

BILL ANALYSIS

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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Consolidated insurance programs (CIPs) are insurance programs in which a principal, usually either an owner or a general contractor, provides insurance coverages that are bundled into one insurance program for a single construction project or multiple construction projects. The coverage usually provides coverage for everyone on the project, from the general contractor to the subcontractors and their employees. Such coverage may include such insurance as general liability, workers compensation, and builder's risk. In the industry, these programs are sometimes referred to as "wraps".

The goal of CIPs is to reduce overall insurance costs for a project by providing one comprehensive policy. The program works best on very large projects, especially those valued at greater than \$100 million, because at that level the program can afford the management and infrastructure needed to make the program successful. A general contractor and/or subcontractors are expected or required to lower their bids for the project to reflect the insurance costs they would have included in their bids. The owner or contractor anticipates savings through the volume purchase.

The experience of many contractors and subcontractors with CIPs has been mixed, even on very large projects. Coverage may be less extensive than the contractor or subcontractor normally carries. The amount of insurance provided may be inadequate or may fail to cover everyone. CIPs may also fail to provide coverage after a particular contractor or subcontractor's work is completed or if a defect or an injury occurs after the subcontractor has left the job. Also many policies terminate prior to the expiration of the Statute of Repose. An off-site accident, although related to the project, may not be covered.

Other issues related to CIPs include the need for additional administrative staff and safety personnel. Separate payroll and auditing procedures are often required of contractors and subcontractors. When a job is finished, final payment is may be delayed because the administrator has not completed the insurance audit.

Given such experiences, many contractors and subcontractors maintain their own liability insurance and workers' compensation in order to be insured adequately, thereby increasing the cost of a project. Additionally, some carriers refuse to provide separate coverage for a contractor or subcontractor when a CIP is involved.

As proposed, S.B. 868 would limit the circumstances under which a CIP could be used.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 151.202, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 2, Insurance Code, by adding Subtitle C, as follows:

SUBTITLE C. PROGRAMS AFFECTING MULTIPLE LINES OF INSURANCE

CHAPTER 151. CONSOLIDATED INSURANCE PROGRAMS.

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 151.001. DEFINITIONS. Defines "consolidated insurance program," "construction project," "contractor," and "insurance credit."

Sec. 151.002. PRINCIPAL. (a) Defines "principal."

(b) Provides that the principal under a consolidated insurance program is the person responsible for the payment of the premium on the insurance coverage and is typically the name insured on the insurance contract or policy.

Sec. 151.003. MINIMUM SIZE OF CONSTRUCTION PROJECT. Requires that the amount of the contract between the owner and the prime contractor for any construction project be greater than \$100 million to be eligible to use a consolidated insurance program under this chapter.

Sec. 151.004. WAIVER OF GOVERNMENTAL IMMUNITY. (a) Defines "governmental unit."

(b) Provides that a governmental unit is liable for damages resulting from negligence by the governmental unit in the procurement or coverage of insurance under a consolidated insurance program.

(c) Provides that sovereign immunity to suit is waived and abolished to the extent of the liability created by this section.

[Reserves Sections 151.005-151.050 for expansion.]

SUBCHAPTER B. GENERAL REQUIREMENTS FOR A CONSOLIDATED INSURANCE PROGRAM

Sec. 151.051. GENERAL REQUIREMENTS. Requires an insurance contract or policy issued under a consolidated insurance program to meet certain requirements.

Sec. 151.052. REQUIRED COVERAGES. (a) Requires an insurance policy or contract issued under a consolidated insurance program to provide coverages for all operations that are necessary and incidental to the construction project.

(b) Requires the consolidated insurance program to provide professional liability coverage for any errors or omissions regarding any design work or program administrative work, including any safety-related services or drug or substance abuse services that are required of the contractor, with separate limits of liability not less than the limits provided by the program for commercial general liability insurance coverage.

(c) Prohibits the operations or coverages under the consolidated insurance program, after the award of a construction contract by the principal and except as provided by Subsection (d), from being materially changed or cancelled without written notice provided to the principal and all contractors 60 days prior to the effective date of the material change or cancellation.

(d) Requires a notice to cancel coverage due to non-payment of premium to be effective only after written notice is provided to the principal and all contractors 30 days prior to the effective date of the cancellation due to non-payment of premium.

(e) Entitles a contractor to certain rights if the operations or coverages under a consolidated insurance program are materially changed or cancelled and not replaced with equivalent operations or coverages.

(f) Provides that, for purposes for Subsection (e) equivalent operations or coverages includes, where applicable, an insurer that meets the requirements in Section 151.060.

(g) Provides that a contractor that elects to cancel its construction project contract under Subsection (e)(2) to be entitled to payment for all properly performed labor or properly furnished materials supplied by the contractor to the construction project prior to the effective date of cancellation of its construction project contract.

(h) Entitles a contractor who submits a price proposal for work on a construction project under a consolidated insurance program to written notification from the principal or contractor of any material change in the consolidated insurance program by the date that is no less than 7 days prior to the date the contractor executes the contract for work on the construction project.

(i) Authorizes a contractor to withdraw its price proposal for work on the construction project without recourse or liability for damage to any person after receipt of notice under Subsection (h).

Sec. 151.053. **COVERAGE OF CONTRACTORS; EFFECT OF SEPARATE COVERAGE.** (a) Requires each contractor on a construction project covered by a consolidated insurance program to be listed as an additional insured on each insurance policy and contract under this program and have equal rights under the policy or contract with the principal and other contractors.

(b) Prohibits the principal or a contractor from requiring a contractor to obtain additional insured endorsements on the contractor's separately maintained insurance contracts or policies that are of the same general type as the insurance coverages provided by the consolidated insurance program except for offsite work for ongoing operations related to the project.

(c) Requires the coverages under the consolidated insurance program to be primary and non-contributory to any insurance policy or contract separately maintained by a contractor that is of the same general type as the insurance coverages provided by the consolidated insurance program.

(d) Requires a contractor covered by a consolidated insurance program to have standing in any hearing or proceeding involving workers' compensation or liability claims, including any claim adjustment and settlement negotiations and requires the contractor to be entitled to representation by legal counsel selected by the contractor and whose expense is required to be covered under the consolidated insurance program. Requires the principal to have the right to approve the legal counsel selected by the contractor, but prohibits such approval from being unreasonably withheld.

Sec. 151.054. **COMPLIANCE BY PRINCIPAL.** Prohibits a principal under a consolidated insurance program who does not comply with the requirements of this chapter from, directly or indirectly, charging a contractor for any insurance coverage provided to the contractor by the program.

Sec. 151.055. **SUBROGATION.** Sets forth requirements for establishing subrogation rights.

Sec. 151.056. **LIMITS OF COVERAGE.** (a) Provides that, subject to Section 151.058, aggregate and per-occurrence limits of all insurance coverages under a consolidated insurance program apply to all contractors under the program for the term of each construction project covered by the program.

(b) Requires the per-occurrence limit to be no less than \$100,000,000 for each single construction project or for each construction project that is part of a multiple construction project.

[Bill as drafted does not contain Subsection (c).]

(d) Requires the consolidated insurance program to reinstate annually the liability limits for each policy or contract subject to the program.

Sec.151.057. APPLICATION TO GENERAL LIABILITY COVERAGE. Sets forth requirements for general liability coverage if a consolidated insurance program includes such coverage.

Sec. 151.058. DURATION OF COVERAGE. Requires a consolidated insurance program that provides coverage of products and completed operations coverage to continue the coverage until the date that is five years from the date on which the construction project is complete.

Sec. 151.059. NOTICE OF PROPOSED CHANGES IN COVERAGE REQUIRED. Sets forth requirements and guidelines for notifying the principal and each contractor of any proposed changes to the consolidated insurance program.

Sec. 151.060. INSURER REQUIREMENTS; INSURER RATINGS. (a) Requires all insurance coverages under a consolidated insurance program to be provided by an insurer that has a certain rating.

(b) Requires the requirements in Subsection (a) to be maintained for the duration of the construction project.

Sec. 151.061. BONDS. (a) Prohibits a consolidated insurance program from providing a performance bond or payment bond for any contractor.

(b) Provides that Subsection (a) does not prohibit the specifications for a construction project from including requirements for bonds that are required to be obtained directly by the contractor.

Sec. 151.062. INDEMNIFICATION. [Bill as drafted does not specify Subsection (a).] Prohibits a contractor from being required to indemnify, hold harmless, or defend any claim for any action assumed under a contract on a construction project covered by a consolidated insurance program under certain circumstances.

(b) Requires the consolidated insurance program, on a construction project covered by a consolidated insurance program, to provide liability insurance to cover the indemnity obligation of a contractor insured under the consolidated insurance program.

Sec. 151.062A. DEFENSE COVERAGE FOR CLAIM OR SUIT. (a) Requires an insurance policy or contract, in the event of a claim or lawsuit that is covered by the consolidated insurance program, to provide for the defense of each contractor with the defense to be conducted by legal counsel selected by each contractor. Requires the principal to have the right to approve the legal counsel selected by the contractor, but prohibits such approval from being unreasonably withheld.

(b) Prohibits Subsection (a) from applying under certain circumstances.

Sec. 151.063. PAYMENT OF CERTAIN DEDUCTIBLES, LOSSES, OR PENALTIES. (a) Requires a principal to pay certain amounts.

(b) Prohibits a principal from assessing a contractor covered under the program for a deductible, loss, or penalty described by Subsection (a), except for a bodily injury or property damage claim under certain circumstances.

(c) Requires the limit of the deductible assessed to the contractor under Subsection (b) to be the lesser of the amount the insurance carrier assesses the principal or \$2,500.

Sec. 151.064. PREMIUMS ASSESSED TO CONTRACTOR. Sets forth guidelines and requirements for assessing premiums to a contractor.

Sec. 151.064A. PAYMENT OF DIVIDENDS OR REFUNDS; INTEREST DUE. (a) Requires any dividend or premium refund due under Section 151.064 to be paid or credited to each entitled contractor no later than the 14th day after payment or credit is issued by the insurance carrier.

(b) Requires a dividend or premium refund not paid in accordance with Subsection (a) to bear interest at the rate of 1-1/2 per cent per month from the date of credit or payment by the carrier until the date of payment in full to the contractor entitled to the payment.

(c) Requires a dividend or premium refund received by or credited to a principal to constitute trust funds to be held by the principal and to be subject to Subchapter B (Misapplication of Trust Funds), Chapter 162, Property Code.

Sec. 151.065. AUDIT REQUIREMENTS. Requires any audit of a contractor covered by a consolidated insurance program who is subject to a premium charge for the coverage to be completed not later than the 45th day after the date on which the contractor substantially completes the work performed by the contractor on the construction project.

Sec. 151.066. DATA REPORTS. (a) Requires the program administrator, insurer, or the principal to report general liability and workers' compensation loss and premium data in detail to certain entities.

(b) Sets forth the timeline for sending the report under Subsection (a).

(c) Requires a report under Subsection (a)(2) to include data that has been corrected after the investigation of any discrepancies reported by a contractor.

(d) Sets forth guidelines for correcting any false information contained in a report and establishes sanctions for a failure to report correct information.

[Reserves Sections 151.067-151.100 for expansion.]

SUBCHAPTER C. DISCLOSURE REQUIREMENTS FOR ADMINISTRATION OF A CONSOLIDATED INSURANCE PROGRAM

Sec. 151.101. REQUIRED DISCLOSURE AT BID SOLICITATION. Requires a principal or contractor, at the time of soliciting bids for a construction project, to disclose in the project plans or specifications that the project will be covered by a consolidated insurance program subject to this chapter.

Sec. 151.102. GENERAL ELEMENTS OF BID SOLICITATION DISCLOSURE. Sets forth requirements for each disclosure made under Section 151.101.

Sec. 151.101A. REQUIRED DISCLOSURE PRIOR TO CONTRACT EXECUTION. Requires a principal or contractor to make a written disclosure to the contractor that contains detailed information concerning the consolidation insurance program not less than 5 days prior to the time the principal or contractor executes a contract for a construction project covered by a consolidated insurance program.

Sec. 151.101B. GENERAL ELEMENTS OF PRE-CONTRACT DISCLOSURE. Sets forth requirements for each pre-contract disclosure made under Section 151.101A.

Sec. 151.103. FORMULA FOR INSURANCE CREDITS. (a) Requires the disclosure required under Section 151.101 to include the formula to be used by a contractor in computing any insurance credits.

(b) Requires the formula to include certain variables.

(c) Prohibits a principal from requiring an insurance credit of a contractor for flat rate coverages maintained by the contractor.

Sec. 151.104. CONTRACT AWARD; BASIS. (a) Requires the disclosure required under Section 151.101 to state the basis on which the principal will award the contract.

(b) Requires a contractor awarding a contract to another contractor to use the basis described under Subsection (a) for any contractor insured under the consolidated insurance program.

Sec. 151.105. INJURED EMPLOYEES. Requires the disclosure required under Section 151.101 to fully describe any light duty return-to-work program required for a contractor's injured employees. Requires a return-to-work program to include a formula under which the reasonable compensation due the contractor for the lost productivity of the light duty employee is computed.

[Reserves Sections 151.106-151.150 for expansion.]

SUBCHAPTER D. SAFETY PROGRAM

Sec. 151.151. SAFETY PROGRAM REQUIRED. (a) Requires a principal to adopt a comprehensive, professionally developed safety program designed to reduce the frequency and severity of worker injuries. Requires the principal to require participation in the safety program by all persons working on the construction project.

(b) Requires the safety program to include a program for detection of drug use and other substance abuse.

(c) Authorizes a qualified third-party safety company to administer and operate a safety program required under this section.

Sec. 151.152. SAFETY PROFESSIONALS. (a) Requires a safety program to have at least one qualified safety professional who works not less than 40 hours weekly at the work site of the construction project for every 100 workers on the construction project.

(b) Requires a person to meet certain requirements to be qualified to serve as a safety professional under Subsection (a).

[Reserves Sections 151.153-151.200 for expansion.]

SUBCHAPTER E. PROGRAM ADMINISTRATION

Sec. 151.201. PROGRAM ADMINISTRATOR. (a) Requires each principal to appoint a qualified administrator for the consolidated insurance program whose only duty is administration of the program.

(b) Sets forth eligibility requirements for a person to serve as the program administrator.

Sec. 151.202. POWERS AND DUTIES OF PROGRAM ADMINISTRATOR; RELATIONSHIP WITH CONTRACTORS; RULES. (a) Requires each program administrator to ensure that the administrator's clients comply with the requirements of this chapter. Provides that, for purposes of this subsection, each contractor on the construction project is considered a client of the program administrator.

(b) Requires the commissioner of insurance (commissioner) to adopt rules as necessary to enforce this section and authorizes the commissioner to impose sanctions under Chapter 82 (Sanctions) for a violation of this section by a program administrator. Authorizes sanctions under this subsection to include revocation of the license held by the program administrator under this code.

Sec. 151.203. CONTRACTOR AS BENEFICIARY. Provides that, for the purposes of insurance benefits under the consolidated insurance program, each contractor is considered a beneficiary of the administrator and requires the administrator to owe a fiduciary duty to each contractor that participates in the program.

SECTION 2. Makes application of this Act prospective to January 1, 2006.

SECTION 3. Effective date: September 1, 2005.