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FISCAL IMPACT REPORT

SPONSOR Taylor, JG DATE TYPED 2/6/04 HB 471/aHTRC

SHORT TITLE Contractor & Subcontractor Registration SB _____

ANALYST Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$600.0		\$600.0	Recurring	Labor Enforcement Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	\$600.0	\$600.0	Recurring	Labor Enforcement Fund

(Parenthesis () Indicate Revenue Decreases)

Duplicates SB 178

SOURCES OF INFORMATION

LFC Files

Response Received From

Regulation and Licensing Department (RLD)

New Mexico Department of Labor (DOL)

SUMMARY

Synopsis of HTRC Amendment

The House Taxation and Revenue Committee amendment to House Bill 471 makes the following changes:

The language in section 1E is stricken as follows:

~~E. For the purposes of this section, "contractor" and "subcontractor" include any party acting in such capacity regardless of professional licensure, including public entities."~~

This corrects the provision in this bill that made the registration requirement applicable to all parties “regardless of professional licensure.” Unlicensed contracting, which includes bidding on construction projects, is a misdemeanor under the CILA.

The amendment on page 3, lines 15 through 18 adds the following language:

"[NEW MATERIAL] REGISTRATION CANCELLATION, REVOCATION, SUSPENSION--INJUNCTIVE RELIEF.--The director of the labor and industrial division of the labor department may:

A. cancel, revoke or suspend with conditions including probation the registration of any party required to be registered pursuant to the Public Works Minimum Wage Act for failure to comply with the registration provisions or for good cause subject to appeal pursuant to Section 13-4-15 NMSA 1978; and

Synopsis of Original Bill

House Bill 471 amends the Public Works Minimum Wage Act to require contractors and subcontractors who bid or work on Public Works Minimum Wage Act (PWMWA) projects to register with the Labor and Industrial Division (LID) of the New Mexico Labor Department (NMLD). The state and political subdivisions would be prohibited from accepting bids from contractors who do not provide proof of registration for any PWMWA project.

Significant Issues

As part of the registration process, contractors must pay annual registration fees of \$200. These fees, collected by the LID, are deposited in a new labor enforcement fund. The LID is charged with administration this fund and appropriations may be made to the LID for administration and enforcement of the PWMWA.

The registration requirement would apply to any party acting in the capacity of a contractor, including public entities, regardless of professional licensure.

Unlicensed construction activity is a misdemeanor under the Construction Industries Licensing Act (CILA). Therefore, the provision in this bill that makes it applicable to everyone, regardless of “profession licensure,” may inadvertently authorize, or create the appearance of authorizing unlicensed criminal activity.

FISCAL IMPLICATIONS

The bill creates a new fund, the labor enforcement fund. Funds deposited in the labor enforcement fund are not subject to general fund reversion.

The bill would provide additional revenue to the LID for administration and enforcement of the PWMWA. The NMLD estimates that the \$200 annual contractor’s fee would generate approximately \$600.0 to the labor enforcement fund.

Continuing appropriations:

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

ADMINISTRATIVE IMPLICATIONS

The bill would assist the LID in its enforcement of the Public Works Minimum Wage Act and the registration requirement is not expected to impact the licensing, permitting or inspection processes regulated by Construction Industries Division (CID).

According to the NMLD, the labor enforcement fund will bring revenue that is needed to help fund an additional FTE to perform responsibilities associated with enforcing the Public Works Minimum Wage Act.

TECHNICAL ISSUES

The bill, as written, may conflict or create the appearance of conflict, with the CILA. The provision of the bill, on page 2, lines 19-22, makes the registration requirement applicable to all parties “regardless of professional licensure.” Unlicensed contracting, which includes bidding on construction projects, is a misdemeanor under the CILA.

Therefore, unlicensed persons could register with the LID and be apparently authorized to bid on projects under that statute, but doing so would constitute a violation of the CILA, thus subject them to criminal charges.

OTHER SUBSTANTIVE ISSUES

According to CID, it is not uncommon for their licensees to experience disciplinary problems that arise out of undercapitalization. By better enforcement of mandatory wage requirements, a segment of the licensee base would, theoretically, be receiving payment for services that it may not be receiving now due to violations of the Minimum Wage Act. While better enforcement of this statute may affect only a fraction of CID’s licensees, it could have a positive impact on the economic health of the construction industries, which could in turn eventually result in better licensee performance overall.

RLG/yr