

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 51 Insurance/Public Construction
SPONSOR(S): Brown
TIED BILLS: none **IDEN./SIM. BILLS:** SB 346 (i)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (sub)	7 Y, 0 N	Cheek	Cooper
2) Insurance	20 Y, 0 N	Cheek	Cooper
3) State Administration		Bond	Everhart
4)			
5)			

SUMMARY ANALYSIS

Historically, state and local governments have required contractors and subcontractors performing public works to assume full liability for loss, and to purchase and maintain adequate insurance to cover such losses. That coverage may be in the form of a consolidated insurance coverage plan known as an owner-controlled insurance program (OCIP). An OCIP 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.

The bill prohibits state and local governments constructing public works from requiring a contractor or subcontractor to participate in an OCIP, with certain exceptions. The 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 OCIP and the conclusion of the applicable statute of limitations.

The 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: h0051c.sa.doc
DATE: April 7, 2004

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:

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

B. EFFECT OF PROPOSED CHANGES:

Background

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, 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.

Owners of real property, both public and private, as well as contractors and subcontractors who are contracted to repair or improve structures on such real property, purchase insurance to protect against financial losses related to the repair or improvement. 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. In recent years, the practice of consolidating insurance has increased.

Effect of Bill

This bill creates s. 255.0517, F.S., relating to owner-controlled insurance programs for public construction projects. State and local governments subject to s. 255.0517, F.S., are prohibited from purchasing an owner-controlled insurance program¹ unless the estimated total cost of the project is \$75

¹ The bill defines “owner-controlled insurance program” to mean “a consolidated insurance program or series of insurance policies issued to a public agency that 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.”

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. If an owner-controlled insurance program is authorized, the following terms apply:

- The program must maintain completed-operations insurance coverage for a term during which the coverage is reasonably commercially available as determined by the state or local government, but for no less than 5 years.
- The advertisement for bids or proposals clearly discloses the insurance coverage provided under the program and the minimum safety requirements that must be met.
- The program may 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 may not include surety insurance.
- The deductible or self-insured retention may not exceed \$1 million per occurrence, and the state or local government must be responsible for the deductible.

This bill also provides exemptions to these requirements. Roads, bridges, and related construction projects constructed by the Department of Transportation are exempt. Additionally, any project subject to an ongoing, owner-controlled insurance program issued before October 1, 2004, or any public works project advertised before October 1, 2004, is exempt.

This bill amends the insurance law to require liability insurers 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 (commonly referred to as "tail coverage").²

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, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: No direct fiscal impact.

² The tail coverage would be from the expiration of the owner-controlled insurance program though the time within which an action may be brought, as limited by the applicable statute of limitations, s. 95.11(3)(c), F.S., which is generally 4 years, but up to 15 years under certain circumstances related to latent construction defects.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: No direct fiscal impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

None.