

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 810

INTRODUCER: Senator Simmons

SUBJECT: Wrap-up Insurance Policies

DATE: March 12, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	Pre-meeting
2.			CM	
3.				
4.				
5.				
6.				

I. Summary:

SB 810 authorizes a wrap-up insurance policy for a nonpublic construction project to have a workers' compensation deductible of \$100,000 or more if:

- The workers' compensation minimum standard premium calculated on the combined payrolls for all entities covered by the wrap-up policy exceeds \$500,000;
- The project's estimated total cost is \$25 million or more;
- The insurer must pay the first dollar of a workers' compensation claim without a deductible;
- The reimbursement of the deductible by the insured does not affect the insurer's obligation to pay claims;
- The insurer must comply with specified workers' compensation filing requirements; and
- The insurer has a program for having the first named insured reimburse the insurer for losses paid within the deductible.

The effective date is July 1, 2013.

This bill creates the following section of the Florida Statutes: 627.4138

II. Present Situation:

Wrap-Up Insurance Policies

Historically, for large construction projects, the project owners, the contractors, and the subcontractors purchase insurance independently to protect against their own potential financial losses related to the project. The contractor includes the cost of insurance in its bid and recovers

the cost under the contract in the amount paid by the project owner. Under this arrangement, a contractor with a good safety record sometimes receives a rebate from its insurer as part of the provisions of the insurance contract. Because the contractors' cost of insurance has been recovered as part of the construction contract, any subsequent insurance rebates received by the contractor generate additional profits. In addition, a contractor with good a safety record can sometimes be awarded an additional bonus from the project owner.

In contrast to the traditional arrangement, consolidated insurance programs, often referred to as "wrap-up" insurance, are offered in the insurance market for large construction projects. Wrap-up insurance is a program or series of insurance policies purchased by one party (either the project owner or general contractor) to cover itself and all of its subordinate contractors and subcontractors for operations at a specific project site. Under wrap-up insurance, one party is responsible for purchasing insurance coverage that applies to all parties performing work, instead of the more traditional situation in which each party purchases its own coverage. Wrap-up policies may provide various coverages, but most commonly are used to provide workers' compensation and general liability coverage.

Wrap-up policies generally take the form of one of two types of consolidated insurance programs. In a contractor-controlled insurance program (CCIP), the general contractor purchases coverage for itself and each of its subcontractors. In an owner-controlled program (OCIP), the project owner purchases insurance to cover itself and all of its contractors and subcontractors. Under an OCIP, the project owner would receive any rebates that may be received from the insurer, based on the project's safety record.

In 1999, the U.S. General Accounting Office (GAO) published a report analyzing the advantages and disadvantages of wrap-up insurance for large construction projects. Based on an analysis of six large transportation projects, the report identified the following advantages and disadvantages of wrap-up insurance policies.¹

Advantages

- Cost savings attributable to a greater purchasing power and economies of scale available for large, labor-intensive projects.
- Elimination of overlap in coverage that can otherwise occur among the contractors and subcontractors insuring for the same accidents. These gaps can be avoided with wrap-up insurance.
- More efficient claims handling processes and less litigation because a single insurer is used for reporting claims, conducting investigations, settling claims, and providing for payment of claims.
- Facilitation of a well-managed centralized safety program that results in fewer injuries.

¹ U.S. General Accounting Office, "Transportation Infrastructure: Advantages and Disadvantages of Wrap-Up Insurance for Large Construction Projects," Report No. GAO/RCED-99-155 (June 1999). Available at <http://www.gao.gov>.

Disadvantages

- Increased administrative costs. Although it may result in overall cost savings, the purchaser of the wrap-up product must devote additional resources related to emphasizing job safety, controlling losses, and managing claims.
- Potential for large premium payments at the start of a construction project and the establishment of a special reserve to ensure funds available to pay deductible requirements on claims.

Workers' Compensation Insurance Policies with Large Deductibles

Large deductible workers' compensation insurance policies are regulated by the Office of Insurance Regulation (OIR) under Rule 69O-186.006, F.A.C. The rule establishes guidelines for large deductible (a deductible of \$100,000 or more per claim) workers' compensation filings. In order to qualify for a large deductible policy, an employer must have a workers' compensation standard premium of at least \$500,000.² Under large deductible programs, the carrier is obligated to pay the claim from the first dollar, but the insured (the employer) then reimburses the workers' compensation carrier, for each claim, for losses paid within the deductible.

The OIR reports that the typical large deductible policy will have a deductible credit that ranges from 30 to 90 percent. As a result, the premiums paid by employers that purchase large deductible policies will be a fraction of the premiums paid for other workers' compensation plans. An ancillary effect of the availability of large deductible plans is that an increasing number of very large employers have ceased being individually self-insured and instead buy large deductible products.

The OIR notes that in some recent insolvencies there have been problems with large deductible policies and the lack of collectible collateral. The remaining obligations of insolvent companies are paid by the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA),³ which is ultimately covered by assessments against all workers' compensation policyholders in Florida.⁴

Limited Availability of Wrap-Up Policies With Large Deductibles

Though remote, the possibility currently exists that a Florida wrap-up policy for a nonpublic construction project could provide for a large deductible for workers' compensation claims. Among the criteria to be met would be that each entity covered under the wrap-up policy have a

² Before the availability of large deductible programs, retrospective rating plans were the dominant rating plan for large employers. Under a retrospective rating plan, the final premium paid by the employer is based on the actual loss experience of the employer during the policy, plus insurer expenses and an insurance charge. If the employer controls the amount of claims, it pays lower premiums.

³ FWCIGA's purpose is to provide a mechanism for the payment of covered claims, to avoid excessive delay in payment, and to avoid financial loss to claimants in the event of the insolvency of a member insurer. See <http://www.fwciga.org>.

⁴ For additional discussion on employer and insurer solvency concerns and large deductible policies see "Workers' Compensation Large Deductible Study," NAIC/IAIABC Joint Working Group Study (March 2006). Available at http://www.naic.org/store_pub_whitepapers.htm.

minimum workers' compensation standard premium of \$500,000.⁵ Satisfaction of this requirement would likely be rare, as every entity on a construction project would need to be an extremely large employer and small subcontractors would be excluded.

III. Effect of Proposed Changes:

Section 1. Creates s. 627.4138, F.S., regarding wrap-up insurance policies for nonpublic construction projects. The bill defines a "wrap-up insurance policy" to mean a policy issued to the nonpublic owner or general contractor of a construction project through a consolidated insurance program that provides coverage workers' compensation coverage, various forms of liability coverage, or a combination of such coverages for the contractors and subcontractors working at a specified contracted work site of the construction project.

The bill authorizes a wrap-up insurance policy to include a deductible of \$100,000 or more for workers' compensation claims if all of the following prerequisites are met:

- The workers' compensation minimum standard premium calculated on the combined payrolls for all entities covered by the wrap-up policy exceeds \$500,000;
- The project's estimated total cost is \$25 million or more;
- The insurer must pay the first dollar of a workers' compensation claim without a deductible;
- The reimbursement of the deductible by the insured does not affect the insurer's obligation to pay claims;
- The insurer must comply with all workers' compensation filing requirements under ch. 440, F.S., for losses, including those below the deductible limit;
- The insurer must file unit statistical reports with the National Council on Compensation Insurance (NCCI) which show all losses, including those below the deductible limit;
- Any unit statistical reports needed to calculate an experience modification factor for the insured must be filed with the NCCI;
- The insurer must comply with NCCI aggregate financial calls, detail claim information calls, unit statistical reporting, and other required calls; and
- The insurer must have a program for having the first named insured reimburse the insurer for losses paid within the deductible.

Section 2. Provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

⁵ See, e.g., Rule 69O-186.006, F.A.C.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Representatives from the Office of Insurance Regulation anticipate that the bill will greatly expand the use of large deductibles for wrap-ups. Currently, workers' compensation wrap-up construction project policies require that the General Contractor and all sub-contractors on the project receive individual policies because the workers' compensation law prohibits any employer from being added as an "additional insured" on any other employer's policy.

The bill safeguards the payment of workers' compensation benefits to injured workers by requiring the insurer to pay the first dollar of a workers' compensation claim without applying the deductible and specifying that the failure of a policyholder to reimburse an insurer for the deductible by the insured does not affect the insurer's obligation to pay claims.

C. Government Sector Impact:

According to representatives from the Workers Compensation Insurance Guaranty Association (FLWCIGA), large deductible policies were a factor in three of the seven liquidations that occurred from January 2009 through June 2012 requiring reimbursement from the association. The FLWCIGA incurred losses of approximately \$49 million due to the three companies. If the FLWCIGA requires additional funds to pay its obligations, it will levy assessments on workers' compensation insurers, who are authorized to include assessments as an appropriate factor in the making of rates.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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