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FISCAL IMPACT REPORT

SPONSOR Lujan, B. **ORIGINAL DATE** 1/31/07 733/aHLC/aHBIC/aSJC/
LAST UPDATED 3/14/07 **HB** aSFL
SHORT TITLE Construction Industry Proof of Responsibility **SB** _____
ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY07 | FY08 | | |
| NFI | NFI | NA | NA |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 13

SOURCES OF INFORMATION

LFC Files

Responses Received From

Construction Industries Division (CID)

SUMMARY

Synopsis of SFL Amendment

The Senate Floor amendment for HB 733 strikes the SJC amendment thus maintaining the HBIC amendment which set the effective date of July 1, 2008.

Synopsis of SJC Amendment

The Senate House Judiciary Committee amendment for HB 733 strikes the original effective date of July 1, 2008 and replaces it with the new effective date of July 1, 2009.

The amendment makes a technical change.

Synopsis of HBIC Amendment

The House Business and Industry Committee Amendment for House Bill 733 set a two year time frame within which bonds can be used to cure violations caused by the licensee.

The amendment also extends liability of bond holder even after cancellation for all obligations of

the principal pertaining to the bond terms that occur prior to the effective date of cancellation.

Finally, the amendment sets an effective date of July 1, 2008.

Synopsis of HLC Amendment

The House Labor and Human Resources Committee Amendment are as follows:

On page 5, line 2, after “bond” the amendment inserts, “of not more than ten thousand dollars (\$10,000)”.

The amendment sets a cap on the amount of the bond.

Synopsis of Original Bill

This legislation would require licensees (contractors only) of the Construction Industries Division (CID) to carry a bond that would respond to damages caused by the licensee in the performance of contracting as proof of the professional responsibility required by the Construction Industries Licensing Act see NMSA 1978, Section 60-13-1.1). This bond would replace the current professional responsibility requirement (see NMSA 1978, Section 60-13-49) which is either:

- a bond that responds to a claim by CID for payment of fines assessed by CID;
- a cash collateral deposit against which CID has recourse for payment of fees; or
- an audited financial statement from the licensee.

FISCAL IMPLICATIONS

Impact on the Agency. There is very little fiscal implication for the Division if this amendment is made. Currently, the Division seeks payment of fines directly from the contractor, rather than the bonding company, so that the cause and effect relationship between the contractor’s mistake and the fine is reinforced. This legislation would not change this practice; therefore, the Division does not expect a significant impact on its ability to collect fines if bond requirement in the current statute is repealed.

Impact on the Contractor. The majority of contractors currently satisfy the professional responsibility requirement with a bond. Assuming that the cost of the new bond would not be significantly different from the bond currently required, the contractor would not be adversely affected by the change in bond type.

Impact on the Public. Under the current professional responsibility statute, the consumer of services provided by a licensed contractor has no assurance of the contractor’s professional responsibility because none of the three options for demonstrating professional responsibility gives the consumer restitution for damages if the contractor fails to perform professionally or responsibly. This legislation would give the consumer recourse for damage proven to be caused by a licensed contractor.

SIGNIFICANT ISSUES

1. The existing professional responsibility requirement does not demonstrate or prove professional responsibility of CID licensees. It merely ensures that CID has a source

- for the payment of fines if the licensee does not pay them, and then only if the licensee elects the bond or cash collateral option. If a financial statement is selected, neither the division nor the public have any assurance of the contractor's performance.
2. The existing requirement creates a discrepancy in the discipline of licensees. Licensees whose bond or cash collateral becomes ineffective during the term of the license are subject to license suspension and revocation. Licensees who submit a financial statement are not subject to suspension or revocation, regardless of the financial condition of the licensee.
 3. The existing statute does not ensure that a contractor will be responsible in performing the work undertaken. The statute limits the contractor's ability to obtain permits for individual projects based on the amount of the bond or cash collateral. For example, a bond in the amount of \$500 will authorize the licensee to obtain a permit for work the value of which is not greater than \$25,000 *per project or permit*. However, there is no restriction on the number of \$25,000 projects for which the licensee may obtain permits at one time; therefore, contractors can, and do, over-extend regardless of the permit limitation imposed by the professional responsibility limit. Further, there is no value-per-project restriction on a licensee who uses a financial statement to satisfy the requirement.

PERFORMANCE IMPLICATIONS

Liquefied Petroleum Gas licensees are required to carry insurance and Manufactured Housing licensees are required to carry a bond. Requiring the same kind of proof of professional responsibility of CID licensees would treat these similarly situated licensees consistently and would ensure that CID's licensees would meaningfully demonstrate proof of professional responsibility.

ADMINISTRATIVE IMPLICATIONS

This legislation would not adversely affect CID's administration of the professional responsibility requirements. In fact, because there would be only one type of proof of professional responsibility, current procedures could be streamlined. In addition, because the bill simplifies the consequences and procedures when a bond becomes ineffective, it will be easier to communicate the requirements and consequences of failing to comply with the licensees. Bond attachment would be processed by the bonding company in direct communication with the claimant, so there would be little administrative impact on the Division.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates SB13

TECHNICAL ISSUES

Portions of the Construction Industries Licensing Act may have to be amended to reflect the changes made by proposed amendment. For example, Section 60-13-19(C) mentions "bond or other proof of responsibility required pursuant to the Construction Industries Licensing Act" Section 60-13-48.1 discusses financial statements when submitted as proof of responsibility

ALTERNATIVES

Require errors and omissions insurance instead of a bond

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The inequities of the current professional responsibility requirements will continue to result in disparate treatment of CID licensees, and CID licensees will continue to be licensed without being required to demonstrate meaningful professional responsibility to the citizens of New Mexico.

CS/nt