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FISCAL IMPACT REPORT

SPONSOR: King DATE TYPED: 2/25/03 HB 904

SHORT TITLE: Contractor Proof of Financial Responsibility SB _____

ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI		NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Construction Industries Division of Regulation and Licensing Department

SUMMARY

Synopsis of Bill

House Bill 907 changes the manner in which licensed contractors may demonstrate proof of financial responsibility, as required under the Construction Industries Licensing Act, for issuance and maintenance / renewal of a construction license.

Currently, the law provides that a contractor may demonstrate compliance with this licensing requirement one of three ways: (1) a license bond, (2) cash collateral, *or* (3) *provision of a current financial statement as issued by a financial institute*. HB 907 eliminates this third option (provision of a current financial statement).

The bill also provides that the failure to maintain proof of financial responsibility shall result in a cause of action (brought by the Construction Industries Division) for revocation of the contractor's license, or the assessment of an administrative penalty of not less than \$500 or more than \$5,000. Currently, the only cause of action available to the Division is the revocation of the license.

Finally, HB 904 also strikes the 12-month "statute of limitations" for bringing action against a licensee on the proof of responsibility.

Significant Issues

1. The major concern related to the contractor's "proof of responsibility" issue is that homeowners are often led to believe that licensed and bonded means there exists an insurance policy which the homeowner may access in the event of contractual or performance liability on the part of the contractor. This is an erroneous understanding on the part of homeowners. This "proof of responsibility" is a licensing bond that the state may assert a claim against for satisfaction of a licensing, permit, fee or penalty claims.
2. Striking financial statements as an option will aid the Division in keeping better track internally of contractors' compliance with the proof of responsibility requirements. Currently, when a bond or cash collateral assignment certificate is voided / cancelled, the Division (having been named jointly with the contractor on the bond or collateral assignment certificate) is automatically notified by the financial institute through which the bond or certificate was obtained.

However, with an internal financial statement, if the contractor's assets / business value changes, the Division has no way of knowing.

3. It is easier for the Division to move against a jointly held bond or collateral certificate than against a contractor's independently held assets for satisfaction of a fee or fine debt to the division.
4. In removing the 12 month "statute of limitations" (running from the time the case accrues or substantial completion of the project, whichever is earlier), HB 904 recognizes that it is often difficult to identify claims for which proof of responsibility may be important in a timely fashion. However, with the elimination of the financial statement option, the division should be able to identify whether the required proof of responsibility is being maintained, and is available for satisfaction of a fee or fine debt to the Division.

Troubles relating to statutes of limitations are raised by homeowners who allow a known code violation to linger, unaddressed, until the time frame allowed for seeking a remedy through the Construction Industries Division has expired. A homeowner has two years from the date of discovery of a code violation to seek the assistance of the Division. A contractor should not be liable indefinitely, and the two year period is fair to the homeowner and the contractor.

FISCAL IMPLICATIONS

HB 904 has no direct financial implications for the state. However, a secondary benefit may exist for the state if the Construction Industries Division is able to more easily identify non-compliance with the proof of responsibility requirements, and/or is able to take action against bonds or collateral assignments in order to satisfy unpaid fees or fines. This is revenue to the general fund. However, the Division rarely pursues the payment of fees or fines through the proof of responsibility on file.

RELATIONSHIP

Senate Bill 141 and House Bill 609 increase penalties related to a contractor's failure to disclose

to a consumer that the bond does not benefit the consumer. Senate Bill 141 also contains a provision that requires contractors to obtain a consumer protection bond as a part of licensure.

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