subdivisions.”
- Add a new section G to read:  
“Nothing in this section shall be construed to confer the authority granted to a municipality pursuant to Section 3-17-6 NMSA 1978 or to a county pursuant to Section 4-37-1 NMSA 1978 to any other political subdivision of the state.”

According to RLD, the substitute does not appear to achieve its purpose because the parameters of building code adoption by municipalities and counties should be placed in the statute that creates the authority: NMSA 3-17-6. Historically municipalities have argued that the municipal code allows a municipality to adopt a code that is different from the codes adopted pursuant to the CILA as long as the local code is at least as stringent as the state code. RLD believes, neither the bill as originally drafted, or as it is now amended, clarifies that municipalities and counties must adopt the same code. RLD also states that any restriction on other political subdivisions with respect to building or green standards should be placed in the statute(s) that define the authority of such political subdivision.

The authority to adopt building codes is granted to municipalities by 3-17-6, and to counties by 4-37-1 NMSA 1978, not by the Construction Industries Licensing Act. Nothing in 60-13-44 expands that authority, nor could it. According to RLD, if clarification of the authority granted in 3-17-6 and 4-37-1 is needed, it should be placed in those statutes.

## **PERFORMANCE IMPLICATIONS**

According to RLD, the State’s ability to exercise statewide code enforcement and contractor compliance is critical. When a local jurisdiction adopts a different building code, its residents do not have recourse to the State’s administrative discipline process. The State cannot take disciplinary action against a contractor based on violations of a code that the State has not adopted. Further, a local government has no authority to discipline a contractor, so the violations of its code may continue with no consequence to the licensee.

## **RELATIONSHIP**

HB 94 Delay Municipal Code Effective Dates

## **OTHER SUBSTANTIVE ISSUES**

By law, municipalities and counties are empowered to adopt building codes that “provide for minimum requirements at least equal to the state requirements.” (3-17-6 A NMSA 1978). Further, under the Construction Industries Licensing Act (60-13-44 NMSA 1978), political subdivisions are subject to the state codes, and these codes constitute a minimum requirement for the building codes adopted by political subdivisions. The Construction Industries Division (CID) interprets these statutes as being consistent with the purpose of the Construction Industries

Licensing Act, which is “to the maximum extent possible, [be] uniform in application, procedure and enforcement” of state building standards. Some political subdivisions, however have taken the position that a local government may adopt a code that is entirely different from the state code, as long as it is as stringent as the state code. This has resulted in divisiveness, confusion, and inefficiency at the local level.

As green building standards become increasingly mandated, it will be critical that there be uniformity in the development and application those standards. Unless local governments are required to adopt the state codes, they could each develop standards applicable exclusively in their respective jurisdictions. A proliferation of parochial standards will result in uncontrolled and arbitrary increases in construction costs. Further, green building standards, which are concerned only with energy efficiency and structural performance, must not be adopted at the expense of traditional building standards for structural soundness which protect life and property. To insure that both goals are achieved, the adoption of all building standards must be done at the state level and followed uniformly throughout the state.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status Quo

CS/mt:mc:svb