

Department of Planning and Budget 2002 Fiscal Impact Statement

1. **Bill Number** SB450

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. **Patron** Williams

3. **Committee** Passed both houses

4. **Title** Public Procurement Act; performance and payment of bonds.

5. **Summary/Purpose:** This proposal permits public bodies to determine the form and amount necessary for performance bonds related to transportation projects in excess of \$100,000.

6. **No Fiscal Impact is INDETERMINATE**

7. **Budget amendment necessary:** No.

8. **Fiscal implications:** Although the fiscal impact of this measure is indeterminate, there is a possibility that the proposal could result in increased costs to those public bodies responsible for the construction of transportation projects. These increased costs could result from either the imposition of more stringent performance bond terms and conditions that increase the chosen contractor's costs to complete the project, or the imposition of less stringent terms and conditions that increase the risks of project completion for public bodies. Performance bonds are designed to ensure that if a chosen contractor fails to complete the project, another contractor can be obtained to complete the job at no additional cost to the public body. Currently, there is no uncertainty about the terms and conditions of the performance bonds contractors must furnish public bodies. When a contract award exceeds \$100,000, the chosen contractor must provide the public body with a performance bond for the sum of that contract conditioned upon the contractor's "faithful performance of the contract in strict conformity with the plans, specifications, and conditions of the contract." Under this proposal, however, the form and amount of a contractor's performance bond could vary according to whatever terms and conditions a public body finds "satisfactory." Consequently, these terms and conditions could be more stringent than those currently in place. To the extent a public body requires that a contractor obtain a performance bond whose terms are more stringent than "the faithful performance of the contract..." or whose value exceeds the amount of the contract award, this cost could be passed on to the public body responsible for the highway project. In addition, this proposal could also result in the imposition of terms and conditions that are less stringent than those currently in place. In this situation, a public body's costs of constructing a transportation project could increase considerably if its chosen contractor fails to complete the project in conformance with the project's plans, specifications, and conditions. To the extent the first contractor's performance bond is inadequate, the public body may have no recourse but to pay any subsequent contractor's costs out of its own pockets.

9. **Specific agency or political subdivisions affected:** This proposal could affect any public body involved with the construction of transportation projects.

10. **Technical amendment necessary:** No.

11. Othercomments:None.

Date: 03/01/02/PXV

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cc:SecretaryofAdministration