

SENATE BILL 845

Unofficial Copy
C4

2002 Regular Session
2lr2923
CF HB 1153

By: **Senators Currie, Middleton, Hoffman, Kasemeyer, McFadden, and Ruben**

Introduced and read first time: February 18, 2002

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Owner Controlled Insurance Programs for Public Works Projects**

3 FOR the purpose of requiring the head of a public agency to consult with the
4 Treasurer and to have the Treasurer make a certain determination about use of
5 an owner controlled insurance program; requiring a public agency to use a
6 certain owner controlled insurance program for certain public works projects if
7 the cost of the project is over a certain amount and if the Treasurer makes a
8 certain finding; requiring an owner controlled insurance program to meet
9 certain conditions; authorizing the public agency to purchase an owner
10 controlled insurance policy with a deductible or self-insured retention in a
11 certain amount; requiring a public agency that uses an owner controlled
12 insurance program to submit a certain report to the Treasurer; requiring the
13 Treasurer to collect and analyze certain reports and monitor certain public
14 works projects; requiring the Treasurer to make a certain report periodically to
15 the Governor and the General Assembly; requiring the Board of Public Works to
16 adopt certain regulations; requiring the State Highway Administration to
17 develop and administer an owner controlled insurance program for the
18 construction of the Woodrow Wilson Bridge replacement project; and generally
19 relating to owner controlled insurance programs for public works projects.

20 BY adding to

21 Article - State Finance and Procurement
22 Section 9.5-101 through 9.5-105, inclusive, to be under the new title "Title 9.5.
23 Owner Controlled Insurance Programs for Public Works Projects"
24 Annotated Code of Maryland
25 (2001 Replacement Volume)

26 BY adding to

27 Article - Transportation
28 Section 8-615
29 Annotated Code of Maryland
30 (2001 Replacement Volume)

1 Preamble

2 WHEREAS, Public agencies spend millions of dollars on public works projects
3 every year, and it is essential that the contractors, subcontractors, workers, and
4 public agencies involved in public works projects be covered by comprehensive
5 workers' compensation and general liability insurance; and

6 WHEREAS, Contractors and subcontractors pass on the high cost of workers'
7 compensation and general liability insurance by including the costs in the bids they
8 submit for public works projects and the high cost of obtaining workers' compensation
9 and general liability insurance can prohibit small business and
10 minority/disadvantaged owned businesses from bidding on public works projects; and

11 WHEREAS, When public agencies purchase workers' compensation and general
12 liability insurance for public works projects, they are able to establish strict safety
13 programs that make the projects safer for workers and realize significant savings by
14 using their purchasing power to obtain workers' compensation and general liability
15 insurance for public works projects, thereby relieving the individual contractors and
16 subcontractors from having to purchase the policies and enabling the contractors and
17 subcontractors to submit lower bids; and

18 WHEREAS, The State has forecast a decrease in State tax revenues for the next
19 fiscal year; and

20 WHEREAS, The Department of Transportation has received only one bid for the
21 Woodrow Wilson Bridge, the bid is 176% greater than estimated by the Department of
22 Transportation, and, accordingly, cost-effective methods of developing the
23 \$1,000,000,000 Woodrow Wilson Bridge Project should be aggressively explored; and

24 WHEREAS, Rising insurance rates in the property and casualty insurance
25 market are a contributing factor to the high cost of the Woodrow Wilson Bridge
26 Project; however, it is estimated that an owner controlled insurance program can save
27 the State as much as \$10,000,000 during the construction phase of the superstructure
28 portion of the project; now, therefore,

29 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
30 MARYLAND, That the Laws of Maryland read as follows:

31 **Article - State Finance and Procurement**

32 **TITLE 9.5. OWNER CONTROLLED INSURANCE PROGRAMS FOR PUBLIC WORKS**
33 **PROJECTS.**

34 9.5-101.

35 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

36 (B) (1) "OWNER CONTROLLED INSURANCE PROGRAM" MEANS A SERIES OF
37 INSURANCE POLICIES ISSUED TO A PUBLIC AGENCY TO COVER SUBSTANTIALLY ALL

1 THE CONTRACTORS AND SUBCONTRACTORS ON A SPECIFIC PUBLIC WORKS PROJECT
2 COMBINED WITH A CENTRALLY ADMINISTERED SAFETY PROGRAM.

3 (2) "OWNER CONTROLLED INSURANCE PROGRAM" INCLUDES POLICIES
4 COVERING WORKERS' COMPENSATION, GENERAL LIABILITY, ENVIRONMENTAL
5 LIABILITY, PROFESSIONAL LIABILITY, CASUALTY, PROPERTY, TITLE, BUSINESS
6 INTERPRETATION, BUSINESS RISK, FORCE MAJEURE, COMPLETION, AND OTHER
7 INSURABLE RISKS.

8 (C) "PUBLIC AGENCY" MEANS A DEPARTMENT, AGENCY, AUTHORITY, BOARD,
9 COMMISSION, OR SIMILAR ENTITY OF THE STATE, A COUNTY, OR MUNICIPAL
10 CORPORATION ORGANIZED UNDER STATE LAW FOR A PUBLIC PURPOSE.

11 (D) (1) "PUBLIC WORKS PROJECT" MEANS ANY CONSTRUCTION,
12 RENOVATION, DESIGN, ENGINEERING OR INSPECTION UNDERTAKING BEING
13 PERFORMED AT ONE SITE OR A SERIES OF SITES, AT ONE TIME OR OVER A SERIES OF
14 YEARS, FUNDED BY OR AT THE DIRECTION OF A PUBLIC AGENCY.

15 (2) "PUBLIC WORKS PROJECT" INCLUDES THE CONSTRUCTION AND
16 RECONSTRUCTION OF ROADS AND BRIDGES, THE BUILDING AND REHABILITATION
17 OF WATER AND SEWER WORKS, AND THE CONSTRUCTION AND RENOVATION OF
18 PUBLIC BUILDINGS SUCH AS OFFICE BUILDINGS, SCHOOLS, DORMITORIES,
19 LIBRARIES, AIRPORTS, TRAIN STATIONS, PARKING STRUCTURES, AND PRISONS.

20 9.5-102.

21 THE PURPOSE OF THIS TITLE IS TO ENABLE A PUBLIC AGENCY TO UTILIZE AN
22 OWNER CONTROLLED INSURANCE PROGRAM FOR PUBLIC WORKS PROJECTS IF THE
23 HARD CONSTRUCTION COSTS ARE IN EXCESS OF \$100,000,000, WITH THE GOALS OF
24 SIGNIFICANTLY REDUCING THE COSTS OF PUBLIC WORKS PROJECTS WHILE
25 ENSURING GREATER PROJECT SAFETY FOR WORKERS.

26 9.5-103.

27 (A) THE HEAD OF A PUBLIC AGENCY SHALL CONSULT WITH THE TREASURER
28 AND THE TREASURER SHALL DETERMINE WHETHER USE OF AN OWNER
29 CONTROLLED INSURANCE PROGRAM IS COST EFFECTIVE AND IN THE BEST
30 INTEREST OF THE STATE.

31 (B) TO THE EXTENT THE TREASURER DETERMINES IT IS NECESSARY AND IN
32 THE BEST INTEREST OF THE STATE, THE PUBLIC AGENCY SHALL USE AN OWNER
33 CONTROLLED INSURANCE PROGRAM IF:

34 (1) THE TOTAL COST OF THE PUBLIC WORKS PROJECT IS OVER
35 \$100,000,000; AND

36 (2) THE TREASURER MAKES A FINDING THAT THE COST OF THE PUBLIC
37 WORKS PROJECT WOULD LIKELY BE REDUCED BY USING OWNER CONTROLLED
38 INSURANCE.

1 (C) AN OWNER CONTROLLED INSURANCE PROGRAM USED BY A PUBLIC
2 AGENCY UNDER THIS SECTION:

3 (1) SHALL MAINTAIN COMPLETED OPERATIONS COVERAGE FOR A TERM
4 OF AT LEAST 3 YEARS DURING WHICH COVERAGE IS REASONABLY COMMERCIALY
5 AVAILABLE AS DETERMINED BY THE TREASURER;

6 (2) MAY NOT PROHIBIT A CONTRACTOR OR SUBCONTRACTOR FROM
7 PURCHASING ANY ADDITIONAL INSURANCE COVERAGE THAT THE CONTRACTOR OR
8 SUBCONTRACTOR BELIEVES IS NECESSARY FOR PROTECTION FROM ANY LIABILITY
9 ARISING OUT OF THE CONTRACT, BUT THE COST OF THE ADDITIONAL INSURANCE
10 MAY NOT BE PASSED THROUGH TO THE STATE ON A CONTRACT BID; AND

11 (3) MAY NOT INCLUDE SURETY INSURANCE.

12 (D) THE PUBLIC AGENCY MAY PURCHASE AN OWNER CONTROLLED
13 INSURANCE POLICY THAT HAS A DEDUCTIBLE OR SELF-INSURED RETENTION IF THE
14 DEDUCTIBLE OR SELF-INSURED RETENTION DOES NOT EXCEED \$1,000,000.

15 9.5-104.

16 (A) EACH PUBLIC AGENCY THAT USES AN OWNER CONTROLLED INSURANCE
17 PROGRAM FOR A PUBLIC WORKS PROJECT SHALL SUBMIT TO THE TREASURER A
18 REPORT THAT:

19 (1) OUTLINES THE EXPERIENCE WITH THE OWNER CONTROLLED
20 INSURANCE PROGRAM;

21 (2) DETAILS ANY SAVINGS REALIZED UNDER THE OWNER CONTROLLED
22 INSURANCE PROGRAM; AND

23 (3) MAKES SUGGESTIONS FOR OTHER PUBLIC AGENCIES CONSIDERING
24 AN OWNER CONTROLLED INSURANCE PROGRAM.

25 (B) THE TREASURER SHALL COLLECT AND ANALYZE THE REPORTS
26 SUBMITTED UNDER THIS SECTION AND MONITOR EACH PUBLIC WORKS PROJECT
27 THAT EXCEEDS \$100,000,000 WITH RESPECT TO THE USE OF OWNER CONTROLLED
28 INSURANCE PROGRAMS.

29 (C) THE TREASURER PERIODICALLY SHALL REPORT TO THE GOVERNOR AND,
30 IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL
31 ASSEMBLY ON THE DATA COLLECTED UNDER THIS SECTION AND ANY
32 RECOMMENDATIONS AS TO CONTINUED USE OF OWNER CONTROLLED INSURANCE
33 PROGRAMS.

34 9.5-105.

35 THE BOARD OF PUBLIC WORKS SHALL ADOPT REGULATIONS TO CARRY OUT
36 THE PURPOSES OF THIS SUBTITLE.

1

Article - Transportation

2 8-615.

3 THE ADMINISTRATION SHALL DEVELOP AND ADMINISTER AN OWNER
4 CONTROLLED INSURANCE PROGRAM IN ACCORDANCE WITH TITLE 9.5 OF THE STATE
5 FINANCE AND PROCUREMENT ARTICLE FOR THE CONSTRUCTION OF THE WOODROW
6 WILSON BRIDGE REPLACEMENT PROJECT.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 June 1, 2002.