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FISCAL IMPACT REPORT

SPONSOR: HAFC DATE TYPED: 03/21/03 HB 913/HAFCS
 SHORT TITLE: Construction Manager for Certain Projects SB _____
 ANALYST: Geisler

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

General Services Department (GSD)
 Regulation and Licensing Department (RLD)
 Department of Education (DOE)

SUMMARY

Synopsis of HAFC Substitute

The House Appropriations and Finance Committee Substitute for HB 913 will require that building construction contracts for \$1,000.0 or more have a separate contract for contract compliance services with an independent contract compliance monitor. The contract compliance monitor shall provide oversight, not construction management, as an agent of the using agency and of the state or the local public body in monitoring the construction project for the purpose of monitoring the time, cost and quality of the project to ensure conformance with the contract documents entered into between the contractor, the using agency and the state or local public body.

A contract compliance monitor may employ such other licensed contractors and professionals, including architects, engineers and surveyors, as are necessary. Costs of the contract compliance monitor shall be paid from any fund available to the using agency.

The bill would require that the contract compliance monitor be selected by the state purchasing agent for state agency and legislative branch construction contracts. Excluded from the using the state purchasing agent to procure the services of a contract compliance monitor are agencies of the judicial branch of government, the board of regents of the State educational institutions named in Article 12 of the State constitution, local public bodies, regional educational coopera-

tives, and charter schools. These entities would be able to select their own contract compliance monitor.

Public school buildings and facilities funded by the Public School Capital Outlay Act and single and multi-family dwellings build pursuant to federal or state housing programs are excluded from the bill. The bill contains an emergency clause.

Significant Issues

1. Aggregate Expenditure Provision for Multiple Projects

The bill contains a provision that if the state or local public body has other projects for the construction of buildings that will commence in same fiscal year and if the projected state expenditure in the aggregate for all the projects is \$1,000.0 or more, then all of the projects are subject to the provisions of this section.

2. Qualification

A contract compliance manager is defined as a person with the skills and background necessary to provide contract compliance services who: 1) possesses a G-98 contracting license, 2) is registered to practice architecture or is licensed as a professional engineer, 3) has professional liability insurance coverage of at least one million dollars.

3. Exemptions

Public schools buildings and facilities funded pursuant to the Public School Capital Outlay Act are exempt from the provisions of this bill. Regional educational cooperatives and charter schools were added to the section exempting agencies from procuring contract compliance monitoring through the state purchasing agent. The exemption for the legislature from procuring contract compliance monitoring services from through the state purchasing agent has been removed.

FISCAL IMPLICATIONS

GSD supports this bill. They believe the bill's heightened emphasis on monitoring contract compliance is likely to help the state avoid costly contractor caused defects in workmanship and quality. Property Control Division is adequately staffed to comply with the requirements of this bill. GSD believes the state may also realize long-term savings of at least \$100.0 per year per contract by effectively ensuring contract compliance.

CONFLICT

Per GSD, this bill conflicts with Section 13-1-99, NMSA 1978, which exempts most professional services and local public body procurements from the State Purchasing Agent.

TECHNICAL ISSUES

RLD notes that the bill requires the monitor to be licensed by RLD in the "G-98" classification. There is no such classification. CID assumes that the classification intended was a GB-98, and that the stated reference is merely a typo. See proposed amendment #1 below.

OTHER SUBSTANTIVE ISSUES

RLD provides:

- RLD has had no experience with contract compliance services and, therefore, it is unknown whether they will actually produce the intended results. It has been the RLD's Construction Industries Division's experience that projects on which construction management services are performed do not necessarily result in code compliance. At the same time, costs of this service often have a significant impact on the project budget.
- The bill does not make clear what the consequences of failing to use contract compliance services would be, or how compliance with the requirement would be monitored in instances where the State procurement officer does not select the service provider.
- The bill does not make it clear whether a compliance manager would be required for renovation or remodeling projects.
- RLD is concerned that the triple professional qualification requirement for the compliance monitor (registered architect, licensed professional engineer and licensed general contractor) may make it difficult to find qualified candidates to perform contract compliance services.
- RLD questions the bill's exemption for public schools. They note that the experience of the Director of Construction Industries, who sits as a member of the Public School Capital Outlay Commission, indicates that public schools could benefit from contract compliance monitoring. RLD recommends removing this exemption in amendment #3 below.

Note: The State Department of Education supports their exemption from the provisions of this bill because other laws require significant construction project oversight by DOE.

- RLD questions the exemption for regional educational cooperatives from the provision that that the contract monitor be selected by the state purchasing agent. To the extent that such a cooperative is a joint powers entity, created pursuant to the State joint powers laws, it should be treated as a state agency or institution under this law, and not be exempted from the State purchasing agent's authority to select a compliance monitor. RLD recommends removing this exemption in amendment #2 below.

AMENDMENTS

Provided by RLD:

1. Change the reference to "G-98" at page 7, line 1, to "GB-98.
2. Delete all of sub-section 13-1-100.2. D. (4) at page 6, lines 17-18.
3. Delete all of sub-section 13-1-100.2. C (2) at page 6, lines 2 – 4.

GGG/yr