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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/07

SPONSOR SCORC LAST UPDATED 2/24/97 HB \_\_\_\_\_

SHORT TITLE Repealing Retainage Act SB 604/SCORCS

ANALYST Propst

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (OAG)

Energy, Minerals and Natural Resources Department (EMNRD)

### SUMMARY

#### Synopsis of Bill

Senate Corporation and Transportation Committee Substitute for Senate Bill 604 repeals NMSA 1978, Sections 57-28-1 through 57-28-11, the Retainage Act.

### SIGNIFICANT ISSUES

The Retainage Act governs the withholding and payment of “retainage”, or money payable to the contractor or subcontractor that has been withheld by the owner conditioned on substantial completion of all work in connection with a construction contract. It applies to most construction projects except for those contracted for by the Department of Transportation and for the construction of residential property containing four or fewer dwelling units. It generally prohibits the withholding or retainage on a construction project unless an escrow agreement is used. The law currently sets time limits for payment to contractors, governs dispute resolution between owners and contractors with respect to retainage; provides penalties for failing to deposit or withhold retainage; and provides for the award of attorney fees and costs.

The committee substitute for SB 604 provides a number of definitions including a definition of “construction”, “contractor”, “owner” and “subcontractor. It also provides a section on prompt payment and that payment may be made by first class mailing, electronic funds transfer or by hand delivery. If the owner fails to pay the contractor within 21 days, the owner is required to pay interest computed as one and one-half percent of the undisputed amount per month or fraction of the month until paid.

The committee substitute further provides that a local public body may make payment within 45 days if the source of funding is grant money and the contract provides for payment after 21 days and language in the bill is contained in the contract.

### **PERFORMANCE IMPLICATIONS**

EMNRD notes that removing these strictures should provide more flexibility to the state with contractors, expanding the state’s ability to ensure task completion and the ability to fix errors in a rapid manner, with a minimal amount of effort on the state’s part. This should improve state efficiency in terms of project completion and save agencies time and money. The removal of the late fees language tracks changes the Department of Finance and Administration has made in other contract boilerplate, providing for consistency in contracting documents and saves the state money.

### **ADMINISTRATIVE IMPLICATIONS**

The Attorney General notes that if this act is repealed, presumably the withholding and payment of retainage will be governed by contract provisions negotiated between the owner and contractor.

WEP/mt