

BILL ANALYSIS

Senate Research Center

S.B. 1081
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Consolidated insurance programs (CIPs) are insurance programs under which a principal provides general liability insurance coverage, workers' compensation insurance coverage, or both, that are incorporated into an insurance program for a single construction project to provide insurance coverage for the owner and all contractors on a construction project. These policies are bought by the project owner or general contractor. When bidding on a project covered by a CIP, contractors are expected to deduct the cost of insurance from their bids. In theory, CIPs reduce insurance costs for a project through buying in bulk and ensure that each contractor on a project has sufficient coverage. In practice, many contractors have found that the cost savings associated with a CIP are realized through providing insufficient coverage that results in risk shifting to contractors that would ordinarily be covered by the contractors' own insurance coverage. It is important to note that most contractors cannot supplement the coverage provided under a CIP with their own insurance due to an endorsement in their policies that excludes coverage for work done on CIP projects.

S.B. 1081 requires disclosure that a project will be covered by a CIP and that contractors are provided sufficient information to compare the coverage under a CIP with their own insurance. Such disclosure will be provided when soliciting bids for a construction project and prior to signing the construction contract. It is understood that the amount of information disclosed when soliciting bids will be less than the amount of information disclosed prior to signing the construction contract. S.B. 1081 also requires that each contractor covered by a CIP be provided a copy of the policy. (Original Author's/Sponsor's Statement of Intent)

S.B. 1081 amends current law relating to the disclosure of certain information under a consolidated insurance program.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 1 (Section 151.002, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 151.002, Insurance Code, as follows:

Sec. 151.002. RULES. Requires the commissioner of insurance (commissioner) to adopt rules as necessary to implement and enforce this subchapter and Subchapter B (General Requirements).

SECTION 2. Amends Subchapter A, Chapter 151, Insurance Code, by adding Sections 151.003 through 151.009, as follows:

Sec. 151.003. INFORMATION REQUIRED TO BE PROVIDED BY PRINCIPAL BEFORE ENTERING CONSTRUCTION CONTRACT. Requires a principal, if a construction contract requires a person to enroll in a consolidated insurance program, not later than the 10th day before the date the principal enters into the contract with the person, to provide the following information about the consolidated insurance program to the person:

- (1) contact information, including phone number and e-mail address, for the program administrator, the principal's risk manager, and the insurer's contact person for filing a claim for each type of insurance coverage provided in the program;
- (2) the criteria for eligibility of enrollment into the program;
- (3) a description of the project site covered by the program coverages;
- (4) a summary of insurance coverages to be provided to the contractor under the program, including information as set forth;
- (5) a summary of insurance coverages to be provided by the contractor;
- (6) instructions on how to include or exclude costs of insurance provided by the program in the person's proposal for work on the construction project;
- (7) a description of the audit or claims procedures related to the program that may result in additional cost to a contractor, including the method of calculation for any assessment charged to a contractor related to the principal's payment of a policy deductible and any other specific cost amounts; and
- (8) a description of a contractor's duties related to reporting payroll and retention of documentation and claims and participation in safety inspections and incident reporting.

Sec. 151.004. INFORMATION REQUIRED TO BE PROVIDED BY CONTRACTOR BEFORE ENTERING CONSTRUCTION CONTRACT. Requires a contractor, if a construction contract requires a person to enroll in a consolidated insurance program, not later than the 10th day before the date the contractor enters into the contract with the person, to provide to the person, in an accurate form, the information listed in Section 151.003 that the contractor received under that section.

Sec. 151.005. RELIANCE ON INFORMATION PROVIDED. Requires that the information required under Section 151.003 be accurate, and a person who receives the information under Section 151.003 or 151.004 may justifiably rely on the information to decide whether to enter into the construction contract.

Sec. 151.006. FAILURE TO FURNISH. (a) Prohibits a person from being required to enter into a construction contract that requires enrollment in a consolidated insurance program unless the person is provided the information in compliance with Section 151.003 or 151.004, as applicable. Authorizes the person, if the information required under Section 151.003 is not provided to a person within the 10-day period under Section 151.003 or 151.004, as applicable, to elect not to enroll in the consolidated insurance program.

(b) Authorizes a principal or contractor, if a person elects not to enroll in the consolidated insurance program under Subsection (a), to provide the person with the information required under Section 151.003 after the 10-day period under Section 151.003 or 151.004, as applicable. Requires the person to elect whether to enroll in the consolidated insurance program not later than the 10th day after the date that the information is provided under this subsection.

(c) Requires the person, if a person elects not to enroll in the consolidated insurance program under Subsection (a) or (b) and enters into a construction contract for the construction project, to obtain insurance coverage for the person's work on the project that substantially complies with the coverage terms and liability limits imposed for other persons who work on the construction project but who are not insured under the consolidated insurance program.

(d) Requires the principal or contractor, as applicable, to compensate a person with whom the principal or contractor contracts and who obtains insurance coverage under Subsection (c) for the actual cost of that insurance coverage.

Sec. 151.007. REQUEST FOR INSURANCE POLICY; DEADLINE TO PROVIDE.

(a) Authorizes a contractor to request in writing from the principal, or from the party with which the contractor has a direct contractual relationship, a complete copy of the insurance policy that provides coverage for the contractor under the consolidated insurance program.

(b) Requires that the copy described by Subsection (a) be provided to the requesting contractor not later than the later of the 30th day after the date the request was sent or the 60th day after the date the contractor's work covered by the consolidated insurance program begins on the construction project.

Sec. 151.008. FAILURE TO PROVIDE INSURANCE POLICY. Provides that it is a material breach of a contractor's construction contract if a complete copy of the insurance policy requested by the contractor under Section 151.007 is not provided before the later of the 75th day after the date the request was sent or the 90th day after the date the contractor's work covered by the consolidated insurance program begins on the construction project.

Sec. 151.009. ELECTRONIC DELIVERY. (a) Requires a principal or contractor, on a person's express request, to provide information under this subchapter in hard copy written form.

(b) Authorizes the principal or contractor, if a person does not expressly request information be provided in hard copy written form, to comply with the requirements of this chapter by transmitting the information by facsimile or e-mail or allowing access to the information on the principal's, or the principal's agent's, Internet website.

SECTION 3. Provides that the changes in law made by this Act apply only to an original construction contract with an owner of an improvement or contemplated improvement that is entered into on or after January 1, 2016. Provides that, if a construction contract with an owner of an improvement or contemplated improvement is entered into on or after January 1, 2016, the changes in law made by this Act apply to a related subcontract, purchase order contract, personal property lease agreement, consolidated insurance program, and insurance policy. Provides that, if a construction contract with an owner of an improvement or contemplated improvement is entered into before January 1, 2016, that original construction contract and a related subcontract, purchase order contract, personal property lease agreement, consolidated insurance program, and insurance policy are governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. Effective date: January 1, 2016.