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FISCAL IMPACT REPORT

SPONSOR: Leavell DATE TYPED: 2/24/03 HB _____
 SHORT TITLE: Void Certain Indemnification Agreements SB 280/aSCORC/aSJC
 ANALYST: Wilson

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 State Highway and Transportation Department (SHTD)
 Attorney General’s Office (AGO)
 Regulation & Licensing Department (RLD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment removes agreements for alterations, construction, maintenance and repair from the definition of a construction contract as it is used in SB 280.

Synopsis of SCORC Amendment

The Senate Conservation & Transportation Committee amendment clarifies that Section 1 of SB 280 does not address surety bonds. The other changes in this amendment are drafting issues.

Synopsis of Original Bill

Senate Bill 280 replaces the language in the current NMSA 1978, Section 56-7-1 with entirely new language voiding certain indemnification provisions in construction contracts and adding a new definition for “construction contract”. SB 280 also extends the prohibition in NMSA 1978, Section 56-7-2 to include both foreign and domestic indemnification provisions in agreements relating to wells and mines in New Mexico.

Significant Issues

SB 280 amends Section 56-7-1 making void only those indemnity agreements relating to bodily injury or property damage as found in construction contracts. Given the general rule that indemnification agreements in construction contracts are void, SB 280 further makes an exception to allow such indemnification agreements addressing matters other than bodily injury or property damage.

SB 280 also excepts a contract provision requiring a party to purchase a project-specific insurance policy.

SB 280 does not apply to construction contract bonds.

ADMINISTRATIVE IMPLICATIONS

SHTD's current construction contracts already substantially comply with the proposed requirements in SB 280, but SHTD may need to modify the indemnity/hold harmless language.

TECHNICAL ISSUES

SHTD notes Subsection B contained in Section 1 of SB 280 provides exceptions to the prohibition against indemnity/hold harmless provisions in construction contracts only to the extent the contract contains a provision that:

- (1) requires that one party to the contract is only indemnifying or holding the other party harmless for acts or omissions of the indemnitor, or
- (2) requires a party to the contract to purchase a project-specific insurance policy.

SHTD's construction contracts currently have provisions that require both (1) and (2). It is unclear from the use of the word "or" at the end of subsection B(1) in the bill if it is allowable for a construction contract to have provisions addressing both exceptions (1) and (2), or if the intent of the bill is that the construction contract may contain a provision that addresses only one of the exceptions, but not both. This needs to be clarified.

DW/yr/njw:yr