

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1081
By: Creighton
Business & Commerce
4/15/2015
Committee Report (Substituted)

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)

C.S.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 Subchapters A and B (General Requirements).

SECTION 2. Amends Subchapter A, Chapter 151, Insurance Code, by adding Sections 151.003 through 151.008, as follows:

Sec. 151.003. INFORMATION REQUIRED TO BE PROVIDED BY A PRINCIPAL PRIOR TO ENTERING INTO A CONSTRUCTION CONTRACT. Requires the principal who procures the insurance policy under a consolidated insurance coverage, not less than ten days before the date a principal enters into a construction contract with a person, and the contract contains a requirement for the person to enroll in a consolidated

insurance program, to provide to the person the following information about the consolidated insurance program:

- (1) contact information, including phone and email addresses for the program administrator, the principal's risk manager, and the insurance company's contact person for filing a claim for each type of insurance coverage provided in the program;
- (2) criteria for eligibility of enrollment into the program;
- (3) a description of the project site to which the program coverages apply;
- (4) a summary of insurance coverages to be provided to the contractor under the program, including:
 - (A) the policy form number and issuing organization name for a standardized insurance policy or a sample policy form if not a standardized form;
 - (B) per occurrence and aggregate limits of insurance coverage and any sublimits that may apply;
 - (C) term of coverage for each limit and sublimit; and
 - (D) material endorsements to the policy described in Subdivision (A);
- (5) a summary of insurance coverages to be provided by the contractor;
- (6) instructions to a person 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 could result in a contractor's responsibility for any additional costs, including the calculation for any assessment to a contractor related to the principal's payment of a policy deductible, and including specific monetary amounts related to those costs; and
- (8) a description of a contractor's duties related to:
 - (A) reporting of payroll and retention of documentation; and
 - (B) reporting of claims and participation in safety inspections and incident reporting.

Sec. 151.004. INFORMATION REQUIRED TO BE PROVIDED BY A CONTRACTOR PRIOR TO ENTERING INTO A CONSTRUCTION CONTRACT WITH A PERSON. Requires the contractor, not less than ten days before the date a contractor enters into a construction contract with a person, and the contract contains a requirement for the person to enroll in a consolidated insurance program, to provide to the person the information about the consolidated insurance program listed in Section 151.003.

Sec. 151.005. RELIANCE ON INFORMATION PROVIDED PRIOR TO ENTERING INTO CONTRACT; FAILURE TO FURNISH. (a) Requires that the information that is required to be provided under Section 151.003 accurately reflect those terms of the consolidated insurance program. Requires a contractor providing information to a person under Section 151.004 to accurately provide the information that the contractor received regarding the terms of the consolidated insurance program. Authorizes a person receiving the information under Section 151.003 or 151.004 to justifiably rely on the information to

guide its decision on whether to enter into a contract that requires the person to enroll in the consolidated insurance program.

(b) Authorizes a person, if the person is not timely provided the information required to be provided under Sec. 151.003 or Sec. 151.004, to elect not to enroll in the consolidated insurance program.

(c) Authorizes a principal or contractor, if a person elects not to enroll under Subsection (b), to provide to that person the information about the consolidated insurance program listed in 151.003 and the person will then have 10 days after the date the information is provided to elect to enter into the construction contract.

(d) Requires the person, if the person elects not to enroll in the consolidated insurance program under Subsection (b) or (c), and the person enters into a construction contract for the construction project, to furnish insurance coverage for its work on the construction project in substantial compliance with what is required for a person that is not covered by an insurance policy under the consolidated insurance program.

(e) Requires a person that provides insurance coverage under Subsection (d) to be compensated by the party with which the person has entered into the construction contract for the person's actual cost of its insurance coverage.

(f) Prohibits a person from being required to enter into a construction contract that contains a requirement for the person to enroll in the consolidated insurance program unless the person has been provided the information about the consolidated insurance program listed in Section 151.003 at least 10 days prior to the date the agreement is entered into.

Sec. 151.006. REQUEST FOR INSURANCE POLICY; DEADLINE TO PROVIDE. Authorizes a contractor to request in writing from the principal, or from the party with which it has a direct contractual relationship, a complete copy of the insurance policy that provides coverage for the contractor under the consolidated insurance program. Requires that a complete copy of the insurance policy be provided to the requesting contractor by the later of the:

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

(2) 60th day after the date work covered by the consolidated insurance program commences on the construction project.

Sec. 151.007. FAILURE TO PROVIDE INSURANCE POLICY. Provides that, if the requesting contractor has made a request under Section 151.006 of the party with which it has a direct contractual relationship, it shall be a material breach of the requesting contractor's construction contract under this chapter if the requesting contractor is not provided the information under Section 151.006 by the later of the:

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

(2) 60th day after the date work covered by the consolidated insurance program commences on the construction project.

Sec. 151.008. ELECTRONIC DELIVERY. (a) Requires the principal or contractor, if the contractor requesting information under this subchapter expressly requests that the information be provided in written form, to provide the items in written form to the requesting contractor.

(b) Authorizes the principal or contractor, if the contractor requesting information has not made an express request for the information under this subchapter to be provided in written form and a principal or contractor chooses to provide the

information required under this subchapter by electronic delivery, to comply with the information delivery requirements in this subchapter by:

(1) electronic transmission by facsimile or email; or

(2) providing access to the required information on the principal's, or its agent's, Internet web site.

SECTION 3. Provides that Sections 151.003 through 151.008, Insurance Code, as added by this Act, apply only to a construction contract that is entered into on or after January 1, 2016. Makes application of this Act prospective to January 1, 2016.

SECTION 4. Effective date: January 1, 2016.