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FISCAL IMPACT REPORT

SPONSOR Aragon DATE TYPED 02/01/04 HB _____

SHORT TITLE Contractor & Subcontractor Registration SB 178/aSCORC

ANALYST Gilbert

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	Indeterminate	Indeterminate	Recurring	New Labor Enforcement Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Regulation and Licensing Department (RLD)

State Highway and Transportation Department (SHTD)

No Response Received From

New Mexico Labor Department (NMLD)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to Senate Bill 178 made the following changes to clarify the intent of this bill:

~~Strikes the definition in Section 1E: "For the purposes of this section, "contractor" and "subcontractor" include any party acting in such capacity regardless of professional licensure, including public entities."~~

Add the following language to Section 3A: "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

Senate Bill 178 amends the Public Works Minimum Wage Act to require contractors and sub-contractors 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. However, the NMLD did not provide an estimate as to how many contractors may be subject to the \$200 annual fee.

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).

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/lg:dm