

## **BILL ANALYSIS**

Senate Research Center

S.B. 354  
By: Carona  
State Affairs  
4/25/2007  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Consolidated insurance programs (programs) are insurance programs in which a principal, usually an owner or general contractor, provides insurance coverages that are bundled into one insurance program for a single construction project or multiple construction projects. The policy typically provides coverage for each entity on the project, from the general contractor to the subcontractors and their employees for general liability, workers' compensation, and builder's risk. When coverage on a construction project is provided through a program, the principal anticipates saving money through selling contracts in volume, and the general contractors and 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 experience of many contractors and subcontractors has been mixed. In some cases, coverage may not provided the same extent of coverage that the contractor or subcontractor normally carries; the amount of coverage may not match the scope of the job; and gaps in coverage may exist.

As proposed, S.B. 354 provides a regulatory framework for the use of consolidated insurance programs, addresses the amount, length, and types of coverage provided by a program, and the size of projects that can participate in a program.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 151.251, 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 "administrator," "consolidated insurance program," "construction project," "contractor," "insurance credit," "principal," and "residential."

[Reserves Sections 151.002-151.050 for expansion.]

#### SUBCHAPTER B. GENERAL REQUIREMENTS FOR A CONSOLIDATED INSURANCE PROGRAM

Sec. 151.051. GENERAL REQUIREMENTS. Requires that an insurance contract or policy issued under a consolidated insurance program (program) provide coverages as required by the Texas Department of Insurance (TDI) and comply with the requirements adopted under this chapter.

Sec. 151.052. REQUIRED COVERAGES. (a) Requires an insurance policy or contract issued under a consolidated insurance program to provide coverages for all necessary and

incidental operations on the construction project site to the extent of the general type of insurance provided under the contract or policy. Defines "construction project site."

(b) Prohibits this chapter from being interpreted to prevent a contractor from obtaining, and charging to the principal the cost of, any insurance coverage not provided by the program for the protection of the contractor and the construction project.

(c) Prohibits the operations or coverages under the program, after the execution of a construction contract by the principal, from being materially changed, nonrenewed, or canceled without providing to the principal written notice provided to the principal and all contractors not later than the 60th day before the effective date thereof, except as provided by Subsection (d).

(d) Requires a notice to cancel coverage due to nonpayment of premium to become effective only after written notice is provided to the principal not later than the 10th day before the effective date of the cancellation.

(e) Requires the insurer or administrator to notify in writing each contractor that the coverage is cancelled. Requires such notice to be sent not later than the date coverage is cancelled.

(f) Entitles a contractor to certain courses of action if the operations or coverages under a program are materially changed, nonrenewed, or canceled and are not replaced with equivalent operations or coverages.

(g) Defines "equivalent operations or coverages" for the purposes of Subsection (f).

(h) Provides that Subsection (f)(2) does not apply to work not covered by the program.

(i) Requires a contractor that elects to suspend its contract under Subsection (f)(2) to provide written notice thereof to the principal or other contractor covered under the program with whom it has a direct contractual relationship. Entitles the contractor to payment for all properly performed duties or properly furnished materials and equipment, including the overhead cost and profit thereof, for such materials and services provided before the effective date of the contract suspension.

(j) Requires a contractor that suspends a contract under Subsection (f)(2) and is paid under Subsection (i) to perform all work and furnish all materials for which the contractor is paid.

Sec. 151.053. COVERAGE OF CONTRACTORS; EFFECT OF SEPARATE COVERAGE. (a) Requires that each contractor covered by a consolidated insurance program be a named insured on each insurance policy and contract under this program. Specifies that each contractor shall have equal rights with the principal under the policy or contract, subject to industry standards. Provides that this subsection does not apply to an individually issued contract or policy in the name of the contractor as the first-named insured under a program.

(b) Prohibits a principal or contractor from requiring a contractor to obtain an additional insured endorsement on a specified policy or contract that is of the same general type as the insurance coverage provided by the program. Provides an exception for off-site work for ongoing operations related to the project that is not covered by the program.

(c) Requires that the coverages under the program be primary and noncontributory to any separately maintained insurance policy or contract covered

by the consolidated insurance program that is of the same general type as the coverages provided by the program.

Sec. 151.054. COMPLIANCE BY PRINCIPAL. Prohibits a principal who does not comply with the provisions of this chapter from charging a contractor, or low-tier contractor, for any insurance coverage provided to the contractor by the program. Provides that noncompliance under this section does not include inadvertent errors that are not repeated in a way that would cause a reasonable person to believe that they are habitual or premeditated. Requires the dates sets as deadlines in this chapter to be interpreted to be material matters.

Sec. 151.055. SUBROGATION. Provides that the principal and contractor do not have subrogation rights against each other for a claim covered by the program. Establishes the same lack of subrogation rights between contractors.

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 program apply to all contractors for the term of each construction project covered by the program.

(b) Sets forth guidelines to determine the per-occurrence limit for a residential construction project.

(c) Establishes guidelines to determine the per-occurrence limit of nonresidential construction projects with an overall value less than \$400 million.

(d) Requires the per-occurrence limit for a nonresidential construction project with a value that exceeds \$400 million to be not less than \$100 million.

(e) Requires a consolidated insurance program to annually reinstate the liability limits for each policy or contract under the program or replace it with other policies or contracts that provide equivalent coverage and limits. Prevents this subsection from being applied to completed operations coverage upon completion of the construction project.

(f) Requires the insurer to notify all contractors in writing not later the 10th day after the date that the total monetary limit of liability coverage issued under the program is reduced by 50 percent, as well as for each additional 10 percentage point reduction.

(g) Requires that the aforementioned reduction be calculated based on incurred losses and expenses.

(h) Requires that the notice described in Subsection (f) include the initial monetary limit of liability coverage as well as that which remains at the time of the notice date.

(i) Provides that the notice required under Subsection (f) is only required if the combined monetary limit of all policies has been reached and if the limits on coverages have been extended by other policies.

(j) Prohibits the monetary limit of liability from being reduced if the insurer fails to comply with Subsection (f).

Sec. 151.057. APPLICATION TO GENERAL LIABILITY COVERAGE. Requires that coverage for a construction project cover a negligent act of a contractor and its ongoing and completed operations if a consolidated insurance program includes general liability coverage.

Sec. 151.058. DURATION OF COVERAGE. Requires a program that provides general liability coverage to continue completed operations coverage until the last date for bringing a suit for damages, as defined in Chapter 16, Civil Practices and Remedies

Code. Prohibits a contractor's separately maintained insurance from excluding coverage for a contractor's ongoing operations for warranty or punch-out work on a project covered by a program after written notification that the program has ended has been received.

Sec. 151.059. INSURER REQUIREMENTS; INSURER RATINGS. Sets forth specific requirements for an insurer that provides coverages under a consolidated insurance program for a nonresidential and residential construction projects. Requires that policies or contracts providing coverage under the program be issued to the first-named insured not later than the 30th day after coverage has been bound or otherwise agreed. Requires the requirements under this section to be maintained for the duration of the project.

Sec. 151.060. INDEMNIFICATION. (a) Requires the program to provide liability insurance on a program-covered construction project to cover the obligation of a program-insured contractor to indemnify, hold harmless, or defend another person for an action resulting in damage to person or property.

(b) Requires the minimum liability coverage required under Subsection (a) to be equal to the general liability coverage provided by the current standard form promulgated by the Insurance Service Office (ISO).

(c) Prohibits certain contractors from being required to indemnify, hold harmless, or defend any claim for an action that would be covered under the general liability coverage provided by the current standard form promulgated by the ISO unless the general liability coverage provides complete coverage for such obligation. Provides that any such requirement in a construction project contract pertaining to a construction project covered by a consolidated insurance program in which the contractor participates is void.

Sec. 151.061. DEFENSE COVERAGE FOR CLAIM OR SUIT. Requires the insurance policy or contract to provide coverage for the defense of each contractor in the event of a lawsuit or arbitration proceeding covered by a program. Provides that a program-covered contractor has standing in any hearing or proceeding dealing with worker's compensation or liability claims provided that the coverage is part of the program. Entitles the contractor to be represented at such hearing or proceeding by an employee or agent thereof, and program-covered legal counsel upon request from the contractor.

Sec. 151.062. PAYMENT OF CERTAIN DEDUCTIBLES, LOSSES, OR PENALTIES. (a) Requires a principal to pay, subject to Subsection (b), any coverage deductibles or losses in a retrospective or other loss sensitive rating plan under the program; any penalties incurred under the program; and all deductibles applicable to any policy provided by the program.

(b) Authorizes a principal to charge a reasonable deductible for a property damage loss under certain conditions and in an amount proportional to the size and severity of the loss, not to exceed \$5,000.

Sec. 151.063. PREMIUMS ASSESSED TO CONTRACTOR. Requires that if any coverage premiums under a program on a construction project are assessed to a contractor, the contractor's most recent experience modifier be used to compute the premium assessed to the contractor and be adjusted annually to reflect a change in the contractor's experience modifier.

Sec. 151.064. AUDIT REQUIREMENTS. Requires that any required audit of a program-covered contractor who is subject to a premium charge be completed not later than the 60th day after the contractor completes its work on the construction project. Extends the timeframe by one day for each day that the contractor fails to provide to the auditor access to its records after it has received written notice of the audit's completion date.

Sec. 151.065. DATA REPORTS FOR WORKERS' COMPENSATION. (a) Requires the program administrator to submit to the contractor a detailed report of the contractor's loss and payroll data, at least quarterly.

(b) Requires the aforementioned report and subsequent quarterly reports to be sent to the contractor within certain time periods.

(c) Requires the insurer to report certain information to the appropriate rating bureau annually within certain time periods.

(d) Requires the report to include corrected data resulting from an investigation of any discrepancies reported by a contractor.

(e) Requires an insurer to notify the rating bureau of any incorrect information submitted to the bureau not later than the 30th day after the date in which the insurer received written notice of the incorrect information.

(f) Requires that the deadlines under Subsections (b), (c), and (e) be extended one day for each day that the contractor fails to provide access to information necessary to complete the audit after it has received written notice of the date the audit is to be conducted.

[Reserves Sections 151.066-151.100 for expansion.]

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

Sec. 151.101. REQUIRED DISCLOSURE AT BID SOLICITATION. Requires the principal or contractor to disclose prominently in the project plans, specifications, and requests for bids or proposals at the time the contractor is soliciting for bids that the project may be covered by the program.

Sec. 151.102. GENERAL ELEMENTS OF BID SOLICITATION DISCLOSURE. Sets forth specific content requirements that are to be included in a disclosure made under Section 151.101.

Sec. 151.103. REQUIRED DISCLOSURE PRIOR TO CONTRACT EXECUTION. (a) Authorizes a principal to establish a minimum construction contract amount in order to include the contractor in the program.

(b) Entitles a contractor who submits a price proposal to written notification from the principal or other contractor of any material changes in the program not later than the 10th day before the execution date of the contract for work on the project.

(c) Authorizes a contractor, upon receipt of notice of adverse material change, to withdraw its price proposal or modify the price for the insurance component of the proposal without recourse or liability for damages to any person.

(d) Requires the principal to make a written disclosure of the price proposal that includes detailed information regarding the program by the seventh day before the execution of the contract for a project covered by a program.

Sec. 151.104. GENERAL ELEMENTS OF PRE-CONTRACT DISCLOSURE. Sets forth specific content requirements that are to be included in each disclosure made under Section 151.103.

Sec. 151.105. FORMULA FOR INSURANCE CREDITS. Requires that the disclosure required under Section 151.101 include the formula to be used by the contractor in computing insurance credits. Sets forth the content requirements for the formula. Prohibits a principal from requiring an insurance credit from a contractor for program-

provided coverage that is of the same type as flat-rate coverages maintained by the contractor.

Sec. 151.106. **CONTRACT AWARDS; BASIS.** Requires the disclosure described in Section 151.101 to state an explanation of how premium overruns or underruns are to be applied and if the contract will be made on the basis of including or excluding the cost of insurance coverage. Requires a contract-awarding contractor, to use the specified basis under Section 151.106(a) for any program-insured contractor.

[Reserves Sections 151.107-151.150 for expansion.]

#### SUBCHAPTER D. SAFETY PROGRAM AND INJURED WORKERS

Sec. 151.151. **APPLICATION.** Provides that this subchapter applies only if workers' compensation is a coverage provided by the program.

Sec. 151.152. **SAFETY PROGRAM REQUIRED.** Requires a principal to adopt a comprehensive safety program 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. Requires the safety program to include a program for the detection of substance abuse. Authorizes a qualified third party safety company to administer and operate the safety program.

Sec. 151.153. **SAFETY PROFESSIONALS.** (a) Sets forth minimum safety staffing requirements for a consolidated insurance program. Requires the principal, directly or through its contract with a contractor to maintain safety policies and staffing commensurate with the expected and actual hazards of the project.

(b) Requires a safety program conducted under this subchapter to have at least one qualified safety professional assigned to the construction project for primary safety responsibility. Requires a safety professional, if the construction project value exceeds \$25 million, to work not less than 40 hours per week at the work site of the construction project and provides that no work may take place at the work site unless at least one qualified safety professional is present at the work site.

(c) Sets forth the required qualifications for a person to serve as a safety professional under Subsection (b).

(d) Sets forth the required qualifications for a person to serve as a safety professional under Subsection (b) for a nonresidential construction project that is solely for the maintenance or remodeling of an existing industrial plant facility that maintains an ongoing consolidated insurance program in its regular course of business for such maintenance or remodeling work at the industrial plant facility.

Sec. 151.154. **INJURED EMPLOYEES.** Requires the disclosure under Section 151.101 to fully describe any light duty return-to-work program required for injured employees. Requires a return-to-work program to give a reasonable length of time during which a light-duty program would be in place. Specifies that the reasonable length of time will vary depending on the type of injury.

Sec. 151.155. **LIGHT DUTY STANDARDS.** Authorizes a consolidated insurance program to require the employer of an injured employee to provide alternative duty for the employee under certain circumstances.

[Reserves Sections 151.156-151.200 for expansion.]

#### SUBCHAPTER E. PROGRAM ADMINISTRATION

Sec. 151.201. **PROGRAM ADMINISTRATOR.** Requires each principal to appoint a qualified administrator for the administration of the program. Sets forth specific

eligibility requirements for a person to serve as the program administrator. Provides that the qualification requirements do not apply to an administrative assistant who provides support duties.

Sec. 151.202. POWERS AND DUTIES OF PROGRAM ADMINISTRATOR; RELATIONSHIP WITH CONTRACTORS. Provides that each program-covered contractor is considered a client of the program administrator. Sets forth specific powers and duties of the program administrator.

Sec. 151.203. CONTRACTOR AS BENEFICIARY. Provides that each program-covered contractor is considered a beneficiary of the administrator, to which the administrator owes a fiduciary duty.

[Reserves Sections 151.204-151.250 for expansion.]

#### SUBCHAPTER F. RULE MAKING AUTHORITY

Sec. 151.251. RULES. Requires the commissioner of insurance to adopt rules to implement and enforce this chapter and its purposes and intent and to provide for the protection of policyholders, insureds, and workers under a consolidated insurance program.

SECTION 2. Makes application of this Act prospective to January 1, 2008.

SECTION 3. Effective date: September 1, 2007.