

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1087 w/CS Participation in Insurance Plans (government construction contracts)
SPONSOR(S): Brown, Zapata
TIED BILLS: none **IDEN./SIM. BILLS:** CS/SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)	8 Y, 0 N	Thomas	Schulte
2) Insurance	16 Y, 2 N w/CS	Thomas	Schulte
3) State Administration	5 Y, 0 N w/CS	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 generally prohibits state or local governments entering into a construction contract from requiring a contractor or subcontractor to participate in an insurance plan controlled by a party to the contract. There are exceptions for certain large construction projects. This bill further requires a liability insurer to offer a supplemental liability insurance policy in the nature of tail coverage to cover any period of time between the end of an owner-controlled insurance policy and the conclusion of the applicable statute of limitations.

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: h1087d.sa.doc
DATE: April 24, 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

This bill creates a new section of law in ch. 255, F.S., the chapter on public property that includes provisions on maintenance, repairs, and improvements to state-owned real property. This bill creates the following definitions applicable to the new section only:

- “Owner-controlled insurance program” means a consolidated insurance program or series of insurance policies issued to a public agency which may provide one or more of the following types of insurance coverage for all of the contractors, subcontractors, architects, and engineers working at specified or multiple contracted work sites of a public construction project: general liability, property damage, workers’ compensation, employer’s liability, builder’s risk, or pollution liability coverage.
- “Specified contracted work site” means construction being performed during one or more fiscal years at one site or a series of contiguous sites separated only by a street, roadway, waterway or railroad right-of-way, or along a continuous system for the provision for water and power.
- “Multiple contracted works site” means construction being performed at multiple sites during one or more fiscal years which is part of a ongoing capital infrastructure improvement program, or involves the construction of one or more public schools.

This section of the bill provides limitations on the purchase by a state agency, political subdivision, state university, community college, airport authority, or other public agency in this state, or any instrumentality thereof, of an owner-controlled insurance program in connection with a public construction project. Such may only be purchased if it is determined necessary and in the best interest of the public agency and if each of the following conditions is met:

- The estimated total cost of the project is \$75 million or more; the estimated total cost of the project is \$30 million or more, if the project is for the construction or renovation of two or more public schools during a fiscal year; or the estimated total cost of the project is \$10 million or more, if the project is for the construction or renovation of one public school, regardless of whether the project’s duration extends beyond a fiscal year.
- The program maintains completed-operations-insurance coverage for a term during which the coverage is reasonably commercially available as determined by the public agency, but for no less than 5 years.
- The bid or proposal specifications for the project clearly specify, for all bidders or proposers, the insurance coverage provided under the program and the minimum safety requirements that must be met.
- The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that the contractor or subcontractor believes is necessary for protection against any liability arising out of the contract. The cost of the additional insurance must be disclosed to the public agency.
- The program does not include surety insurance.
- The public agency may only purchase an owner-controlled insurance policy that has a deductible or self-insured retention if the deductible or self-insured retention does not exceed \$1 million per occurrence.
- The public agency is responsible for payment of the applicable deductibles of all claims.

Certain projects are not subject to these requirements, specifically:

- Any project of the Department of Transportation which is authorized under s. 337.11;
- Any existing project or projects of a public agency which are the subject of an ongoing, owner-controlled insurance program issued before October 1, 2003; or
- Any project of a public agency which is advertised by the public agency before October 1, 2003, for the purpose of receiving bids or proposals for the project.

Section 2 of this bill creates s. 627.441, F.S. Chapter 627, F.S., is the insurance code. The bill creates the following definitions applicable only to this new section:

- “Contractor” means a contractor, subcontractor, architect, or engineer performing work on a public construction project under contract with a public agency, as described in s. 255.0517(2).
- “Liability insurer” means an insurer issuing a commercial general liability insurance policy in this state to a contractor which provides coverage for liability arising out of completed operations performed by the contractor or on the contractor’s behalf.

This bill requires a liability insurer to offer coverage at an appropriate additional premium for liability arising out of current or completed operations under an owner-controlled insurance program for any period beyond the period for which the program provides liability coverage, as specified in s. 255.0517(2)(b), F.S. The period of this coverage must be sufficient to protect against liability arising out of an action brought within the time limits provided in the statute of limitations, s. 95.11(3)(c), F.S.

C. SECTION DIRECTORY:

Section 1 creates s. 255.0517, F.S., relating to owner-controlled insurance programs for public construction contracts.

Section 2 creates s. 627.441, F.S., relating to commercial general liability policies issued to contractors.

Section 3 provides an effective date of October 1, 2003.

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:

None.

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.

On April 23, 2003, the Committee on State Administration adopted one "remove everything after the enacting clause amendment" that substantially changed the bill. Where the bill applied to both ch. 255, F.S. (public real property and public works), and ch. 287, F.S. (procurement of personal property and services), the amendment only applies to ch. 255, F.S. Where the bill prohibited a government from entering into an owner-controlled insurance program, this bill only generally prohibits owner-controlled insurance programs as to public works, with a number of exceptions that were not previously in the bill. The amendment also added the amendment to the insurance code to provide for the mandatory offering of a policy in the nature of tail coverage as related to an owner-controlled insurance program. The amendment also removed the provision that would have allowed a government to consider whether contractors would participate in an owner-controlled insurance program when evaluating submitted bids. The bill was then reported favorably with a committee substitute.