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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/2009

SPONSOR Nava LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE School Construct Project Bidder Requirements SB 328

ANALYST Aguilar

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund PSCOF STBF

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Education Department (PED)

Public School Facilities Authority (PSFA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 328 amends the procurement code to require bidders and contracted subcontractors for a public works construction projects for a school district to provide proof that the bidder of a construction project exceeding \$125.0 provides wages to its employees in accordance with the Public Works Minimum Wage Act, makes medical benefit plans available to its employees, legally and contractually requires its employees to submit to drug and background tests as a condition of employment, and prohibits the presence of employees who fail a substance abuse test on the job site until they have passed a subsequent substance abuse test. The bill only applies to contractors and subcontractors submitting competitive qualification-based proposals.

### FISCAL IMPLICATIONS

PSFA notes the Contractors would be required to offer health care plans, and drug testing for their workers and ensure the same for subcontractors on the project potentially increasing overall construction costs for projects.

## SIGNIFICANT ISSUES

Contractors who were previously not required to provide insurance plans for employees will now be required to do so which is estimated to significantly increase operating costs. Overall project cost impacts are expected to be significant yet are difficult to estimate, however it can reasonably be expected that a number of smaller contractors and subcontractors will be unable or unwilling to provide the mandated medical benefit plans and substance abuse checks to all “employees” and would be excluded from participating in the impacted projects. Currently, districts are having difficulties in finding qualified subcontractors in small remote communities and this is expected to be exacerbated by the provisions contained in the bill.

Note: major assumptions underlying fiscal impact should be documented.

PSFA also notes that some provisions contained in this bill may be difficult to implement due to technical issues with the bill and have unintended consequences on other statutes such as Design Build (13-1-119.1) and Construction Manager At-Risk for Educational Facilities (13-1-124). Also, public school projects procured through a traditional bid process are not bound by these requirements and may limit the use of the competitive qualifications-based proposal method.

- All references to “bidder” should be changed to “offerer”. Technically there are no bidders under a competitive qualifications-based proposal as the selection is made through a request for proposal process instead of a bid.
- The intent of this legislation is to have the various classes of laborers and mechanics involved in the construction project to be paid in accordance with the Public Works Minimum Wage Act to have access to medical benefits and to submit to substance abuse tests. The use of the word “employees” will make this applicable to other administrative and office staff of the company.
- Every construction contract in excess of \$60,000 is already bound by the provisions of the Public Works Minimum Wage Act (13-4-11). The wages paid to each worker are mandated and include fringe benefits to cover benefits including medical or hospital care. These wages and benefits are only applicable while performing work on the public works project. This bill would require these provisions to be applicable all the time, even if the contractor only occasionally performs or wishes to bid on a public works project solicited through a competitive sealed proposal.
- The bill does not provide a listing threshold for subcontractors that will be performing work or services to the contractor. The language further appears to only apply to first-tier subcontractors under contract to the contractor and not subcontractors or sub-subcontractors.
- Under a Construction Manager At-Risk (CMAR) process, the selection of subcontractors will not occur until after the plans have been fully developed and the CMAR will not be able to provide proof in their proposal that all subcontractors will be bound by the provisions in the bill. Without a listing threshold or a definition of subcontractor it is unclear how the provisions of this bill will be enforced or administered.

- All school projects that include Public School Capital Outlay Council (PSCOC) funding are required to use standard documents prescribed by the Public School Facilities Authority (PSFA). The general conditions of the construction contract require that the superintendent(s) or foremen on the job be in charge of the work and are responsible for ensuring that all person on the project are operating in a safe and acceptable manner. Any person who is acting in an inappropriate manner, which would include under the influence of drugs or alcohol, are to be immediately removed from the project and not again be employed on any part of the work.

## **TECHNICAL ISSUES**

- This bill does not define “medical benefit plans”.
- All references to “bidder” should be changed to “offerer”.
- Requirements should also apply to any subcontractor that may be substituted in accordance with the Subcontractor’s Fair Practices Act to provide the same proof before entering into a contract.
- If the intent of the bill is to ensure health insurance is provided and drug checks are conducted for employees of contractors and subcontractors whose employees conduct the building trade’s portion of school public works projects, then the reference to “qualifications-based” proposals does not apply. If the intent is to ensure that employees of professional service providers involved in building public schools (architect, engineer, landscape architect, construction managers and surveyors) have health insurance and are tested for drugs, then the reference to the Public Works Minimum Wage Act is inappropriate unless accompanied by a wholesale revision of Chapter 13, Article 4 which would be required to cover professional service contractors in public works projects.

PA/mt