

LFC Requester:	Noah Montano
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**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment** _____
Correction _____ **Substitute** _____

Date February 27, 2025
Bill No: HB 491

Sponsor: Rep. Henry
Short Title: Construction & Inspection Licensing

Agency Name and Code Regulation and Licensing Department - 420
Number: _____
Person Writing Lori Chavez
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	N/A	N/A	N/A	N/A	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: n/a

Duplicates/Relates to Appropriation in the General Appropriation Act: n/a

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: House Bill 491 (HB 491)

HB 491 amends and add a new licensure type to the Construction Industries Licensing Act (“CILA”) for inspection companies. The new license would allow private company inspectors to perform license contract work and to inspect construction work on behalf of governmental agencies, contractors and homeowners.

SECTION 1: adds to the statutory purpose of CILA expanding its mission to include improved inspection resources, improved building safety, ensure contractor compliance with laws, codes and standards compliance and a more efficient and cost-effective construction process.

SECTION 2: changes the definition for “qualifying party” to mean a person who submits to the examination for “certificate of qualification”.

Adds the definition “private inspection company” to mean a private enterprise that is licensed by the division to apply for permits and conduct inspections of permitted work for work performed by a contractor or homeowner and reports to the appropriate governmental jurisdiction.

Changes throughout the act, the word “individual” to “person” and substitutes the phrase “state or any county, municipality or other political subdivision” with “a government or private inspection company” throughout the CILA.

SECTION 3: adds the prohibition of employees of the division from engaging in any business activity that would be considered contracting pursuant to CILA.

SECTION 4: adds to the duties of the division, the issuance of private inspection company licenses, to submit those licenses to the commission for review and approval and to publish the list of contractors quarterly on the division’s website.

SECTION 5: adds to the division and commission’s powers the authority to prosecute code and license violations.

SECTION 6: adds to the definition of “gas fitting” the installation of “safety-related repair.”

SECTION 7: adds multiple provisions, including:

- a provision allowing government agencies to contract with private inspection companies to provide inspections on behalf of state and local jurisdictions;
- a provision allowing inspectors to be employed by private inspection companies;
- a provision that government agencies shall publish any codes adopted beyond state codes;
- a provision allowing private inspection companies to conduct inspections for another government agency who does not have a certified building official in its employ and to contract to provide a certified building official and inspectors services to government agencies;
- a provision requiring the private inspection company to replace a certified building

- official within sixty days, or longer if approved by the division; and
- a provision authorizing the director to investigate complaints brought against the private inspection company.

SECTION 8: adds a provision granting private inspection companies the same authority as state certified inspectors when inspection construction projects, including the authority to cut or disconnect in cases of emergency an installation or devise when necessary for safety and requires public utilities to cooperate with all requests of the inspectors. And, adds a provision prohibiting certified building officials and inspectors employed by governments from being employed by private inspection companies.

SECTION 9: adds a provision requiring private inspection companies to comply with stricter codes adopted by the local government agency, with the CILA constituting the minimum applicable code requirements.

SECTION 10: adds multiple provisions, including:

- a provision requiring the commission to adopt rules for the issuance of permits to include private inspection companies and to increase the amount of surety that can be required from five hundred dollars (\$500) to one thousand five hundred dollars (\$1,500);
- a new paragraph defining the scope of work a private inspection company may perform when contracted by a government agency to include inspecting permitted work, using the same forms, request methods used by government agencies, and charging fees in excess of the government fees required for performing inspections;
- a new paragraph defining the scope of work a private inspection company may perform when contracting with a contractor to include requesting a permit affidavit signed by a qualifying party, payment of all initial inspection fees and service charges, and inspect permitted work performed by a licensed contractor;
- a paragraph requiring private inspection companies to prepare, upon completion of the work, a certificate of compliance summarizing the inspections performed, that the permitted work complies with plans and applicable codes and declaration that any additional inspection fees and service charges have been paid; and
- a paragraph prohibiting a contractor or homeowner who begins an inspection process with a government agency or private inspection company from changing the inspection provider once the permit is issued.

SECTION 11: adds a paragraph requiring the commission adopt rules establishing proof of responsibility requirements for private inspection companies.

SECTION 12: adds a new section to the CILA establishing licensing requirements for private inspection companies

FISCAL IMPLICATIONS

Minimal costs associated with implementing HB 491 primarily associated with rulemaking.

SIGNIFICANT ISSUES

HB 491 creates a new private inspection company (“private inspectors”) license that allows the company to act as a private contractor while simultaneously inspecting permitted work on behalf

of the state and local building departments as private inspectors creating inherent conflicts of interest between the contractor and the private inspectors.

The purpose of the CILA is to promote the general welfare of the people of New Mexico by providing for the protection of life and property through adoption and enforcement of codes and standards for construction, alteration, installation, connection, demolition and repair work. HB 491 conflicts with the purpose of the CILA to ensure permitted construction work is inspected by objective, non-bias and independent inspectors.

INCREASED COST FOR CONSTRUCTION PROJECTS

HB 491 will negatively impact the cost for construction projects by adding additional fees, above what the state and local jurisdictions charge for permits, to be paid directly to a for-profit private inspection company to perform inspection services currently provided by the Construction Industries Division (“CID”) of the New Mexico Regulation and Licensing Department (“RLD”) and local jurisdictions for the cost of the permit. This directly contradicts the goals of industry and government to streamline inspections and reduce costs for construction projects. Costs associated with construction projects are the number one complaint the CID receives concerning construction. As a result, construction projects may face financial strain, potentially leading to delays and increased expenses, ultimately affecting the affordability and feasibility of various developments within the community.

CONFLICT OF INTEREST

HB 491, as written, does not impose any restrictions on a private inspector from engaging in contracting activities. The language of the bill allows private inspectors to operate independently without compromising their ability to pursue contracting work. While the bill may outline specific roles and responsibilities for inspectors in relation to inspections and compliance, it does not explicitly prevent them from obtaining the necessary licenses and permits to engage in contracting. This means that private inspectors have the potential to diversify their professional activities by taking on contracting projects, provided they adhere to the relevant licensing requirements established by the state.

Objectivity of the private inspector is particularly tainted with HB 491 by creating a mutual financial interest between the contractor and the private inspector who both have monetary interests with the contractor having interest in inspections passing quickly and on the first inspection and the private inspector developing and maintaining a reliable clientele base for future income. This co-dependent relationship created by HB 491 between the contractor and the private inspector is what subjects the process to the greater probability of falsification of inspections to achieve their mutual interests. Inspections performed by state employees removes the monetary self-interest and allows for a more objective, honest and complete inspection of the work which is in the public’s interest.

MISCOMMUNICATION

Implementing third-party inspections for a building department can create a fragmented inspection process that complicates communication and coordination among stakeholders. When multiple entities are involved, the potential for miscommunication increases, and important details may be overlooked. This fragmentation can also lead to delays in project timelines, as developers and contractors may need to navigate additional layers of bureaucracy to address issues that arise during inspections. Ultimately, relying on private inspectors can detract from the efficiency and effectiveness of the building department, undermining its primary goal of

ensuring safe and reliable construction practices. This disconnect can result in buildings being approved that do not meet the necessary safety and quality standards, putting occupants at risk and potentially leading to costly legal disputes.

CONFLICT IN THE INTERPRETATION OF BUILDING CODES

Conflicting issues with private inspectors often arise due to differences in interpretation of building codes and regulations. Since these private inspectors are not embedded within the local building department, they may have varying levels of familiarity with specific local codes and standards. This disconnect can lead to discrepancies in inspection outcomes, where a private inspector may approve a project that an in-house inspector would deem non-compliant. Such inconsistencies can create frustration among contractors and developers, who may face delays and additional costs as they navigate conflicting assessments from different inspectors. This situation undermines the uniformity and reliability that a standardized inspection process aims to achieve.

LACK OF OVERSIGHT

Another potential conflict involves the accountability and oversight of private inspectors. Unlike in-house inspectors who are directly accountable to the building department and its policies, third-party inspectors may operate with varying degrees of autonomy. This lack of oversight can lead to concerns about the quality of inspections and the potential for negligence. If a third-party inspector overlooks critical safety issues or fails to adhere to established protocols, the repercussions can be significant, impacting not only the safety of the building but also the reputation of the building department. Moreover, if disputes arise regarding the quality of inspections, it can be challenging to address accountability, as private inspectors may not be subject to the same disciplinary measures as in-house staff. This ambiguity can erode trust in the inspection process and complicate relationships between stakeholders involved in construction projects.

INSPECTOR QUALIFICATIONS

The New Mexico Administrative Code (NMAC) at section 14.6.5.8, dealing with qualifications and requirements for inspectors must be considered. Third-party inspectors will be qualifying by passing a national trade exam, which establishes a standardized benchmark for their competency. However, it is crucial to recognize that New Mexico mandates specific journeyman or foreman level field experience as qualifications for inspectors, emphasizing the importance of hands-on experience in the relevant technical trades. This requirement underscores the state's commitment to ensuring that inspectors possess both theoretical knowledge and practical expertise in their respective fields. By enforcing these qualifications, New Mexico aims to maintain high standards for safety and compliance in the construction trades, ensuring that inspectors are well-equipped to evaluate projects effectively and uphold the integrity of building regulations and codes.

The NMAC at section 14.6.5.8 does not provide licensing for inspectors. Instead, inspectors are issued a certificate that qualifies them to conduct inspections as per the established administrative codes. It is important to note that inspectors are not authorized to pull permits for any projects; this requires a contractor license. HB 491 allows private inspection companies to act both as the contractor performing the work and the inspector who inspects and fails/passes the inspection on behalf of the state.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS