

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 843 Owner-controlled Insurance Programs for Public Construction Projects
SPONSOR(S): Government Efficiency & Accountability Council and Murzin
TIED BILLS: **IDEN./SIM. BILLS:** SB 1624

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Audit & Performance</u>	<u>6 Y, 0 N</u>	<u>Strickland</u>	<u>De La Paz</u>
2) <u>Government Efficiency & Accountability Council</u>	<u>11 Y, 0 N, As CS</u>	<u>Strickland</u>	<u>Cooper</u>
3) <u>Policy & Budget Council</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4) <u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5) <u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

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 law currently prohibits state and local governments constructing public works from requiring a contractor or subcontractor to participate in an OCIP, with certain exceptions.

The bill amends current statutory law by:

- Providing that a site or a series of contiguous sites along a single continuous system satisfies the definition of a "specified contracted work site."
- Providing a definition for a "capital infrastructure improvement program."
- Requiring an OCIP to provide completed operations coverage for at least 10 years.
- Authorizing general contractors and subcontractors working under a construction project to combine their payrolls under the owner-controlled insurance program to satisfy eligibility requirements for large deductible workers' compensation rating plans under specified circumstances.
- Providing that owner-controlled insurance programs issued prior to October 1, 2007 are exempt from the provisions of this bill.

The bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

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 of 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.

For large construction projects, 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. Consolidated insurance programs, commonly referred to as "Owner Controlled Insurance Programs" (OCIP) and "Contractor Controlled Insurance Programs" (CCIP), are available in the insurance market for large construction projects. 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.

With the creation of s. 255.0517, F.S. in 2004, state and local governments were prohibited from requiring an OCIP unless 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. 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.

Current law 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.

Current law also provides a requirement that liability insurers must 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”).¹

Effect of Proposed Change

The bill provides that a specified contracted work site, as it pertains to s. 255.0517, F.S., includes a site or a series of contiguous sites along a single continuous system.

The bill defines a “capital infrastructure improvement program” as a construction program with a single public agency provided service, system, or facility. The bill further provides that a single service, system, or facility must not be combined with another unless they are performed under a single prime contract. Potable water, wastewater, reclaimed water, stormwater, drainage, streets or roads, intermodal transportation, electric service, gas service, airport services, or seaport services are examples provided by the bill as acceptable services, systems, or facilities.

The bill also allows general contractors and subcontractors working under a construction project to combine their payrolls under the owner-controlled insurance program to satisfy eligibility requirements for large deductible workers’ compensation rating plans as long as the minimum deductible for the construction project is \$100,000 or more and the estimated premium for the construction project is \$500,000 or more.

The bill extends the amount of time required for an OCIP to maintain completed operations insurance coverage to 10 years or more. Currently the term for which completed operations insurance must be maintained is the term during which “the coverage is reasonably commercially available, as determined by the public agency, but for no less than 5 years.” This provision eliminates the potential gap between the 5 year minimum under the current law and the 10 year statute of repose for latent defects.

Any project issued an owner-controlled insurance program prior to October 1, 2007 is exempt from the provisions of this bill.

C. SECTION DIRECTORY:

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

Section 2. Provides an effective date of October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

¹ The tail coverage is from the expiration of the expiration of the owner-controlled insurance program though the time within which an action may 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.

1. Revenues:

The bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate a state expenditure.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not create, modify, amend, or eliminate a local revenue source.

2. Expenditures:

This bill does not create, modify, amend, or eliminate an expenditure for local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 11, 2007, the Government Efficiency & Accountability Council adopted a strike-all amendment and reported HB 843 as a council substitute. The strike-all amendment made the following changes to current law:

- Providing that a site or a series of contiguous sites along a single continuous system satisfies the definition of a "specified contracted work site."

- Providing a definition for a “capital infrastructure improvement program.”
- Requiring an OCIP to provide completed operations coverage for at least 10 years.
- Authorizing general contractors and subcontractors working under a construction project to combine their payrolls under the owner-controlled insurance program to satisfy eligibility requirements for large deductible workers’ compensation rating plans under specified circumstances.
- Providing that owner-controlled insurance programs issued prior to October 1, 2007 are exempt from the provisions of this bill.