

The Florida Senate
PROFESSIONAL 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: CS/SB 1624

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Owner-Controlled Insurance Program

DATE: April 17, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	Favorable
2.	Johnson	Deffenbaugh	BI	Fav/CS
3.			GA	
4.				
5.				
6.				

I. Summary:

Owner-controlled insurance programs (OCIPs) are offered in the insurance market for large construction projects undertaken by a private or public sector entity. An OCIP is a program or series of insurance policies purchased by one party (e.g., project owner) to cover itself and all of its subordinate contractors and subcontractors, which may provide one or more of the following types of insurance coverage for any contractor or subcontractor working at a worksite: general liability, property damage, workers' compensation, employer's liability, builder's risk, or pollution liability coverage.

The committee substitute provides the following changes to the current statutory provisions regulating the use of an owner-controlled-insurance program by a public agency:

- Provides that a "specified contracted work site" for purposes of an OCIP applies to a *single* continuous system.
- Clarifies when a capital infrastructure improvement program at multiple work sites meets the \$75 million threshold requirement in order for the construction project to be eligible to use an OCIP. A capital infrastructure improvement program must be for a single public service, system, or facility that cannot be combined with another project unless certain conditions are met. The term, "capital infrastructure improvement program," is also defined.
- Specifies that, under an OCIP with a large deductible workers' compensation rating plan, the individual contractors and subcontractors are not required to individually satisfy eligibility requirements and may combine their payroll if the deductible is \$100,000 or more and the standard premium is \$500,000 or more.

- Requires an OCIP to provide completed operations coverage, which insures against construction defections after the completion of the project, for at least 10 years rather than 5 years.

This bill substantially amends the following sections of the Florida Statutes: 255.0517.

II. Present Situation:

Insurance Coverage for Construction Projects

For large construction projects, public project owners (e.g., state and local government agencies), contractors, and subcontractors have traditionally purchased insurance independently to protect themselves against financial losses related to the project. The contractors' costs of insurance would be included in their bids and thus would be paid by the project owner as part of the contract. Under this traditional insurance arrangement, the contractors could receive rebates from their insurers based on the contractor's safety record. In addition, some project owners would provide contractors with good safety records with additional bonuses. Because the contractors' costs of insurance were paid by the project owner as part of the contract, subsequent rebates received by the contractors from their insurers generate additional profits for the contractors.

For almost 15 years, consolidated insurance programs (commonly cited as OCIPs or "wrap-up" insurance) have been offered in the insurance market for large construction projects. The OCIP is a program or series of insurance policies purchased by one party (e.g., project owner) to cover itself and all of its subordinate contractors and subcontractors. Unlike traditional insurance in which each party purchases its own coverage, under an OCIP, one party is responsible for purchasing insurance coverage that applies to all parties performing work on the project under contract. The coverage provided in a OCIP policy generally includes workers' compensation, general liability, architects' and engineers' professional liability, builders' risk, excess liability, and pollution liability. A contractor-controlled insurance policy, another type of consolidated insurance program (CCIP), allows the general contractor to purchase coverage for itself and each of its subcontractors. In contrast to traditional insurance, the project owner pays the insurance premiums under an OCIP and receives the rebates from the insurer based on the project's safety record.

Conditions for Purchase of an OCIP by a Public Agency

Legislation enacted in 2004 restricted the use of OCIPs by public agencies.¹ Pursuant to s. 255.0517, F.S., the following conditions must be met in order for a public agency to purchase an OCIP:

- Purchase of the OCIP is determined to be necessary and in the best interest of the public agency;
- The estimated total cost of the public construction project is at least \$75 million, at least \$30 million if the project is for construction or renovation of two or more public

¹ Chapter 2004-377, L.O.F. The act applies to a state agency, political subdivision, state university, community college, airport authority, or other public agency in Florida. Section 1.01(8), F.S., specifies that, in construing the Florida Statutes, the term "political subdivision" includes counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.

schools during a fiscal year, or at least \$10 million if the project is for construction or renovation of one public school;

- The OCIP maintains insurance coverage with respect to completed operations for a term that is reasonably commercially available, but for at least 5 years;
- The bid specifications for the public construction project specify the insurance coverage provided under the OCIP and the minimum safety requirements;
- The OCIP must not prohibit a contractor or subcontractor from purchasing additional insurance coverage, and the cost of the additional coverage must be disclosed to the public agency;
- The OCIP may not include surety insurance;
- A deductible or self-insured retention on an OCIP may not exceed \$1 million; and
- The public agency is responsible for payment of the deductibles of all claims.

Section 255.0517(3), F.S., exempts OCIPs for the following public construction projects from the restrictions otherwise placed on OCIPs for public agencies:

- Any project for the construction and maintenance of all roads designated as part of the State Highway System or the State Park Road System or of any roads placed under supervision of the Department of Transportation by law;
- Any existing project or projects of a public agency which are the subject of an ongoing OCIP issued before October 1, 2004; or
- Any project of a public agency which is advertised by the public agency before October 1, 2004, for the purpose of receiving bids for the project.

Coverage to Contractors for Completed Operations

Section 627.441, F.S., requires a liability insurer issuing commercial general liability insurance coverage to a contractor or subcontractor, which is performing work on a public construction project under contract with a public agency policy, to offer insurance coverage at an appropriate additional premium for liability arising out of current or completed operations under an OCIP for the period beyond the period covered by the OCIP, which must be at least 5 years. The period of additional coverage to be offered by liability insurers must be sufficient to protect against liability arising out of an action founded on the design, planning, or construction of an improvement to real property which is brought within the legal time limits for commencing the action under s. 95.11(3)(c), F.S.

Pursuant to s. 95.11(3)(c), F.S., this type of action must be commenced within 4 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest. If the action involves a latent defect, the time runs from the time the defect is discovered or should have been discovered with the exercise of due diligence. In any event, the action must be commenced within 10 years after the date of actual possession by the owner, the date of the issuance of a certificate of occupancy, the date of abandonment of construction if not completed, or the date of completion or termination of the

contract between the professional engineer, registered architect, or licensed contractor and his or her employer, whichever date is latest.²

Florida Attorney General Opinion 2006-08

The City of St. Petersburg asked the Office of the Attorney General to interpret the OCIP statute in application to a specific city capital improvement plan. In deciding whether the planned improvements to the city's water, wastewater, and reclaimed water systems constituted a "public construction project" under the definition of "owner-controlled insurance program" in s. 255.0517(1)(a), F.S., the opinion considered whether the planned improvements to the three systems were sufficiently related to constitute a public construction project. The opinion cited the definition of "multiple contracted work site" in s. 255.0517(1)(c), F.S., in concluding that the city was authorized in using an OCIP in connection with the improvements.

III. Effect of Proposed Changes:

Section 1 amends s. 255.0517, F.S. to add restrictions to the use of OCIPs by public agencies. The bill provides the following changes:

The bill revises the definition of the term, "specified contracted work site," for purposes of an OCIP, to clarify that it applies to a *single* continuous system. As amended, a "specified contractor work site" would be limited to one site or a series of contiguous sites separated only by a street, roadway, waterway, or railroad right-of-way or along a single continuous system.

The bill creates a definition for the term, "capital infrastructure improvement program" for purposes of an OCIP, and provides that such a program must be for construction of a single public service, system, or facility that cannot be combined with another public agency project unless they are performed under a single prime contract; or are part of a program that interconnects housing or transportation of persons or cargo arriving from an airport or seaport and the combined estimated costs of the construction projects exceeds \$125 million. The bill defines a capital infrastructure improvement program to mean a public agency program involving the construction of a public service, system, facility, or other public work, including, but not limited to, potable water, wastewater, reclaimed water, stormwater, drainage, streets or roads, intermodal transportation, electric service, gas service, airport services or seaport services, and services, systems, facilities, or other incidental public works.

These changes will clarify when a capital infrastructure improvement program at multiple work sites meets the \$75 million threshold requirement in order for the project to be eligible to use an OCIP. According to proponents of the bill, some governmental entities are utilizing the current statutory definition of the term, "multiple contracted work site" to bundle multiple projects in order to meet the \$75 million statutory threshold.

² Section 3 of ch. 2006-145, L.O.F., provides that the change from a 15 year to a 10 year statute of limitation applies to any action commenced on or after July 1, 2006, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(3)(c), F.S., prior to the amendments made by this act may be commenced before July 1, 2007, and if it is not commenced by that date and is barred by the amendments to s. 95.11(3)(c), F.S., made by this act, it shall be barred.

The bill provides that, for purposes of a large deductible workers' compensation rating plan under an OCIP, individual contractors and subcontractors are not required to individually satisfy eligibility requirements and may combine their payroll, if the deductible is \$100,000 or more and the estimated standard premium is \$500,000 or more. Currently, each contractor or subcontractor is subject to the \$500,000 estimated standard premium.

The bill requires an OCIP to provide completed operations coverage, which insures against construction defects after the completion of the project, for 10 years rather than 5 years. This increased period of coverage would be identical with the maximum period of liability under the statute of repose, which is 10 years.

Lastly, the bill exempts any project or projects of a public agency which are committed to an ongoing, owner-controlled insurance program issued before October 1, 2007.

Section 2 provides an effective date of July 1, 2007.

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:

Contractors that otherwise would have bought supplemental completed operations coverage may see lowered costs resulting from the longer coverage required for completed operations insurance coverage. The amount of such saved costs is indeterminate.

C. Government Sector Impact:

To the extent that public entities save on construction costs by the use of OCIPs, the restriction on the kinds of projects on which OCIPs may be used could result in higher construction costs to those public entities. The amount of those costs is indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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