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FISCAL IMPACT REPORT

SPONSOR: Ponce DATE TYPED: 03/05/03 HB 814/aHLC/aHFI#1
 SHORT TITLE: Public Works Contract Apprenticeship Programs SB _____
 ANALYST: Geisler

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
		.01 See Narrative	.01 See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB 616

SOURCES OF INFORMATION

General Services Department (GSD)
 Department of Finance and Administration (DFA)
 Energy, Minerals, and Natural Resources Department (ENMRD)
 Department of Labor (DOL)

SUMMARY

Synopsis of HFI Amendment#1

House Floor Amendment # 1 for House Bill 814 broadens the bill to include “Apprenticeship and Training” from Apprenticeship only. To accommodate this expansion, on page 2 between lines 3 and 4, the following additional subsection D is added to define training.

- “D. “training program” means an on-the-job- training program for highway and utility construction that is recognized by the United States department of labor and the federal highway administration.”.

Synopsis of HLC Amendment

The House Labor and Human Resources Committee Amendment to House Bill 841 strikes the requirement that all projects entered into by a public agency valued in excess of \$100,000 shall include provision requiring the contractor/subcontractor to maintain an apprenticeship program for the life of the contract. Language is also added to state that public works projects contracts

are subject to the provisions of Subsection A of Section 13-4-11 NMSA 1978 for apprenticeship programs. The amended bill also limits the use of funds from the public works apprentice and training fund for staff and fund administration to no more than 15% of the fund.

Synopsis of Original Bill

House Bill 814 will require that public works contracts entered into by a public agency valued in excess of one hundred thousand dollars (\$100,000) shall include provisions requiring the contractor and any subcontractors to maintain, for the life of the contract, an apprenticeship program.

Significant Issues

Several agencies have expressed the concern that this bill will increase the cost of contracts and require significant administrative oversight. Contractors will be compelled to add the cost of the program to the overhead charged for public contracts in order to comply with this proposal. This will increase the contractor's time to complete a job while administering the apprenticeship program. There will be an administrative burden placed on the state agencies to enforce the program and ensure compliance.

Both the DOL and GSD point out that this bill and other proposed legislation should be considered in concert with existing law.

FISCAL IMPLICATIONS

Not determined, but agencies believe construction contract costs could increase as contractors pass on some of the costs of administering the apprenticeship program.

ADMINISTRATIVE IMPLICATIONS

This bill will result in an increase in the number of apprenticeship agreements that have to be processed through the DOL apprenticeship program. There is often a backlog of certifications, and additional work may cause further delays. During the contracting stage for GSD handled public works projects in excess of \$100.0, GSD would need to assure that the required apprenticeship program was in place. It is anticipated this would be handled in the form of a certification by the contract, such that the contractor assumes responsibility for compliance.

RELATIONSHIP

This bill relates to HB 616 - Amend Public Works Minimum Wage Act. HB 814 requires application of its provisions on the same type of public works projects that HB 616 requires, thus making the applicability of each bill consistent with the other. HB 814 is slightly more expansive in its application, however. It applies to installation projects regardless of whether the installation involves construction or alteration of the building in question.

TECHNICAL ISSUES

On page 1, line 24 following the comma after "department" the word "instruction" is used, which by itself appears to be incomplete with regards to a definition of a public agency. This

may be an error and the word “institution” may be the correct word.

OTHER SUBSTANTIVE ISSUES

Provided by GSD:

When considering the impact on public work construction projects, this bill should be considered in concert with the existing “Public Works Apprenticeship and Training Act,” Section 13-4D-4(B) NMSA 1978.

- The existing Act requires all public works construction projects (with certain limited exceptions) to contribute to approved apprenticeship programs or to an apprenticeship and training fund maintained by the labor department. If this provision is not complied with, the construction project may not proceed.
- Under the proposed legislation, for public works contracts over \$100.0, contractors must also maintain their own apprenticeship program per guidelines in the bill.
- The limited exceptions found in the current statute do not appear in the proposed legislation. Current statute exempts the following types of projects: street, highway, bridge, road, utility or maintenance contracts for the purpose of having an apprenticeship program or contributing to the fund.

Provided by DOL:

- The status quo is that any contractor may, but need not, enter into an apprenticeship agreement with the Department of Labor. This agreement allows contractors to use lower-wage apprentices to assist higher-wage journeymen on public works contracts, in theory allowing the contractor to bid lower on projects because of assumed lower wage costs. In return, the contractors promise to train the apprentices and to follow the paperwork protocols of the program. The program is funded by all contractors, regardless of whether they have an apprenticeship agreement in place, because all contractors must pay an apprenticeship contribution as part of the prevailing wage on Public Works Minimum Wage Act jobs.
- HB 814 requires that, for all public works projects over \$100.0, contractors enter into an apprenticeship agreement specific to that job. This would provide the contractors’ workers with training in the building trades. It does not assure the long-term training necessary for an excellent apprenticeship system, but it does facilitate a good start for New Mexicans seeking to upgrade their work skills. The contractors will have to pay apprenticeship contributions for that particular job, but that requirement already exists for many of the skilled trades on public works projects anyway.
- HB 814 does expand the applicability of its provisions to some extent. The bill applies to installation jobs. This addresses *Universal Communications Sys. v. Smith*, 104 N.M. 754 (1986), which says that retrofitting without substantial alteration of the structure does not give rise to applicability of the Public Works Minimum Wage Act. HB 814 also states it applies to construction on buildings leased by public entities. This addresses *Memorial Med. Ctr., Inc. v. Tatsch Constr., Inc.*, 129 N.M. 677 (2000), which gave public entities broad

authority to avoid applicability of the Act by entering into creative financial arrangements that make them pay for a building but only lease it.

GG/ls