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## FISCAL IMPACT REPORT

SPONSOR: Leavell DATE TYPED: 02/08/01 HB \_\_\_\_\_  
 SHORT TITLE: Amend NM Insurance Code SB 275  
 ANALYST: Carrillo

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Office of the Attorney General (AG)  
 State Highway and Transportation Department (SHTD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 275 proposes to prohibits entities from requiring prospective construction contract bidders or proposers to acquire of or disclose financial information to a particular surety company. Violation of this provisions is a fourth degree felony.

#### Significant Issues

The SHTD staff notes the proposed penalty for violation exceeds the penalty for other violations of the Procurement Code.

The AG's staff states Sections 13-1-146 and 13-4-18 NMSA 1978 require contractors to obtain bid security prior to the execution of a construction contract. If SB275 is not enacted, there will remain little incentive for local procurement officials to avoid referring prospective contractors to a particular surety company. This leaves open the possibility for local procurement officials to favor particular surety companies and may conceivable invite a surety company to reward this favoritism with graft.

## CONFLICT

SHTD states this bill, as drafted, would seem to conflict with the Little Miller Act, Section 13-4-18 NMSA 1978, which mandates that the state insure that public works projects are covered by both payment and performance bonds.

## TECHNICAL ISSUES

SHTD staff indicates the omission of two critical prepositions in Section 1(A) leaves the impression it is a fourth degree felony for a state employee to simply require a bidder or proposer to make application or furnish financial data for a surety bond. Since the New Mexico Little Miller Act directs the state to make certain that payments of performance bonds are in place on public works projects, it is doubtful the intent is to now make such conduct criminal. Furthermore, the bill purports to apply to “a bidder or *proposer* in any procurement.” However, the term “proposer” is not defined in the bill, and is not used in the Procurement Code. The common reference is “offeror”. (See Substantive Issues for suggested amendments)

## OTHER SUBSTANTIVE ISSUES

SHTD suggests the following amendments:

- A. An employee of the state or its political subdivisions, or a person acting or purporting to act on behalf of that employee, shall not require a bidder or ~~proposer~~ offeror in an procurement pursuant to the Procurement Code for a construction contract to make application to, or furnish financial data for a surety bond to, or obtain a surety bond from, a particular surety company, insurance company, broker or agent in connection with the bid or proposal.
- B. A person who violates the prohibition of Subsection A of this section is guilty of a ~~[fourth degree felony]~~ misdemeanor. ~~[and shall be sentenced in accordance with the provision of Section 31-18-15 NMSA 1978]~~

WJC/njw