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FISCAL IMPACT REPORT

SPONSOR Lopez DATE TYPED 2/24/05 HB _____

SHORT TITLE School Public Works Construction Projects SB 247

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Significant See Narrative		Various Capital Outlay Funds

Conflicts with HB 333

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
 Department of Finance & Administration (DFA)
 General Services Department (GSD)
 Public Education Department (PED)
 Public School Finance Authority (PSFA)
 Regulations & Licensing (RLD)

SUMMARY

Synopsis of Bill

Senate Bill 247 will require architects, engineers, landscape architects, surveyors, construction managers and their subcontractors to submit proof of compliance with the Public Works Minimum Wage Act; proof they provide "family health care" to their employees and proof that they "legally and contractually require drug and background tests of their employees as a condition of employment" when they submit their proposals for school district public works projects. The bill only applies to those contractors and subcontractors submitting qualifications based proposals.

The provisions of this bill only apply to school projects and not other local public bodies or state public works projects.

Significant Issues

The AGO provided the following:

This bill appears to be an attempt to require certain professions and their subcontractors to provide “health care” and require background and drug tests of their employees before they may bid on local school district public works projects. These requirements could be challenged as to whether they are rationally related to the performance of public works contracts.

The bill does not require the provision of health insurance, but requires the contractor or subcontractor to provide “family” health care. There may be ambiguity as to what this term means. This requirement may also have the effect of raising costs to local school districts and may prevent otherwise qualified architects, construction managers, etc. from submitting proposals. Similar concerns are raised with the requirement that those contractors and their subcontractors “legally and contractually require drug and background tests as a condition of employment”. The bill does not specify the meaning of the term “background tests” and whether that includes employment checks or criminal background checks.

The bill does not specify the exact type of “proof” required. Although the bill does not address the issue, it may be assumed that failure to submit the required “proof” will make the proposal unresponsive leading to disqualification. This could give rise to protests and suits against the school district with regard to the reasonableness of the new requirements, and whether they rationally relate to performance of the project.

School districts could be faced with additional costs and the possibility of a smaller pool of otherwise qualified proposers when attempting to contract for public works projects.

The PED indicated that requiring contractors to provide health care coverage for employees and their families may increase the overhead of the bidding companies and may result in an increase in the bid amounts for the construction projects. Also, requiring contractors to submit employees to drug and background tests as a condition of employment may increase the overhead of the bidding companies and could result in an increase in the bid amounts for the construction projects. It is unclear whether the drug-testing requirement is limited to pre-employment drug tests or whether drug tests may be required during the course of employment.

The PSFA noted an advisory committee created by the 2003 legislature developed recommendations on procurement that were submitted to the GSD to promulgate rules. This group reviewed the employee health care provision and determined that it would limit competition and therefore they did not recommend it.

The RLD offered the following:

The bill requires contractors to submit proof that it provides health care to its employees, and that the employees are required to sign a contract submitting to background checks and drug tests as a condition of employment. Because the labor force in the construction industries is largely transient employees are often not with one contractor longer than the duration of a particular project. If health care means insurance, the difficulties of cover-

ing individuals and their families for short periods of time may be problematic. If it means paying for visits to the doctor, the contractor will have to be able to administer the process for providing this benefit.

Similar administrative issues are associated with background checks and drug testing. Contracts with employees are not common in the construction industries. A mobile work force is necessary to respond to fluctuations in construction activity. Pre-screening and drug testing a mobile work force could be expected to reduce the contractor's ability to respond to project start up requirements.

FISCAL IMPLICATIONS

School districts may incur additional bid prices due to increased operational overhead being applied to bidders. A reduction in the number of qualified bidder applicants may cause delays in the awarding of public works projects.

ADMINISTRATIVE IMPLICATIONS

School districts will have to ensure that bidders meet requirements prior to awarding projects. Conducting this review may increase the workload of school district administration. The bill does not indicate what a contractor or the school district would do with the results of the drug and background checks.

CONFLICT

SB 247 requires bidders and subcontractors for public school projects to provide proof of compliance with wage rates, provide family health care to employees, and require drug and background tests for employees, while HB 333 exempts small public school projects from wage rates.

TECHNICAL ISSUES

The AGO states the bill should state whether failure to provide the "proof" required will disqualify a proposal. The bill should probably also clarify its intended meaning with regard to the requirements for "family health care" and "background tests".

DW/yr