

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: Governmental Operations Committee

BILL: SB 1624

INTRODUCER: Senator Bennett

SUBJECT: Owner-Controlled Insurance Programs

DATE: March 15, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Wilson	GO	Favorable
2.			BI	
3.			GA	
4.				
5.				
6.				

I. Summary:

The bill amends the owner-controlled insurance program (OCIP) statute by prohibiting the use of an OCIP for a multiple work site project, tying their use to the dollar value of a single prime contract, and requiring that an OCIP maintain completed operations coverage for the period of time provided for actions founded on construction defects, which can range from four to ten years.

This bill substantially amends section 255.0517 of the Florida Statutes.

II. Present Situation:

Owner-Controlled Insurance Programs in the Florida Statutes

During the 2004 Regular Session, the Legislature passed a bill that codified requirements for the use of an owner-controlled insurance program (OCIP) by a public entity.¹

Section 255.0517, F.S., restricts the authority of certain public agencies, or any instrumentalities of those agencies, to purchase owner-controlled-insurance programs in connection with a public construction project, except under specified conditions. These public agencies include state agencies, political subdivisions,² state universities, community colleges, airport authorities, and other public agencies in this state.

¹ CS/SB 2696; ch. 2004-377, L.O.F.

² 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.

An “owner-controlled-insurance program” is defined as 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 any contractor or subcontractor 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 of water and power. “Multiple contracted work site” means construction being performed at multiple sites during one or more fiscal years which is part of an ongoing capital infrastructure improvement program, or involves the construction of one or more public schools.

Conditions for Purchase of an OCIP by a Public Agency

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 must be determined to be necessary and in the best interest of the public agency;
- The estimated total cost of the public construction project must be at least \$75 million, at least \$30 million if the project is for construction or renovation of two or more public schools during a fiscal year, or at least \$10 million if the project is for construction or renovation of one public school;
- The OCIP must maintain 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 must 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 must be responsible for payment of the deductibles of all claims.

Exemptions

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

- 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 liability insurers 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 five 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.

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.³

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:

The bill amends the definitions used in the owner-controlled insurance program statute by deleting the definition of "multiple contracted work site" and amending the definition of:

- "owner-controlled insurance program" so that an OCIP may be provided only at *a* work site, not *multiple* sites;

³ Section 3 of ch. 2006-145, L.O.F., provides that the change from a 15 year to a 10 year statute of limitation apply 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), Florida Statutes, 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), Florida Statutes, made by this act, it shall be barred.

- “specified contracted work site” by deleting reference to “continuous system” and adding a provision that work sites will not be deemed contiguous solely because the work involves infrastructure improvements to related delivery systems.

The bill amends the purchase requirements for an OCIP by changing the dollar thresholds applicable from “total cost of the project” to “work will be performed under a single prime contract.” The bill changes the duration required for completed operations insurance coverage from “at least five years” to “the period of time provided in s. 95.11(3)(c), F.S.,” which can be from four up to ten years.

Because s. 627.441(2), F.S., contains a reference to s. 255.0517, F.S., which is amended by this bill, the bill reenacts the former section.

The bill 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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