




(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurrin g</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

**Synopsis:** Senate Bill 158 amends NMSA 1978, Section 13-4-19, commonly known as the Little Miller Act (hereafter “the Act”) and modeled after a federal statute called the Miller Act. The Legislature passed the Act to protect subcontractors and sub-suppliers of labor or materials to state construction projects. *See State ex rel. W.M. Carroll & Co. v. K.L. House Constr. Co.*, 1982-NMSC-150, ¶¶ 308, 99 N.M. 186, 187. Most state construction projects require a payment bond to be furnished in connection with the contract, *see* NMSA 1978, § 13-4-18(A)(2), for the protection of subcontractors and sub-suppliers. The Act authorizes a subcontractor/sub-supplier which has not been paid for materials or services provided to initiate legal action to recover on the payment bond.

SB 158 would amend the Act to make references to contractors/subcontractors gender-neutral; to replace awkward or grammatically incorrect phrasing; and to make other technical corrections. SB 158 also would make explicit the Act’s limitation that a subcontractor/sub-supplier suing under the Act may only obtain a judgment “for the labor performed on, or materials actually delivered to and actually incorporated into, the project.” SB 158, § 1(A) [p. 2, LL. 13-14]

**FISCAL IMPLICATIONS**

There are no fiscal implications for this office.

## **SIGNIFICANT ISSUES**

None.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None at this time.

## **TECHNICAL ISSUES**

SB 158 refers not only to the payment bond but also in several instances to a performance bond. *Compare* SB 158 § 1(A) [p. 1, L. 23; p. 2 LL. 9, 17-18] (references to “payment bond”) *with* SB 158 §§ 1(B) and 1(D) [p. 3 L. 12; p. 4 L. 9] (references to “performance bond”). The two bonds are legally and conceptually distinct. A contractor posts a payment bond to protect its subcontractors/sub-suppliers; in contrast, the contractor posts a performance bond to protect the project owner, i.e. the State of New Mexico; most state construction projects require the contractor to furnish both bonds. *See* NMSA 1978, § 13-4-18(A)(1) and (2). SB 158’s two references to “performance bond” probably should be changed to “payment bond,” since the Act purpose is to provide a right of action to subcontractors/sub-suppliers and set forth procedures for such actions. If the drafter/sponsor of SB 158 used the references to “performance bond” intentionally, language should be added to the bill to explain how that separate obligation applies to the Act.

The short title of SB 158 and the descriptive header both refer to evidentiary standards. The Act does address the evidentiary value of certain documents relating to an action to recover on a payment bond, *see* NMSA 1978, § 13-4-19(D), but SB 158 would make no material change with respect to that provision. Suggest new short title of “Public Works Project Claims” and new descriptive header of “Relating to Public Works Contracts; Clarifying Language for Claims Against a Bond for Furnishing Labor and Materials for Public Works Projects.”

## **OTHER SUBSTANTIVE ISSUES**

None.

## **ALTERNATIVES**

N/A.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**

N/A.