

BILL ANALYSIS

C.S.H.B. 1206
By: Huberty
Insurance
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Consolidated insurance programs (CIPs) are comprehensive systems of insurance policies that are used to provide insurance coverage for the owner and all the contractors on a construction project. Such policies usually provide workers' compensation and general liability insurance with associated excess or umbrella coverage. Interested parties note that when contractors are bidding on a contract that may be covered by a CIP, they are often unaware of what the CIP will cover, the amount the deductible will be, and if the policy limits will be sufficient for the scope of the project. The parties also stress that contractors are often not provided or allowed access to a copy of the policy. C.S.H.B. 1206 seeks to address these issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1206 amends the Insurance Code to require, if a construction contract requires a person to enroll in a consolidated insurance program, the principal and contractor to provide specified information about the consolidated insurance program to the person not later than the 10th day before the date a principal enters into the contract with the person. The bill requires the required information to accurately reflect the terms of the consolidated insurance program and authorizes a person who receives such information to justifiably rely on the information to decide whether to enter into the construction contract.

C.S.H.B. 1206 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 required information, as applicable. The bill authorizes the person to elect not to enroll in the consolidated insurance program if the required information is not timely provided to a person within the prescribed 10-day period, as applicable. The bill authorizes a principal or contractor to provide a person that elects not to enroll in the consolidated insurance program with the required information after the prescribed 10-day period, as applicable. The bill authorizes such a person to elect to enroll in the consolidated insurance program not later than the 10th day after the date that such information is provided.

C.S.H.B. 1206 requires a person that elects not to enroll in the consolidated insurance program and that 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

requirements imposed for other persons who work on the construction project but who are not insured under the consolidated insurance program. The bill requires the principal or contractor, as applicable, to compensate a person with whom the principal or contractor contracts and who obtains such insurance coverage for the actual cost of that insurance coverage.

C.S.H.B. 1206 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. The bill sets out the deadline for providing the copy to the requesting contractor at 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. The bill establishes that it is a material breach of a contractor's construction contract if a complete copy of the insurance policy requested by the contractor is not provided before the later of the 75th 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.

C.S.H.B. 1206 requires a principal or contractor to provide information relating to consolidated insurance programs in hard copy written form on a person's express request. The bill provides that if a person does not expressly request information be provided in hard copy written form, the principal or contractor may comply with the requirements of statutory provisions relating to consolidated insurance programs 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, website.

C.S.H.B. 1206 requires the commissioner of insurance to adopt rules as necessary to implement general provisions regarding consolidated insurance programs, including the bill's provisions.

EFFECTIVE DATE

January 1, 2016.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1206 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

SECTION 1. Subchapter A, Chapter 151, Insurance Code, is amended by adding Section 151.003 to read as follows:

Sec. 151.003. REQUIRED DISCLOSURE.
(a) An insurer or the insurer's agent shall timely provide information to a contractor or potential contractor of a construction project that is covered under or that may be covered

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 151.002, Insurance Code, is amended to read as follows:
Sec. 151.002. RULES. The commissioner shall adopt rules as necessary to implement and enforce this subchapter and Subchapter B.

No equivalent provision. (*But see SECTION 2 below.*)

under an insurance policy under a consolidated insurance program.

(b) The commissioner shall adopt rules establishing requirements governing the provision of information under Subsection

(a). The rules must require an insurer or the insurer's agent to provide:

(1) within a reasonable time, sufficient information to a potential bidder for a contract on a construction project to meaningfully compare the bidder's own insurance program with the coverages, exclusions, limits, deductibles, credits, and costs of the coverage provided under the consolidated insurance program;

(2) before the construction contract is entered into, and with sufficient time for a prudent businesslike analysis, detailed information to a successful bidder on:

(A) the conditions, insuring agreement, coverages, exclusions, deductibles, and limits of each policy issued or to be issued under the consolidated insurance program;

(B) the claims processing procedures and other administrative policies or procedures under the consolidated insurance program; and

(C) the methods to be used in calculating costs, deductibles, and credits under the consolidated insurance program; and

(3) on the contractor's enrollment in the consolidated insurance program, a copy to each contractor of:

(A) each policy under the consolidated insurance program, including any renewal or replacement policy; or

(B) if the insurer has not issued the policy, a copy of an insurance binder and all related endorsements.

No equivalent provision. (But see SECTION 1 above.)

SECTION 2. Subchapter A, Chapter 151, Insurance Code, is amended by adding Sections 151.003 through 151.009 to read as follows:

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

consolidated insurance program to the person:

(1) contact information, including phone number and e-mail address, for:

(A) the program administrator;

(B) the principal's risk manager; and

(C) 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:

(A) the policy form number and issuing organization if the policy is a standardized insurance policy or, if the policy is not standardized, a sample policy form;

(B) per occurrence and aggregate limits of insurance coverages and any sublimits that may apply;

(C) term of coverages for each limit and sublimit, if any; and

(D) any material endorsements to the policy described under Paragraph (A);

(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 specific cost amounts; and

(8) a description of a contractor's duties related to reporting:

(A) payroll and retention of documentation; and

(B) claims and participation in safety inspections and incident reporting.

No equivalent provision.

Sec. 151.004. INFORMATION REQUIRED TO BE PROVIDED BY CONTRACTOR BEFORE ENTERING CONSTRUCTION CONTRACT. If a construction contract requires a person to enroll in a consolidated insurance program, not later than the 10th day before the date a

contractor enters into the contract with the person, the contractor must provide to the person, in an accurate form, the information listed in Section 151.003 that the contractor received under that section.

No equivalent provision.

Sec. 151.005. RELIANCE ON INFORMATION PROVIDED. The information required under Section 151.003 must accurately reflect the terms of the consolidated insurance program, 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.

No equivalent provision.

Sec. 151.006. FAILURE TO FURNISH.
(a) A person may not be 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. 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, the person may elect not to enroll in the consolidated insurance program.
(b) If a person elects not to enroll in the consolidated insurance program under Subsection (a), a principal or contractor may 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. The person may elect 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) 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, the person must obtain insurance coverage for the person's work on the project that substantially complies with the coverage requirements imposed for other persons who work on the construction project but who are not insured under the consolidated insurance program.
(d) The principal or contractor, as applicable, shall 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.

No equivalent provision.

Sec. 151.007. REQUEST FOR INSURANCE POLICY; DEADLINE TO PROVIDE. (a) A contractor may 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) The copy described by Subsection (a) must be provided to the requesting contractor not later than the later of:

(1) the 30th day after the date the request was sent; or

(2) the 60th day after the date the contractor's work covered by the consolidated insurance program begins on the construction project.

No equivalent provision.

Sec. 151.008. FAILURE TO PROVIDE INSURANCE POLICY. 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:

(1) the 75th day after the date the request was sent; or

(2) the 60th day after the date the contractor's work covered by the consolidated insurance program begins on the construction project.

No equivalent provision.

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

(b) If a person does not expressly request information be provided in hard copy written form, the principal or contractor may comply with the requirements of this chapter by:

(1) transmitting the information by facsimile or e-mail; or

(2) allowing access to the information on the principal's, or the principal's agent's, Internet website.

SECTION 2. Section 151.003, Insurance Code, as added by this Act, applies only to a

SECTION 3. Subchapter A, Chapter 151, Insurance Code, as amended by this Act,

construction contract that is entered into on or after January 1, 2016. A construction contract that is entered into before January 1, 2016, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2015.

applies only to a construction contract that is entered into on or after January 1, 2016. A construction contract that is entered into before January 1, 2016, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4. This Act takes effect January 1, 2016.