

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1087 w/CS Participation in Insurance Plans (government construction contracts)
SPONSOR(S): Brown, Zapata
TIED BILLS: **IDEN./SIM. BILLS:** SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)	8 Y, 0 N	Thomas	Schulte
2) Insurance	16 Y, 2 N	Thomas	Schulte
3) State Administration		Bond	Everhart
4)			
5)			

SUMMARY ANALYSIS

Historically, state and local governments have required contractors and subcontractors performing construction and maintenance on public property to assume full liability for loss, to purchase and maintain adequate insurance, and, unless exempted, to purchase a payment and performance bond. Often, private contractors undertaking public construction projects will provide consolidated insurance coverage. Such consolidated coverage is a centralized insurance program whereby one party is responsible for procuring insurance coverage for all participants under a contract rather than each party providing its own insurance. The types of insurance that are typically provided under such arrangement include workers' compensation, general liability, and builder's risk.

This bill prohibits parties to state or local government construction contracts from requiring a contractor or subcontractor to participate in an insurance plan controlled by a party to the public contract. The bill does, however, allow municipalities and counties to consider participation in such plans as a factor in the public bidding process.

This bill does not appear to have a fiscal impact on state or local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1087c.sa.doc
DATE: April 22, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

This bill increases governmental regulation of private contractual agreements between general contractors and subcontractors.

B. EFFECT OF PROPOSED CHANGES:

Background - Public Contracts

Chapter 255, F.S., provides for the procurement of public property and public buildings, and the construction thereof. Section 255.05, F.S., provides that any person entering into a formal contract with the state or any county, city, or political subdivision, or other public authority, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work must deliver to the public owner a payment and performance bond. This bond requires the contractor to perform under the contract in the time and manner prescribed. The contractor is also required to make prompt payments to all persons whose claims derive directly or indirectly from the prosecution of the work provided for in the contract. Any person providing materials, labor, or services under the improvement contract who does not receive proper payment may make a claim against the bond for the amount due.

Chapter 287, F.S., provides for public procurement of personal property and services. This chapter requires the ethical procurement of commodities and contractual services and the adherence to uniform procedures in carrying out such procurement. Section 287.057, F.S., sets forth the conditions for public procurement of commodities or contractual services. Unless otherwise authorized by law, all contracts for the purchase of commodities or contractual services for the purchase of commodities must be awarded by competitive, sealed bidding.

Background - Insurance Coverage

Project owners, such as state agencies or local governments, as well as contractors and subcontractors, purchase insurance independently to protect against financial losses related to the project. Consolidated insurance programs are commonly referred to as “Owner Controlled Insurance Programs (OCIPs)” and “Contractor Controlled Insurance Programs (CCIPs).” These programs are also referred to as “wrap-up insurance.” This coverage is a centralized insurance program that covers the project owner and all contractors and subcontractors. Rather than having each party provide its own insurance, one party is responsible for procuring certain insurance coverage that will apply to all participants in the project under the contract. Generally, coverage under these plans includes workers’ compensation, general liability, builders’ risk, excess liability, and professional liability. Historically, state and local governments have required contractors to assume full liability for loss and to purchase and maintain adequate insurance. In recent years, the practice of consolidating insurance has increased.

Effect of Bill

The bill amends sections 255.05 and 287.057, F.S., to prohibit parties to these public contracts from requiring a contractor or subcontractor to participate in an insurance plan controlled by a party to the public contract under which plan a party to the public contract obtains insurance coverage for parties operating under the contract. The bill allows an operator under the contract to opt out of a consolidated insurance program. The bill prohibits parties to the contract from penalizing a contractor or subcontractor for not participating in an owner or contractor controlled insurance policy. However, the bill allows municipalities and counties to consider participation in such plans as a factor in the public bidding process.

C. SECTION DIRECTORY:

Section 1: Amends s. 255.05, F.S., relating to contracts for public building construction.

Section 2: Amends s. 287.057, F.S., relating to public procurement of commodities and services.

Section 3: Provides that the bill takes effect upon becoming a law and that the bill applies only to contracts entered into on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

No direct fiscal impact. See D. below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures:

No direct fiscal impact. See D. below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Wrap-up insurance may cause a contractor to bear additional recordkeeping costs, specifically associated with workers' compensation insurance. In reporting for workers' compensation purposes, a contractor must segregate the payroll for a project using wrap-up insurance from the payrolls for other projects. When a project requires changes to the original specifications, the contractor has to remove insurance costs from the change order costs and again segregate the labor costs.

D. FISCAL COMMENTS:

The bill may have an impact on the overall cost of state or local government construction contracts, but no direct fiscal impact can be identified or calculated.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require cities or counties to spend funds or take an action requiring the expenditure of funds.

2. Other: None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill has an effective date of upon becoming law. It is unclear what the effect of the bill will be on contracts that are in the bidding process on that date, as this bill might affect bid prices and the willingness of general contractors and subcontractors to participate in the bidding process.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

By the Committee on Insurance: The committee substitute differs from the original bill in that the original bill did not provide that its provisions apply only to contracts entered into after the effective date of the bill, and also did not provide that municipalities and counties may use participation in an owner-controlled insurance program as a factor in the bidding process.