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FISCAL IMPACT REPORT

SPONSOR: Leavell DATE TYPED: 02/25/03 HB _____

SHORT TITLE: Prohibit Directed Suretyship SB 180/aSJC/aSF#1

ANALYST: Geisler

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Regulation and Licensing Department (RLD)
 State Highway and Transportation Department (SHTD)
 General Services Department (GSD)

SUMMARY

Synopsis of SFL#1 Amendments

Senate Floor Amendment #1 amended the bill to clarify that it does not prohibit public employees from making sure that sureties on construction projects meets all requirements otherwise provided by law and made one technical change to language.

Synopsis of SJC Amendments

The Senate Judiciary Committee amendments adjust the penalty for violation of the statute and make a technical correction to the bill.

1. On page 1, line 25, strike “fourth degree felony” and insert in lieu thereof “misdemeanor”.
2. On page 2, lines 1 and 2, strike “Section 31-18-15 NMSA 1978” and insert in lieu thereof “Section 31-19-1 NMSA 1978.”

Synopsis of Original Bill

Senate Bill 180 would make it a fourth-degree felony for a State employee, or one acting on behalf of a State employee, to require a bidder on a construction contract, subject to the State procurement code, to make application or furnish financial data for a surety bond, or to obtain a surety bond from a particular surety company, insurance company, broker or agent in connection with the bid.

Significant Issues

Both RLD and SHTD have expressed concerns about the clarity of the bill. According to SHTD, the bill needs to be clarified to make sure that public employees who require that bidders or offerors use a surety company that is authorized to do business in New Mexico and is approved in federal circular 570 or by the state board of finance or the local governing authority as required by NMSA 1978, Section 13-4-18, are not in violation of the requirements of the bill.

The RLD mentioned three significant issues:

1. It is not clear whether the language “from a particular surety company, insurance company, broker or agent in connection with the bid or proposal” applies only to obtaining a surety bond, or to making application and furnishing financial data for a surety bond.
2. Contractors already licensed by the State have often applied, and supplied financial information to, unspecified bonding and insurance entities as a statutory prerequisite for licensure.
3. Is this language proposed for inclusion in the criminal code?

FISCAL IMPLICATIONS

Indeterminate

ADMINISTRATIVE IMPLICATIONS

SHTD has to routinely check to make sure that contractors on its construction projects use surety companies to provide payment and performance bonds that meet the requirements set forth in NMSA 1978, Section 13-4-18; i.e., that the surety company is authorized to do business in New Mexico and is approved in federal circular 570 or by the state board of finance or the local governing authority. The bill makes no reference to those requirements. As written, the bill could conceivably punish employees who advise bidders or offerors that it must use a surety that complies with Section 13-4-18.

RELATIONSHIP

Unknown. There may be some ambiguity when the financial responsibility provisions of the Construction Industries Licensing Act, NMSA 1978, Section 60-13-49, are considered. If a contractor is required to be licensed to bid, and licensure requires proof of financial responsibility, the prohibitions of this bill could be implicated to the extent it is read to apply to non-specified bonding and insuring entities.

TECHNICAL ISSUES

Under the New Mexico Procurement Code, an entity that submits a proposal in response to a request for proposals is called an “offeror” rather than “proposer”. NMSA 1978, Section 13-1-83

ALTERNATIVES

GSD notes this offense could be added to sections 13-1-196 and 13-1-199 of the New Mexico Procurement Code which provide both civil and criminal penalties for any person, firm or corporation that knowingly violates any provision of the Procurement Code.

AMENDMENTS

From SHTD :

1. In subsection A, delete “proposer” and insert “offeror”.
2. Add clarifying language in subsection A that the bill does not prohibit public employees from making sure that sureties on construction projects meet all requirements otherwise provided by law.

From RLD:

3. Clarify the language based on the answer to significant issue #1.
4. Reconcile conflicts or ambiguities with the Construction Industries Licensing Act (NMSA, 1978, Section 60-13-49).

GG/prr