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# HOUSING JOURNAL

Voice of *New Mexico Home Builders Association* for More Than 35 Years

Volume 39 Issue 2

March 2009

## What's Inside *Inside*

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- **Contest Winner Impressed with the "Big" Show**



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## About The Cover

This Albuquerque kitchen remodel by Sal's Cabinets, LLC was a dream come true for a client who had vacationed in Italy and longed for a Tuscan-style kitchen of her own. The original kitchen was small and dark with a wall separating the dining room and kitchen. Removing the wall created an open kitchen and dining area ideal for entertaining.



*Photo by David Nufer Photography*

# Membership Statistics

	Dec	Jan
Central New Mexico	945	925
Eastern NM	120	117
South Eastern NMHBA	128	125
Lincoln County	154	151
Las Cruces	491	486
Southwestern NMHBA	56	55
San Juan County	235	238
Santa Fe Area	659	664
Otero County	<u>148</u>	<u>152</u>
<b>Total</b>	<b>2936</b>	<b>2913</b>

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# A Message From The PRESIDENT

President



Scott Bealhen

In February, I had the privilege of conducting my first full Board meeting as President of the New Mexico Home Builders Association. I had attended board meetings before, however, this time I was more aware of how devoted and hardworking the members are. With such a diverse membership and local chapters in every corner of the state, it is noteworthy that we

are so often able to arrive at unanimous agreements on how the Association carries out its business. As I watched and listened I realized that it's the membership and participation of all involved which forms the foundation of NMHBA.

I would like this column to bring into play the vast range of issues handled by your Executive Officers, Association Staff and Committee Members, to name just a few:

**Builders Trust** - a Workman's Compensation company with an affiliation to NMHBA, provides the Board with updates on its program at each and every meeting. This is a valuable relationship to the Association in that insurance and insurance costs affect everyone in our industry.

**New Mexico Home Builders Political Action Fund and BUILD PAC** - The New Mexico Home Builders Political Action Fund reports to the Board on the progress of statewide fundraising activities through members appointed on an annual basis by the President. BUILD PAC, the political action committee of the National Association of Home Builders, raises funds and disperses contributions to various national politicians running for office.

At every meeting, the Board is presented with a detailed financial report on the Association's budget for the year. This enables us to ensure that our goals are met and that we are spending your money wisely. This may not be the most attractive part of the job, however, you can rest assured it's one we take seriously.

Since half of the Association's budget is spent on legislative affairs, it's not surprising that two of our committees are solely dedicated to year-long monitoring and research on government-mandated changes to building codes, legislation and policy initiatives that affect home building in New Mexico.

**Building Issues Committee (BIC)** tracks all changes to building codes and works closely with the state's Construction Industries Division. This enables the Association and its members to remain informed and updated on the requirements for building in New Mexico. Part of the committee's recent work is following Governor Bill Richardson's 2030 Green Building Initiative. The policies developed under this Initiative will have a direct impact on building standards of the future. I believe the home building industry should join other industries in developing responsible practices for Green production. Without your involvement, the policies which emerge from this Initiative could affect the industry by adding unnecessary costs to the consumer.

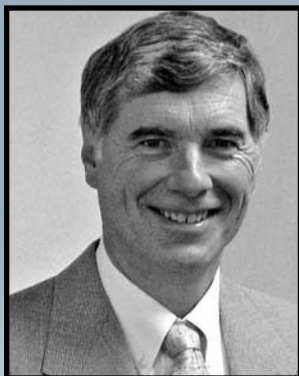
**Government Affairs Committee** works hand-in-hand with BIC to procure research and information from the Association to Legislators. The committee works long hours before and during the Legislative Session in representing the interests of the home building industry.

These are some of the committees that devote an enormous amount of time assisting the Board in staying well-informed on issues that affect the home building industry, both at the national and state levels. Having such a wealth of solid information gives us confidence that we are making good decisions. I appreciate the hard work and hope that is shared by everyone involved.

I would like to end this letter with a word of thanks to all our members who traveled to Santa Fe (and 5 who met us there) in February for the Association's visit to the New Mexico State Legislature. We had 35 members in attendance this year - a new record. I am especially pleased that we had a strong showing this year, since so many of our legislators are new to the Roundhouse. Making connections with them now will be crucial to our success in working with them in the future. One of the day's highlights was a meeting between the Local Association Presidents in attendance and New Mexico Lieutenant Governor Diane Denish. I want to thank Randy Crowder of Clovis, Derrick Childers of Farmington, Rich Bigelow of Silver City, and JB Stearns of Las Cruces for taking the time to represent their local associations before one of our top state leaders. I know the day was a success and hope that we will have an even greater attendance next year.

The Legislative Session is still convened as of this writing. In our next Housing Journal, we will inform you on which legislation impacting the building industry passed or failed.





Jack C. Milarch, Jr.

## 2009 Legislative Update

The theme at the Legislature this year appears to be “increased regulation”. Bills have been introduced to increase regulation of the title insurance industry, the construction industry, domestic wells supply, and infrastructure financing. Some of these bills had the potential to affect the cost of home building in New Mexico.

### CID Issues

Most of these bills look like they are intended to give the Construction Industries Division (CID) more power over licensees and municipal inspectors. This is a continuation of the legislative activities from last year where we saw the license bond changed to a code-violation bond that pays to the consumer, and the authority granted to CID to require continuing education for all licensees and journeymen.

Among the bills NMHBA is supporting is HB599 (Cervantes) which we helped draft. “*Local Government Adoption Of Building Codes*” restricts the adoption of building codes to just the state, cities, and counties. We are trying to keep the building codes unified. NMHBA drafted this bill to address problems that came to light when the Bernalillo County-Albuquerque Water Authority attempted to adopt strict plumbing codes as the Authority pursued their water-saving goals.

Another bill NMHBA helped draft is HB689 (Cervantes) “*Construction Licensing Statute Of Limitations.*” This bill adds an exception to the Uniform Licensing Act that clarifies no action can be taken against a contractor’s license after two years following issuance of the Certificate of Occupancy or the date of cessation of

work. We thought it was unfair that a current law holds a contractor’s license subject to action by CID indefinitely when the new license bond cuts off action after two years following issuance of the Certificate of Occupancy. “Cessation of work” was added as a trigger to cover abandoned work or remodel projects where the homeowner begins using the space before the C. of O. is issued.

HB733 (Lujan) “*Residential Construction Consumer Recovery Fund*” is a result of many meetings over the summer with the Attorney General’s Consumer Protection Division. We are supporting it. Largely in response to high-profile news reports of homeowners being “wronged” by contractors, this fund would provide up to \$25,000 to pay a consumer who has been unable to collect on a court judgment against a contractor. The fund starts with a \$5-10 fee on every residential building permit. We have been resisting a recovery fund for years but NMHBA leadership felt we couldn’t avoid it any longer. We participated in the process of compiling this bill and feel we gained beneficial terms compared with other states’ recovery fund laws. By participating we were able to gain benefits most funds never could have attained – a self-regulating mechanism that includes a cap where no fees can be charged for a year once the fund reaches \$2.8 million, and a fee on permits instead of adding hundreds to the license renewal process. Unlike other states’ funds, ours does not apply to unlicensed or unpermitted contracting, or homeowner permits.

For the last couple of years CID’s executives have been unusually active in promoting legislation. This year’s total of 12 bills is an all-time high. A group of bills sponsored by CID are being promoted as consumer protection bills. HB313 (Lujan) “*Construction Crimes Bureau*” is to protect consumers “from abuse and fraud perpetrated by unscrupulous contractors”. HB478 (Rehm) “*Construction License Revocation & Penalties*” replaces monetary fines with misdemeanor penalties (up to 1 year in jail and/or up to \$1,000 fine) for unlicensed contracting and for contractors who hire unlicensed contractors or allow unlicensed contractors to use their license number. Currently CID works to get unlicensed contractors into the system, charge them a fine and make them legitimate. HB478 would make the crime of unlicensed contracting a misdemeanor. HB254 (Lujan) “*Construction Application Restrictions*” amends statute to allow CID to prohibit an applicant who has had their license or certificate revoked from applying for a new license for a minimum of three years to a maximum

of five years. Current statute allows re-application after one year. The Crimes Bureau has the potential to grow in the future as CID converts more “violations” into “crimes”. We have concerns about spending millions on a new Bureau that would investigate and “package” cases against contractors for presentation to District Attorneys.

Another group of bills drafted by CID seek to increased regulation of municipal inspection departments and raise fees for municipalities and facilities like PNM, UNM and Intel. First, HB94 (Heaton) “*Delay Municipal Code Effective Dates*” puts off implementation of 2007’s HB219 “All-or-nothing” for local building inspection departments until July 1, 2011. No one expected the amount of detail involved in setting up Joint Powers Agreements to facilitate the municipalities that wanted to “take it all”. CID has also drafted several versions of regulations for them to establish the conditions under which local building services departments could be “given back” to CID control. CID still hasn’t come up with a version acceptable to everyone. As a result of this, and local fiscal pressures, very little progress has been made around the state. CID is seeking statutory authority to begin charging municipalities for CID’s services. SB280 (Griego, P) “*Create Construction Building Inspection Fund*” creates a revolving fund into

which CID will deposit fees charged to local inspection programs. This fund could result in higher permit fees if the municipalities pass CID’s fees along to the builders. Another example is HB324 (Williams-Stapleton) “*Construction Industries Annual Permits*” that repeals Section 60-13-46 which allows for annual permits for municipalities and large facilities like PNM or Intel. This could result in more work for licensed contractors, and it could result in higher permit fees being paid by municipalities as each project they undertake would require separate permits at full fee.

### Infrastructure

Today there may be too many lots, but a few years ago, and in another few years in the future again nothing may be more important to NMHBA members than the availability of developed lots upon which to build. As the cost of infrastructure continues to rise, NMHBA continues to seek ways to increase the “tools in the toolbox” for developers. The Tax Increment Development District (TIDD) act passed in 2005, and now several TIDDs have been approved and are starting to function. The problem is the TIDD model works well in an “up” market, and not so well in a “down” market where suddenly we find ourselves. Several lawmakers

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are looking for ways to amend the TIDD legislation, and others are just trying to shut the process down. These bills include a moratorium on new TIDDs, no TIDDs for “greenfields” (vacant property), adding the state Secretary of Finance in the inner workings of TIDDs, cutting the GRT allowed to be diverted into TIDDs unless they include affordable housing, limiting the TIDDs to 25 years, and restricting property tax diversion to only land upon which an “eligible business” sits. HB552 (Lujan) “*Infrastructure Development Act*” stands alone as another infrastructure creation tool. It creates an infrastructure financing political subdivision; the source of funding is general obligation bonds and user fees on the landowners who use the infrastructure instead of diverting new Gross Receipts Taxes like TIDDs.

### **School Impact Fees**

One of the biggest problem pieces of legislation this year is SB367 (Griego, E.) that would let impact fees be charged for schools. Surveys from California and Virginia show impact fees for schools range from \$5,000 up to \$17,000 per single family residence. The same survey found impact fees in New Mexico have increased 225% since 2006 – not including Albuquerque’s special “Albuquerque Public Schools fee”. One of the main reasons new homes pay Gross Receipts Tax upon sale (resale housing is exempt) is to provide funds to the state and local governments for items including new schools. The school districts are separate political subdivisions from the municipalities levying and collecting the impact fees. These funds will have to be transferred from the municipalities to the school districts and the municipalities may add an administrative fee for processing the funds on top of the impact fee. If a municipality imposes impact fees for a new school and then “donates” the funds to the local school district it’s possible the state funding will be reduced by that amount, leaving the district in no better financial position than if the impact fees had not been levied. At a time when the federal government is giving out \$8,000 credits to buyers of new homes it is not the time to be raising the cost of housing.

### **Regulatory Justice**

“Regulatory Justice” is a term for a concept that encourages regulatory agencies to pay more attention to the concerns of industry during the process of developing regulations. Many times state agencies develop regulations and then only show them to industry after they have been approved to be sent to public hearing. It is often too late for industry to have any meaningful impact on the regulations. This causes a breakdown in the communication process between the regulators and

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## NMHBA Plans 50th Anniversary Gala

If you've been involved with your Local, State, or National HBA, you've probably met a lot of good people who are part of the housing industry. This summer offers another chance to make new acquaintances or renew old friendships.

To commemorate fifty years as an Association serving the housing construction industry statewide, New Mexico Home Builders Association is inviting its membership to an anniversary celebration in Ruidoso this June. (See invitation on page 8.)

**Reserve your room soon!** The event will be held at Inn of the Mountain Gods and for your convenience we have reserved a room block for Gala attendees. These rooms are available for \$169/night. Just call 1-800-545-9011 and ask for the NMHBA rate. They will be available on a first-come first-served basis until May 12, so you may want to make your room reservation soon if you wish to stay at the Inn.

**Sponsorships available!** On page 9 is our 50th Anniversary Gala sponsorship form which you're welcome to complete if you would like to help sponsor our celebration. Sponsorships range from \$50-\$1,500 and are available to companies and/or individuals.

Do you have any humorous, poignant or other NMHBA memories of any kind? Whether or not you plan to attend the Gala, we'd like to hear how our Association has made an impact on you. Please email your memories to [nancy@nmhba.org](mailto:nancy@nmhba.org). Or write your memories down and mail them to our office.

**Don't forget to RSVP for the NMHBA 50th Anniversary Gala!**



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those being regulated. Two bills introduced this session are meant to continue to bring this issue to the attention of lawmakers by requiring preparation and filing of a regulatory impact statement with each rule, regulation or standard promulgated by a state agency.

### **Mortgage Finance Authority (MFA)**

The MFA serves as the de facto housing department for the state. It is an important source of programs for those of our members who specialize in affordable housing. Usually the MFA appropriations end up rolled into one omnibus funding bill with reduced amounts allocated to the various programs. But this year with funding being cut across the board it is also possible they could all die in the finance committees this Session. It could be they will be brought to the Special Session Governor Richardson has mentioned for May so the Stimulus funding may be distributed. This year's initiatives by MFA include:

**SB10 (McSorley)** provides \$1 Million to MFA to create a Home Buyer Education Program; **SB62 (Martinez, R.)** allocates \$5 Million for creation of a Low-Income Energy Conservation Program; **SB63 (Martinez, R.)** asks for a \$2 Million additional allocation for the Low-Income Emergency Home Repairs program; **SB130 (Boitano)** allocates \$2 Million for home loans and down payment

assistance to teachers, public safety workers, health care workers, and active members of the military; **SB211 (Rodriguez)** allocates \$15 Million for the Housing Trust Fund, **HB260 (Sandoval)** appropriates \$3 Million for the Low Income Home Energy Assistance Program (LIHEAP) and \$9 Million for matching funds for the weatherization program; and **HB268 (Gonzales)** includes \$2.5 Million to create and implement the Income-based Energy Efficiency Loan Program for low to moderate income households.

HB732 (Lujan) "*Low Income Energy Utility Fund Distributions*" was introduced after the federal Stimulus funding was signed, and is partly for MFA programs through 2014. The Low Income Home Energy Assistance Program (LIHEAP) is a grant from U.S. Department of Health and Human Service that helps New Mexico low-income families meet the costs of home heating and cooling one time per year, and it requires matching funds from the state. Up to 15% of the LIHEAP grant may be used for weatherization. HB732 diverts over \$10 Million per year for these programs and defines and creates:

1. The low income energy efficiency improvement program at Energy, Minerals and Natural Resources Department (EMNRD) for small-scale, direct in-home energy efficiency programs that do not include weatherization and to assist low income households to

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*Please Join Us In  
Celebrating Our  
50th Anniversary!*

When: Friday, June 12, 2009  
Where: Inn of the Mountain Gods Ruidoso, NM  
Time: 6:00 pm cash bar  
6:30 pm dinner  
Cost: \$45 per person

Reservations Required  
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Semi-Formal Attire Requested



# 50th Anniversary Gala

## Sponsorship Form

### \$1,500 Gold Sponsor

- Recognition in the Housing Journal.
- Recognition during the Anniversary Gala on June 12, 2009.
- 4 dinner tickets to the Anniversary Gala.
- Listing on the Anniversary Gala program.
- Listing on Sign displayed at Anniversary Gala.



### \$1,000 Silver Sponsor

- Same benefits as Gold Sponsor, except company will receive 3 tickets to the Anniversary Gala.

### \$500 Crystal Sponsor

- Recognition in the Housing Journal.
- 2 dinner tickets to the Anniversary Gala on June 12, 2009.
- Listing on the Anniversary Gala program.
- Listing on Sign displayed at Anniversary Gala.

### \$100 Bronze Sponsor

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- 1 dinner ticket to the Anniversary Gala on June 12, 2009.
- Listing on the Anniversary Gala program.

### \$50 Friend of Associates Sponsor

- Listing on the Anniversary Gala program.

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  \$1,000 Silver     
  \$500 Crystal  
 \$100 Bronze     
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# Contest Winners Impressed with the “BIG” Show

First-time attendees at NAHB’s International Builders’ Show discovered just how big the “Big Show” actually was when they traveled to Las Vegas, Nevada, in January and saw the latest products and services showcased in the exhibit halls.

For the third consecutive year, Builders Trust and NMHBA teamed up to award trips to IBS to BT participants who never before attended the Show. One eligible winner from each Local HBA was drawn at random and most of their registration, airline, and hotel expenses were reimbursed courtesy of BT. Contest winners agreed to be interviewed for this article.

Larry Thompson, TC Thompson Bldr Inc (Artesia), said IBS went beyond his expectations. “It was informative and big,” he said. “All builders should see the enormous support mechanism we have backing us up.”

“It was very well planned and easy to get around,” stated Tony Lara of Lara Builders Inc (Las Cruces). “It was huge and took a lot of walking.”

Jill Thomison of Steve Thomison Construction (Silver City) described her IBS experience as “BUSY!!” She attended nine different educational sessions, including one on log cabins.

“What was funny was that on the first morning I caught the bus (early to attend the first timer’s breakfast) and there was only one other man that got on it,” she said. “We were talking on the way to the convention center and I found out that he has been building log cabins for over 20 years! He was very informative and is a great contact.”

Over 60,000 folks attended IBS this year and had the opportunity to see what new products and services were being offered by more than 1600 exhibitors. Though attendance was down from previous years, IBS continues to be the building industry’s premiere event.

Dan Larabee, Larabee Construction Inc (Aztec), liked the opportunity to see new products firsthand and speak with reps about them. “We were really into the solar products,” he said. “We will be using a lot of the alternative energy products in our own business.”

Andy Cordova, A.D.C. Construction (Clovis), enjoyed learning about the new ideas and products to simplify his trade, such as shower pans, roofing material and shingles, windows, and doors. “You not only learn about products, but you also get to meet contractors from other states and compare ideas,” he said.

“I loved the exhibits, but made the mistake of not mapping out all I wanted to see,” said Perry Paulazzo of Chaboney Inc. dba Service Master of Santa Fe. “You should plan what you want to see before you go; it’s too big to do on site.”

“The floor exhibits were overwhelming,” said David Jackson of Real Sharp Construction Services (Albuquerque). “Truthfully I wasn’t sure what to expect. But it was great.”

The 2010 International Builders’ Show will remain in Las Vegas and is scheduled to take place January 19-22.



# Summary of Construction Industries Commission Meeting

Our construction industries' rule making and disciplinary board met in January, and their agenda as distributed at the meeting is reproduced here for you to see what business they dealt with. NMHBA comments on topics of interest are included in italics.

---

## AGENDA

### I. Convene – Roll Call

Introductions

### II. Approval of Agenda

### III. Approval of Minutes

November 21, 2008 Regular Meeting

### IV. Date and Location of Next Meeting

March 20, 2009, Location TBD

### V. Public Comment

### VI. New Business

a. Election of New Chairman and Vice Chairman

*Tom Montano re-elected as Chairman; David Dallago re-elected as Vice Chair.*

b. Approval of Open Meetings Act Resolution

c. Request Approval of Electrical Continuing Education Courses and Instructors - Rem Pacheco, Electrical Bureau Chief

d. Request Approval for Stipulated Agreements - Maria Lopez, Compliance Bureau Chief

Issaiah Blancas

Paul Musante

Weldon Alred

Kent Miller

Emiliano Acosta

Bob Fisher dba Springfield Mechanical

Jeff Clark

Design Glass Incorporated

Jerry D. Griffin

Jose Brito

Steve Dougherty

Eagle Carports / Alicia Torres

Harvill Industries / William Harvill

Bill Jackson

Sandra Martinez dba Clear Choice USA

Lorenzo Pino

Jose Saldivar

Arthur Hames dba Sweetwater Barn Company

Taos Stone / Joe Garcia Jr.

Matt Vasquez

Paul Waldmann

John Lopez

Evergreen LLC / Kimberly King

*CID staff reported that contractors who had agreed to be fined contributed \$38,000 to the state's General Fund.*

e. Pilot Project: Sharing of Inspection Services between Local Government Programs

- Lisa Martinez-CID Director and Bill Fulginiti-New Mexico Municipal League

*Director Martinez asked the Commission to approve a pilot project allowing jurisdictions to combine forces to offer plan check and full service inspections. Clovis and Portales and Rio Rancho and the Village of Bernalillo will combine. One further combination will be allowed under the 12-month pilot project. (NMHBA and several local associations have been advocating for this change for several years with the goal of better efficiency for code compliance services.)*

f. Request Approval to Proceed to Public Hearing – NMAC 14.12.3.16(D)

- Fermin Aragon

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**VII. Old Business**

**VIII. Executive Session**

**IX. Presentations:** Electrical Bureau Activity Overview – Rem Pacheco

*Bureau Chief Pacheco reported his bureau did 35,000 inspections last year. The bureau has approved a number of continuing education courses, 49 of which are available online.*

**X. Director’s Report** – Lisa Martinez  
Request Approval of Licenses Issued in November and December, 2008

*CID has been assigned the job of administering the new recycled metals law whereby recyclers will be tracked and recycled metals will be accounted for. Director Martinez said she believes this program should have been assigned to the Department of Public Safety.*

*Governor Richardson’s office has asked CID to plan for a 5% reduction in next year’s budget. The Legislature in their budget proposal has asked for a .67% reduction. Martinez reported a 5% reduction will be difficult to deal with.*

*CID is proposing 5 different consumer protection related bills for the 2009 legislature. Editor’s Note: CID staff have noted they have been deeply involved in several high profile home investigations where fraud and other allegations have taken much of their time and resources. Local District Attorneys have refused to pursue allegations against contractors and CID apparently feels they must pursue these with their resources even though they involve more than code violations.*

*Director Martinez will be asking the Legislature to extend the time for implementation of HB 219 (the all or nothing date for taking all code compliance activity or giving it all back to CID) for two more years.*

*Jack Milarch asked for at least a 6-month extension in the July 2009 effective date for the new code compliance bond because CID has failed to prepare rules and processes for implementation of the change. Director Martinez said she will consider asking the Legislature to make this change.*

**XI. Other Business**



South Central Region National Highway  
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become more energy efficient.

2. Distributions to and from the existing Low Income Utility Assistance Fund. The fund would receive one-third of the natural gas processors tax. The distribution is repealed June 30, 2014.

HB732 divides oversight and administration of the Low Income Utility Assistance Act among the Human Services Department for LIHEAP, EMNRD for the low income energy efficiency improvement programs, and the Mortgage Finance Authority for weatherization programs.

### **Subdivisions or Municipalities**

HB37 (Begaye) "*Subdivision Act Tribal Notification*" was presented as concerning Indian tribes that sometimes have culturally significant sites that are now on private land miles away from the current Indian reservation lands. The tribes are seeking a way to be notified whenever a subdivision is considered so they may protect sacred land. The problem for developers is how to find out which areas are considered "hands off" early in the process before they have spent thousands of dollars on grading plans and subdivision layouts that may have to be totally reworked once they are informed of areas of cultural significance. After meeting with tribal Governors and suggesting amendments to their lobbyist, what we thought was a simple mistake in word-smithing appears to be a revelation of the true agenda for this bill. The Indian nations want to have the same review authority of transportation, water supply and quality, and terrain management (drainage) as the State Departments of Transportation (DOT) and Environment (NMED), the State Engineer's Office (SEO), and the soil and water conservation district. The wording would essentially permit the Indian nations to provide comments on the comments of the SEO, DOT, NMED and the soil and water conservation district. NMHBA has been treating this as a delicate issue of culturally significant sites requiring negotiation between the Indian Governors and developers' groups. Now it appears the problem is this bill may slow down the subdivision process across the state while counties wait to hear the opinions of each of the Indian Nations in the state. HB37 required every Indian nation, tribe or pueblo to send an annual request to each county in the state to be placed on the notification list. If they failed to accomplish this, their comments would carry no greater weight in the subdivision process than any other interested person. The bottom line is the decision rests with each county commission. All opinions, including those under HB37 are advisory. This bill has been amended, substituted and amended again, so it is difficult to tell what the latest version looks like. If you want the latest version of HB37, call Melanie at the NMHBA office.

NMHBA is supporting SB629 (Boitano) "*Maximum Sales Price On Private Lots & Homes*" that forbids municipalities or other political subdivisions from setting a maximum sales price for residential lots or a privately-produced housing unit. The concept of inclusionary zoning is catching on across the state as a way for municipalities to require developers to provide low-cost housing in their communities. This bill doesn't prevent voluntary agreements where builders and municipalities work together to produce affordable housing. It simply invalidates mandatory inclusionary zoning such as the current 30% requirement in Santa Fe.

### **Climate Change**

With all the discussion of global warming everyone has an idea of how best to save the planet. Some bills introduced this session are aimed at reducing the amount of carbon dioxide (CO<sub>2</sub>) released into the atmosphere, while others are geared toward provision of clean energy sources.

NMHBA is supporting SB291 (Feldman). "*Sustainable Building Tax Credit Provisions*" broadens the earlier version of Sustainable Building Tax Credit legislation to all building owners, not just taxpayers, which allows non-profits to sell tax credits. It also allows tax credits for multifamily dwellings to be charged against the commercial tax credits limit if the residential allocation has been exhausted and there are unclaimed credits in the commercial category. Due to the recent ANSI certification of the NAHB Green Building Standards, the bill was amended to give BGNM equal credits as LEED-H certified homes. This bill follows the federal government's lead on encouraging more energy efficiency.

We are also closely monitoring the efforts to provide state tax credits for solar photovoltaic (PV) installations on residences and geothermal heat pumps on both residential and commercial properties. It appears several groups are searching for the best method to provide the initial funding to pay the up-front costs of installing PVs on residences. SB257 (Keller) "*Solar Market Tax Development Credit*" amends solar tax credits to allow an additional 10% credit on top of the federal credit of 30%. HB375 (Gonzalez, R) & SB442 (Cisneros) both provide for 30% tax credit (up to a max. \$9,000) for installation of residential geothermal heat pumps. \$2 million a year in credits cap.

Bringing an idea from California to New Mexico, HB572 (Egolf) "*Solar Energy Improvement Special Assessments*" establishes a procedure for a special assessment district to be set up by a county that allows willing homeowners to participate to have private financing fund the installation of

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solar PV units and having the money spent become a tax lien on their property.

We are interested to see that HB653 (Rodefer) “*Environmental Board Greenhouse Gas Rules*” did not make it through the House Energy & Naturalization Committee. It would establish a cap-and-trade program for those who emit 10,000 tons per year of CO2 and provides for Statute to “sunset” when the federal government develops a program that will result in emission reductions at least as great.

### Water

Just as important as lots to build upon, the availability of water is of great concern to NMHBA members. We are actively opposing HB521 (Varela) which is the annually introduced anti-domestic wells bill. It appears this bill was opposed not only by the Well Drillers’ Association, the Realtors Association of New Mexico, and NMHBA, but even by the State Engineer.

### Miscellaneous

This Session has seen a lot of money shuffling. Raids on unused funds to divert the money for another purpose are becoming common. SB30 (Cisneros) “*Septic Tank Replacement Assistance*” was for \$4 million to establish the Liquid Waste Disposal System Assistance Fund to provide funds for replacement of cesspools and other non-approved septic systems for indigent citizens. A committee substitute deleted the appropriation and modified several other funds under the control of the NM Environment Department to allow their unused funds to be transferred into this new fund.

HB488 (Lujan) “*Title Insurance Rates, Hearings & Coverages*” began as a consumer-protection bill and changed into one that created increased competition in the industry. All parties agreed on the compromise bill complete with arms around one another’s shoulders. As is common with these negotiations controversial ideas get dropped in the name of compromise. The Committee Substitute removed requirements for title insurance to cover losses for defects not shown on public records and pay damages resulting from negligent title searches.

### Lien Law

Every time there is an industry downturn there will be more interest in the Lien Law as invoices begin to be paid late. There were two bills and a memorial introduced this session to address this issue. One bill, HB859 “*Reduce Lien Time Limit Without Court Claim*” (King), included reverting back to the early 1990s’ limit of only six months

in which to file a lawsuit to enforce the lien.

Rep. Al Park introduced HB300 “*Clarify Lien Claims & Invalid Lien Damages*” in response to complaints by constituents that contractors (both general and subcontractors) were placing invalid or excessive liens on residential property as a method to force payment. During discussions of HB300 every lawmaker had stories of how similar actions had been taken against people they knew, and each seemed to have their own idea for better solutions to the problem. HM64 (Rehm) was introduced to stop the bombardment of ideas for amendments to HB300.

HM64 (Rehm) “*Stop Notice Act Study Task Force*” has passed, and this means continued discussions of the Stop Notice Act and mechanic’s liens will be taken up next summer during the Interim Committee meetings around the state. The changes to this Act could be big as the various interests all angle to promote their competing agendas: general contractors want to limit the rights of subcontractors to lien their projects, the subcontractors want to strengthen their rights to get paid, bankers are seeking to prevent invalid liens from holding up closings, and legislators are trying to incorporate

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## NM Residential Building Permits – Now and Then

(YTD through December 2008  
& through December 2007)

County	2008	2007
New Mexico - Balance of State*	890	1448
Bernalillo County	1253	2462
Chaves County	40	54
Colfax County	13	36
Curry County	116	132
Dona Ana County	834	1288
Eddy County	108	99
Lea County	93	113
Lincoln County	91	164
Los Alamos County	6	21
Luna County	44	76
McKinley County	9	31
Otero County	65	153
Rio Arriba County	0	6
Roosevelt County	29	29
Sandoval County	670	1074
San Juan County	274	372
Santa Fe County	140	277
Sierra County	3	4
Socorro County	13	16
Taos County	116	195
Valencia County	98	199
<b>Total</b>	<b>4905</b>	<b>8249</b>

\* Includes the following counties: Catron, Cibola, De Baca, Grant, Guadalupe, Harding, Hidalgo, Mora, Quay, San Miguel, Torrance, and Union

Source: U.S. Census Bureau

## NM Residential Building Permits – Now and Then

(YTD through January 2009 &  
through January 2008)

County	2009	2008
New Mexico - Balance of State*	55	69
Bernalillo County	43	104
Chaves County	1	1
Colfax County	1	1
Curry County	21	10
Dona Ana County	68	77
Eddy County	1	8
Lea County	2	5
Lincoln County	2	6
Los Alamos County	0	0
Luna County	1	4
McKinley County	0	1
Otero County	0	8
Rio Arriba County	0	0
Roosevelt County	0	1
Sandoval County	57	52
San Juan County	17	20
Santa Fe County	5	12
Sierra County	0	1
Socorro County	0	0
Taos County	2	15
Valencia County	3	7
<b>Total</b>	<b>279</b>	<b>402</b>

\* Includes the following counties: Catron, Cibola, De Baca, Grant, Guadalupe, Harding, Hidalgo, Mora, Quay, San Miguel, Torrance, and Union

Source: U.S. Census Bureau

**2009 NMHBA  
Meeting Calendar**

**March**

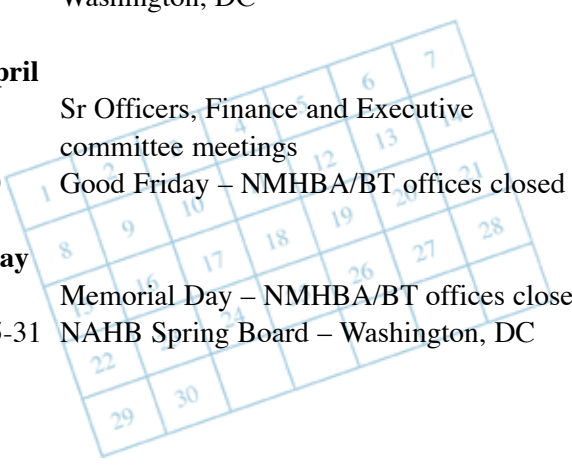
- 13 Gov't Affairs and BIC committee meetings
- 21 Legislative Session ends
- 24 NAHB Legislative Conference – Washington, DC

**April**

- 3 Sr Officers, Finance and Executive committee meetings
- 10 Good Friday – NMHBA/BT offices closed

**May**

- 25 Memorial Day – NMHBA/BT offices closed
- 25-31 NAHB Spring Board – Washington, DC



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consumer protection. Part of the problem is no one is held responsible for invalid liens under the current system. County Clerks accept liens that are improperly notarized and incorrectly filled out. Contractors who are unaware of the nuances of the law file liens after the time deadline has passed, and in some instances for unsubstantiated amounts or for work that has not been completed. Current law has no requirement the County Clerks notify homeowners of the lien being recorded on their property, and there are no penalties for clerks or contractors when they have recorded invalid liens. All of these issues will be just the starting points for discussions over the next two years before new legislation can be introduced in the next 60-day session in 2011.

### **Workers' Compensation**

Builders Trust Claims Manager Dan Stock has been assisting the lobbying efforts and testifying on bills concerning workers' compensation. HB506 (Martinez, K) "*Workers' Comp & Occupational Disease Law*" as originally introduced would have eliminated the cap on attorneys fees in work comp cases. As a result of negotiations it was amended to closely resemble SB579 (Campos) "*Increase Workers' Comp Attorney Fee Limit*" that BT already supported. After SB579 was slightly amended both bills were mirror images.

It was also critical that SB609 (McSorley) "*Workers' Comp Disabilities & Attorney Fees*" be killed. What's bad about SB609 was that would have allowed "stacking" of two or more disabilities to permit compensation to exceed the maximum 500 weeks. It also would have allowed combining injuries in two different categories so a claimant could be more than 100% disabled. It would have required increased payments if a claimant's hearing loss worsened after the initial injury determination, and would have allowed lawyers to be paid for their time spent processing their billing for the claim. The \$16,500 cap on attorney fees for a single accidental injury claim would not include reimbursement for travel, food and lodging at the rates specified in the Per Diem and Mileage Act for employees. The bill would have permitted a judge to exceed the cap in the case of an attorney representing a claimant who seeks and is awarded a benefit for a total permanent disability.

SB303 (Sanchez, M.) "*Firefighter Occupational Diseases*" is another story entirely. While it appears to have no impact on the construction industry, it might in future years. This Bill is a "Governor's Bill" and likely to be signed into law by the Governor. This Bill is one of many work comp bills passed or being proposed across the nation seemingly as a result of medical problems highlighted in

firefighters after responding to the World Trade Center disaster of 9-11. Currently the injured worker must prove his/her case. Instead of having to prove that the heart attack, cancer, lymphoma, leukemia, hepatitis, tuberculosis, or infection was caused by exposure on the job, the disease is presumed to have been caused by the employment, and the employer must prove it was not. The shifting of the burden of proof to the employer is the monumental change in the statute that this bill creates. Municipalities and counties have no way of projecting how many of their employees might get one of the cancers or infections listed in the bill, or experience a heart attack. Therefore they can't predict how much money to put in reserve just in case a work comp claim is filed, and they don't know how much their work comp rates will increase. (Estimates are for increases to range from 1.4% to 17%.) In addition to all of our taxes increasing to cover these costs to our municipality or county, this legislation could easily be changed in future years to the great detriment of all employers. It is expected that other occupational groups or industries will argue in future legislative sessions, or before courts under the equal protection clause, that they too should get special treatment. Occupational diseases are not covered in the work comp laws because contracting the disease is usually a process that occurs over a period of time, based on exposure to some disease causing agent(s). The statute has a 'last known exposure' section and normally the employer stuck with the claim is the employer where the employee had his/her last known exposure to the disease causing agent(s). Builders Trust believes that the worker's burden to prove their claim is work-related is a basic tenet of all state workers' compensation systems, and once that foundation is cracked, collapse could be close behind.

### **For More Information**

NMHBA has been e-mailing updates on the bills mentioned here, plus many others, each Friday during session. If you wish to be placed on the distribution list for next session and following sessions, just let us know. You can send your e-mail requests to [melanie@nmhba.org](mailto:melanie@nmhba.org) at any time to be added to the Legislative Update listing.

With the mountains of bills introduced this session and the varied interests of NMHBA members we can't possibly cover the details of every bill individual members may be interested in. If you've heard of a bill of particular interest you'd like us to look up for you, call Melanie Teeter at the NMHBA office.

*The actual text of any bill along with the legislative staff analysis of the bill, may be found online at <http://www.legis.state.nm.us>. Click on "Legislation", then "Bill Finder" on left side, enter the bill number, and scroll down to the file.*

