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FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/08

SPONSOR Larranaga LAST UPDATED 1/28/08 HB 173

SHORT TITLE Public Works Subcontractor Bonding SB _____

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Education (PED)
 Public School Facilities Authority (PSFA)
 Energy Minerals and Natural Resources (EMNRD)

SUMMARY

Synopsis of Bill

House Bill 173 also repeals Section 13-1-148.1 NMSA 1978, which is for bonding of subcontractors. This bill repeals the section that states that a subcontractor shall provide a performance and payment bond on a public works building project if the subcontractor's contract is \$125,000 or more.

FISCAL IMPLICATIONS

According to the Public Education Department By repealing section 13-1-148.1 NMSA 1978, the competition would no longer be limited to subcontractors who submit a payment and performance bond. The cost of school construction projects could decrease significantly. The costs of sub-contractors having to provide a performance and payment bond increases bid prices. Requiring this type of bonding also limits the amount of sub-contractors bidding for public works projects. Many sub-contractors are under-capitalized and financially cannot pay for these types of bonds, which have been problematic for getting sub-contractors to work on small rural projects. This requirement has limited competition extensively since its inception and caused a reduction in the number of qualified applicants.

SIGNIFICANT ISSUES

Currently, projects are already bonded up to the entire amount of the project by the general contractor and to require additional bonding of the subcontractors overlaps with this bonded amount. Additionally, repealing of the subcontractor bonding law may eliminate confusion as to which bond to pursue a claim against, the general contractor's or the subcontractor's. It will restore the clear delineation of roles and responsibilities between the general contractor and its bonding agent.

OTHER SUBSTANTIVE ISSUES

Contractors are currently required to provide a performance bond on all construction projects which protect them from poor performance of a sub-contractor. Many agencies argue that this requirement does not provide any additional protection. Requiring subcontractor bonding may not guarantee performance or quality.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The subcontractor bonding requirement will remain in effect.

CS/mt