

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Banking and Insurance Committee

BILL: SB 682

INTRODUCER: Senator Bennett

SUBJECT: Construction Contracts

DATE: February 11, 2006

REVISED: 4/20/06

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	Fav/1 amendment
2.			RI	
3.				
4.				
5.				
6.				

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill provides that if a general contractor or subcontractor requires in a written construction contract that a subcontractor, sub-subcontractor or materialman provide an insurance policy or certificate of insurance extending coverage rights to an additional insured, the general contractor or subcontractor has three business days to specifically reject in writing the certificate as nonconforming with the construction contract. If a rejection is not made in writing within three business days of receipt of the certificate or policy, the general contractor or subcontractor shall be deemed to have accepted the policy for purposes of work already completed or material already delivered. If a policy or certificate is deemed accepted, then the lack of conforming insurance cannot be used as a reason to reject work previously completed or materials previously supplied, nor may payment be withheld for completed work or supplied material. However, a certificate is not deemed accepted if the certificate does not comply with the insurance coverage limits specified in the construction contract, the policy or certificate tendered was knowingly and fraudulently altered, the certificate reflects coverages or conditions that are not in the actual underlying insurance policy, or if the underlying policy is canceled, nonrenewed, or materially and adversely altered during the term of the construction contract. The contractor or subcontractor requiring the policy may specifically reject the certificate in writing at any time with regard to work not yet completed or material not yet delivered.

This bill creates the following sections of the Florida Statutes: 627.442

II. Present Situation:

Required Certificates of Insurance

Although there are no laws specifically addressing the practice, a general contractor or subcontractor may require that a certificate of insurance or insurance policy be submitted by a subcontractor, sub-subcontractor or materialman as a condition of work. If an insurance policy or certificate is not submitted, or if it does not meet the standards of the general contractor or subcontractor requiring the policy, that contractor may prohibit the other party from working on the project, or may withhold payment for work already done until the proper insurance is submitted.

Proponents of this legislation state that certain general contractors use the fact that insurance is non-conforming with the requirements of the construction contract as a means to withhold payment once work has been completed or materials have been delivered. The implication is that certain general contractors do not verify that the coverage meets their requirements until work is completed or withhold that knowledge as a means of delaying and perhaps ultimately withholding payment for work that has been completed. Most general contractors state that a general contractor has the right to withhold payment for services rendered when insurance is non-complying because the subcontractor or materialman is in breach of contract. The breach places the general contractor in the difficult position of perhaps assuming liability for the subcontractor's work. As such, the ability to withhold payment provides the general contractor with a strong tool in motivating the subcontractor to comply with the agreed upon insurance requirements.

III. Effect of Proposed Changes:

Section 1. Creates s. 627.442, F.S. The new section provides guidelines for the proper rejection of a non-conforming certificate of insurance when a general contractor or subcontractor requires a subcontractor, sub-subcontractor, or materialman to provide a policy or certificate of insurance that extends coverage rights to an additional insured. A policy or certificate of insurance may be properly rejected as not conforming to the requirements of the general contractor or subcontractor, and payment to the subcontractor or sub-subcontractor may be withheld:

- Within 3 business days after receiving the policy or certificate if the rejection is in writing.
- At any time before the date the subcontractor or sub-subcontractor starts work or the materialman delivers material.
- At any time if the policy or certificate tendered does not comply with the insurance coverage limits specified in the construction contract.
- At any time if the policy or certificate tendered was knowingly and fraudulently altered.
- At any time if the certificate reflects coverages or conditions that are not in the actual underlying insurance policy.
- At any time if the underlying policy is canceled, nonrenewed, or materially and adversely altered during the term of the construction contract.

If a general contractor or subcontractor does not reject the policy or certificate in writing and state the specific reasons for the rejection within 3 business days after receiving the policy or certificate, then the policy or certificate is deemed to be accepted for work performed or materials supplied until such time as the policy or certificate is specifically rejected in writing. If a policy or certificate is accepted or deemed accepted, then the lack of conforming insurance cannot be used as a reason to reject work previously completed or materials previously supplied, nor may payment be withheld for completed work or supplied material.

Once a general contractor or subcontractor specifically rejects in writing a policy or certificate as non-conforming, any provision of the construction contract that requires such insurance as a condition of the contract is unenforceable. As such, payment may be withheld for work performed or materials supplied after the date of the rejection of the policy or certificate until the underlying policy is brought into compliance with the requirements of the construction contract.

Section 2. The act shall take effect July 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The legislation will act to the benefit of subcontractors, sub-subcontractors and materialmen, who will be paid for work they have performed if the non-conforming certificate or policy they tendered is not specifically rejected in writing within three business days. General contractors will no longer be able to withhold payment in this circumstance.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

Barcode 142028 by Banking and Insurance:

States that a general contractor or subcontractor is deemed to have accepted an insurance policy or certificate unless: (1) for a commercial construction contract, the general contractor or subcontractor rejects it in writing within 30 business days; or (2) for a residential construction contract, the general contractor or subcontractor rejects it in writing within 7 business days.

Defines “residential construction project” and “commercial construction project” for purposes of this section.

Prohibits any person requiring a workers’ compensation policy pursuant to a construction contract from requiring that the policy be issued by an insurer or self-insurance fund that is rated by a nationally recognized insurance rating service if the issuing insurer or self-insurance fund is covered by the Florida Workers’ Compensation Insurance Guaranty Association.

States that the provisions of the bill do not apply if the general contractor or subcontractor provides a sample of an acceptable certificate of insurance or a one-page schedule accurately reflecting necessary insurance requirements to the sub contractor, sub-subcontractor, or materialman. The sample certificate or schedule must be provided at the time of a request for bids, or prior to the commencement of work or provision of materials.

States that a contract for the purchase of goods or services may not contain a clause that conditions payment for the goods or services on the receipt of payment from another person. Such a clause is void as a violation of the public policy of the state. Although it is not limited by its terms to general contractors or subcontractors, the provision is intended to ensure that subcontractors receive payment from a general contractor regardless of whether the general contractor itself is paid. The provision will benefit subcontractors and similar parties, but will cause general contractors to be the guarantor of payment to subcontractors in the event that the general contractor is not paid. Preventing a general contractor from conditioning payment for goods or services rendered by a subcontractor on whether the general contractor is paid would alter the current practice of many general contractors in the state. (WITH TITLE AMENDMENT)