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## FISCAL IMPACT REPORT

SPONSOR: Maes DATE TYPED: 02/08/01 HB \_\_\_\_\_  
 SHORT TITLE: Insurance for State Construction Projects SB 289  
 ANALYST: Carrillo

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		Indeterminate			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

General Services Department (GSD)  
 State Highway and Transportation Department (SHTD)  
 Workers' Compensation Administration (WCA)  
 Office of the Attorney General (AG)

### SUMMARY

#### Synopsis of Bill

Senate Bill 289 proposes to authorize owner-controlled and procured insurance on certain state construction projects. The bill also increases the Risk management Division's (RMD) authority for settlement of public liability fund claims.

#### Significant Issues

According to the SHTD and GSD staffs, allowing the purchase of "wrap-up" insurance could save the state a significant amount of money on insurance costs on major projects. There would be greater protection of participants arising out of more complete insurance protections.

The WCA staff notes:

The bill will force small contractors who work on projects other than the state roll-up to carry double insurance burdens (for their own insurance and the state project) or maintain separate work forces and separate payrolls.

SB289 will cause confusion among workers as to the identity of the employer's insurer with respect to particular work, and may cause additional litigation where one worker is working on both roll-up and no-roll-up jobs at the time of injury.

The bill creates loss cost tracking and experience modification tracking issues for contractors that work on both roll up and non-roll up jobs, because they are insulated from the losses that occur while they are on the roll-up job.

The increases in the complexity of litigation inherent in the bill will slow down case resolution at the WCA.

### **FISCAL IMPLICATIONS**

SHTD staff states SB 289 could result in significant cost savings to the SHTD in payment of insurance premiums on large construction projects.

GSD staff notes anticipated savings are for construction costs for large projects. The actual dollars saved will depend on the number of large construction projects funded in any given year. For multi-year projects, the saving will spread across fiscal years.

### **ADMINISTRATIVE IMPLICATIONS**

GSD notes the service of an owner-controlled insurance program specialist broker will be required plus additional oversight from RMD. Any additional administrative costs would be covered through contractual arrangements.

SHTD's Standard Specifications for Road and Bridge Construction already contain provisions requiring contractors to purchase their own insurance on a project. Passage of this bill would give SHTD the option on a large project to have RMD purchase a "wrap-up" policy rather than each contractor and subcontractor purchase their own insurance. However, in order for SHTD to take advantage of this option, SHTD will have to go through rule-making to change the insurance requirements in the program.

WCA staff indicates the increase in litigation complexity and time can be absorbed by the WCA.

### **OTHER SUBSTANTIVE ISSUES**

The AG's staff states SB 289 adds a new subsection to Section 41-4-23 NMSA 1978 that authorizes the purchase of insurance to cover "all risks of all contractors and subcontractors" on major construction projects. Because the language "all risks" is inclusive without limitation, it may authorize the purchase of many insurance coverages that have historically been the responsibility of contractors. For instance, the Little Miller Act (Section 13-4-18 NMSA 1978) requires contractors to obtain performance and payment bonds for wages, materials and completion of the contract. Also, state contracts for services generally carry provisions requiring the contracting party to obtain errors and omissions insurance coverage. These matters have been the responsibility of the contractor, presumably because if the contractor is negligent in its delivery of services, then the contractor ought to carry the liability for that negligence.

WCA staff indicates a worker who is injured while picking up construction materials at a supplier for both the state roll-up project and other work for the contractor will be disadvantaged because there will be two insurers (the contractor's own insurance company and the roll-up insurer) looking to limit their liability exposure and delaying benefits to the worker while they contend among themselves.

Further WCA notes it will be difficult to "reassemble" the unbundled experience rating of a contractor who works partly on a roll-up job and partly on standard work. The reassembly is important because loss experience is a critical portion of workers' compensation insurance premium calculation.