

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 2/7/19

SPONSOR Woods LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Private Construction Inspections SB 122

ANALYST Daly

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$120.0	\$120.0	\$240.0	Recurring	General Fund
		Unknown	Unknown	Unknown	Recurring	PSCOC Fund
		Unknown	Unknown	Unknown	Recurring	Local Government Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB 105

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Regulation & Licensing Department (RLD)  
 New Mexico Attorney General (NMAG)  
 Public School Finance Authority (PSFA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 122 amends the Construction Industries Licensing Act to increase inspection resources by requiring the Construction Industries Division (CID) to license private inspection companies to perform inspection services for governments; perform inspections for licensed contractors and homeowners to enforce and improve building safety; ensure contractor compliance with laws, codes and standards; and provide for a more efficient and cost-effective construction process for governments, contractors, and homeowners. It also makes changes to other provisions of the Act.

A “private inspection company” is defined to mean a private enterprise licensed by CID to apply

for permits and conduct inspections of all work by the contractor or homeowner to ensure compliance with applicable codes and approved plans and report to the appropriate governmental jurisdiction. Included in this definition is approval of plans and inspections of manufactured commercial units, modular home or pre-manufactured homes. Subsection 1(V). “Government,” is defined as the state or a county, municipality or other political subdivision. Subsection 1(W).

Section 3 extends an existing provision requiring surrender of a contractor’s license or certificate of competence to make that requirement apply not only to employees but also to contractors of CID, such as private inspections. It also adds a new subsection (C) that bars CID employees from engaging in any business that would be considered contracting under the Act. Section 4 adds language that requires private inspection company licenses be reviewed and approved by the Construction Industries Commission.

Section 5 broadens the powers of CID and the Commission to not only investigate but also prosecute code and license violations in any code jurisdiction in New Mexico.

Section 7 allows CID to employ state inspectors or to contract with private inspection companies to carry out state inspections. An inspector or statewide inspector must be employed by either a government or private inspection company to inspect work (under permits issued in the trade bureau) for which such an inspector is certified, provided that the government or private company has a certified building official in its employ and the government has adopted the current minimum code requirements. If another government does not have a certified building official in its employ, the state or its agent, which may be a private inspection company, is required to conduct all inspections. SB 122 removes the geographical limitations on the provision allowing a government to enter into a memorandum of understanding (MOU) to share the services of a certified building official, and authorizes government to contract with a private inspection company for certified building official and inspector services. These MOUs and contracts must be listed on the division’s website. When a certified building official leaves the employ of a private inspection company, the company has 60 days, or longer if approved by the division, to replace that certified building official.

Section 8 makes changes necessary to effectively implement the inclusion of state certified inspectors employed by a private inspection company. Section 9 permits the governmental entity to hire its own inspector or private inspection company to determine compliance of public buildings pursuant to the adopted standards within its jurisdiction.

Section 10 allows a private inspection company, pursuant to a contract with a government, to: inspect the work for which a permit was issued; use the same forms and request methods as used by the government; and remit fees collected to the government in accordance with the conditions of the contract. Subsection (F) allows a private inspection company to charge and keep fees in addition to the government fees for performing inspections. Additionally, pursuant to a contract with a contractor, a private inspection company may request a permit on behalf of the qualifying party and payment of all initial inspection fees and service charges, and then may inspect the work of the contractor pursuant to the permit. Subsection (H) sets forth the requirements and tasks of a private inspection company upon the completion of all required inspections. A contractor or homeowner who begins the inspection process shall continue with the same inspection provider until the final inspection has been completed; any change in the inspection provider once a permit has been issued requires the permission of CID.

Section 11 outlines licensure requirements, including work experience requirements, for private inspection companies. CID's license fees cannot be higher than those charged to general contractors. A certified building official is barred from working for more than one private inspection company at the same time unless the companies have at least 30 percent common ownership.

Section 12 requires the Commission establish proof of responsibility rules for private inspections companies.

### **FISCAL IMPLICATIONS**

RLD advises that the provisions of SB 122 expanding CID's authority to prosecute code and license violations could require additional compliance officers and attorneys, which would impact its operating budget. RLD estimates the annual cost of one compliance officer and one attorney to be \$120 thousand, as shown in the operating budget impact table.

The Public School Finance Authority (PSFA) currently has an agreement in place with CID that ensures projects funded through Public School Capital Outlay Council (PSCOC) are given priority in inspection and review over other construction projects, pursuant to the Public School Capital Outlay Act. PSFA reports that in FY18, the PSCOC reimbursed CID \$245.8 thousand under that MOU. PSFA indicates if SB 122 is enacted, that MOU may need to be modified, or additional costs may be incurred by the PSFA, as the cost of private inspections are not yet determined. Thus, the impact on its funding source is unknown, as shown in the operating budget impact table.

Because SB 122 authorizes private inspection companies to charge fees in excess of the government fees for inspections, the impact on other local governmental units that may contract for private inspectors is unknown, as reflected in the budget impact table.

### **SIGNIFICANT ISSUES**

RLD first expresses concern as to conflicts of interest that arise given the definition in Section 2(V) of "private inspection company", along with language in Section 10(G) that allows a private inspection company to both request a permit on behalf of a qualifying party and inspect the work of the contractor pursuant to that permit. It notes that currently, a licensed contractor secures a permit and an independent state inspector or local jurisdiction's certified building inspector conducts inspections. To allow a private company to perform both functions could create a conflict of interest that runs counter to the system of independent inspections of construction projects.

RLD next directs attention to new language in Section 7(D) and Section 9(F) that suggests a political subdivision can adopt a code "in excess" of state codes. RLD reports that under existing law, the Act sets the minimum standard for code compliance in the State. While local governments can enact more stringent requirements by ordinance, they cannot adopt codes. The state is the entity that, for stability and uniformity, is solely responsible for adopting and enacting codes. See Section 60-13-44(F).

Further, RLD comments on Section 7(H), which provides at least a 60 day window for a private inspection company to replace a certified building inspector leaves its employ. Unlike the

situation when CBO leaves a government position, there may be no procedure or upper management/supervisory personnel at the private company to ensure the independence of the inspection process.

RLD also notes that Section 9(E) charges CID with the responsibility to ensure compliance with adopted standards for public buildings, but then grants a local government that employs an inspector or private inspection company exclusive enforcement power.

Both RLD and PSFA point out the provision in Section 10(F) allowing private inspection companies to both collect fees due to the government and then charge and keep additional fees for performing inspections. This practice seems inconsistent with the language in Section 1(B) that the bill's provisions will create a more cost-effective process for government, contractors and homeowners. A similar issue arises in Section (G)(1), allowing service charges for securing a permit.

RLD suggests that Section 10 (H) provides a lesser standard of compliance by private inspectors, since their certificate of compliance are based only on a written representation that to the best of the private inspection company's knowledge and belief...the work "complies with approved plans and applicable codes." In contrast, RLD advises state certified government inspectors are required to ensure full compliance with approved plans and that codes are either complied with or a variance has been approved.

## **PERFORMANCE IMPLICATIONS**

PSFA reports it has entered into an MOU with CID to address turn-around times for plan review and building inspections. Per the MOU, there is a plan review turnaround time of five business days and building inspections are to occur within 48 hours of the request. This bill may impact the turn-around times established by this MOU since these services may be performed by private companies. Additionally, PSFA currently follows state building codes for the construction of public schools. If this bill is enacted, it may require that the inspections also adhere to the codes adopted by the local governmental bodies, potentially impacting uniformity and the cost of public school buildings.

MD/gb