HB 1153

Department of Legislative Services

Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 1153 (Delegate Cadden)
Commerce and Government Matters

Owner Controlled Insurance Programs for Public Works Projects

This bill requires State and local government agencies to use owner controlled insurance programs (OCIP) for certain public works projects and directs the State Highway Administration (SHA) to develop and administer an OCIP for construction of the Woodrow Wilson Bridge replacement.

The bill is effective June 1, 2002.

Fiscal Summary

State Effect: Special and/or general fund expenditures could increase significantly for State agencies to hire additional personnel needed to implement the bill. Special fund, general fund, and general fund PAYGO expenditures could also decline significantly through savings that may result from the use of OCIPs for State construction projects.

Local Effect: The impact would vary by jurisdiction. Most local governments would not sponsor projects that would be eligible for the insurance coverage required by the bill. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential minimal. SHA advises that the high cost of insurance required for contractors on State projects has discouraged the entrance of small companies; however, the bill will have a greater impact on general contractors for large projects, who will not be small businesses.

Analysis

Bill Summary: This bill requires a public agency to use an OCIP for a public works project that costs over $100,000 if the Treasurer determines that an OCIP would lower the total cost of the project and is in the best interest of the State. It also directs the SHA to develop and administer an OCIP (in accordance with State procurement law) for the construction of the Woodrow Wilson Bridge replacement. The bill's stated purpose is to enable a public agency to use an OCIP if the hard construction costs exceed $100 million, with the goal of reducing the costs of public works projects while ensuring greater project safety for workers.

The bill defines a public works project as any construction, renovation, design, engineering, or inspection being performed at one site or a series of sites at one time and funded by or at the direction of a public agency. Projects can include construction or reconstruction of roads and bridges, building and rehabilitation of water and sewer works, and construction or renovation of public buildings such as schools, libraries, airports, parking structures, and prisons.

An OCIP means a series of insurance policies issued to a public agency to cover substantially all the contractors and subcontractors on a specific works project, combined with a centrally administered safety program. OCIPs under the bill include policies covering workers' compensation, general liability, casualty, property, title business interpretation, risk, uncontrollable events, completion and other insurance risks. It must not prohibit a contractor or subcontractor from purchasing any additional insurance believed to be necessary for protection against breach of contract liability, but the cost of any additional insurance cannot be passed onto the State. An OCIP may not include security insurance.

Each public agency must submit a report to the Treasurer that outlines its experience with OCIPs, details any savings from using an OCIP, and offers suggestions for other public agencies considering an OCIP. The Treasurer must collect and analyze this information and periodically report to the Governor and the General Assembly on the data collected as well as any recommendations on the continued use of OCIPs.

The bill directs the Board of Public Works to adopt regulations to implement its requirements.

Current Law: State agencies are not required to use OCIPs for public works projects.

Background: Insurance for a large-scale construction project often requires several types of coverage, such as worker's compensation, builder's risk, tools and equipment, and general, professional, and excess liability. Several states, including Arizona, California, Nevada, New Jersey, North Carolina, and Utah have used OCIPs (also known as a wrap up) to cover all or most of their project liability. (OCIPs cannot insure automobile liability or contractors' tools and equipment.) The states of Oklahoma and Florida have repealed their requirement for such a program. In response to a congressional request in 1999, the General Accounting Office (GAO) studied the use of OCIPs for six transportation projects and concluded that they provide several advantages and disadvantages.

OCIPs can generate savings through bulk purchasing of insurance, eliminating duplicate coverage, reducing potential litigation, enhancing safety, and administering claims more efficiently. Disadvantages include requiring project owners to invest more time and resources in administration, thus requiring additional personnel or contractual services, and possibly requiring large premiums to be paid at the beginning of the project. The managers of the six projects surveyed by GAO indicated that they saved $2.9 million to $265 million in insurance coverage.

GAO observed that two of the most common barriers to using an OCIP are state systems for worker's compensation in some states and the project size needed to make an OCIP cost effective. GAO stated that a large labor-intensive project with construction costs of $50 million to $100 million would be in a better position to obtain an OCIP. Project owners can choose from two types of OCIPs: (1) the guaranteed cost plan in which the premiums remain the same over the term of the policy; or (2) a loss-sensitive plan in which the premiums depend on the policyholder's claims that are actually paid.

Maryland and Virginia are replacing the aging Woodrow Wilson Bridge with a 12-lane, 70-foot high drawbridge that is estimated to cost $2.4 billon to construct. The bridge, which carries over 190,000 vehicles daily, was scheduled to be completely replaced by late 2006 or early 2007; however, the only bid received for construction of the bridge structure was $372 million over the State Highway Administration's (SHA) estimate. Maryland will rebid the project which will delay completion by at least six months.

State Expenditures: The Department of Legislative Services (DLS) notes that the potential savings to the State from the use of an OCIP will depend on several factors, including broker's fees, the type of insurance plan chosen, and any unforeseen changes in the project and the market. The Maryland Insurance Administration (MIA) notes the cost of an OCIP will rely on whether the insurance market continues to "harden," in which demand for policies exceeds the supply. While OCIPs will incur greater upfront costs, if they are managed correctly, MIA indicates they will provide broader coverage with better loss control and risk management. Mismanaged OCIPs can result in significant losses.

Approximately 40 transportation projects that are being planned or are under construction, including several airport improvements and Metrorail extensions, would require an OCIP under the bill. Due to the $100 million threshold specified by the bill, few non-transportation State projects would likely trigger the requirement for an OCIP unless projects are combined. DLS notes that of the top ten general obligation bond-funded programs in the PAYGO budget, only one, public school construction, would qualify for an OCIP.

SHA reviewed four OCIP proposals from insurance brokers for potential application to the Woodrow Wilson Bridge project and decided to allow the private contractors to provide their own insurance. SHA concluded that the final costs of an OCIP, including the insurance, the value of claims, the brokers' fees, and the administration of the insurance and workplace safety programs, cannot be known until the project is complete and may exceed the savings. It estimates that it would need three administrators and two consultants over six years.

SHA observes that it can be very difficult to ascertain the true cost of each contractors' insurance and to adjust bids after they are awarded so that the State can be reimbursed. SHA acknowledges that an OCIP could simplify the responsibility of claims and reduce litigation, as well as ensure all contractors have insurance.

The State Treasurer's Office advises that it would incur significant administrative costs for staff and training as its insurance division does not have the expertise required to make the determinations required under the bill. Additional staff would also be needed to monitor public works projects and conduct the analysis of those projects. The level of expenditures, which would be derived from the State Insurance Trust Fund, cannot be determined at this time.

The Uninsured Employers' Fund and the Injured Workers' Insurance Fund (IWIF) indicate that the bill would not affect them. IWIF observed that revenues to workers' compensation insurers could decline if the bill works as intended; however, savings will be achieved through better coordinated loss control and administrative efficiency by consolidating the purchase of insurance. The Department of General Services said that it does not anticipate any projects under its management that would require an OCIP.

Local Fiscal Effect: Several local jurisdictions -- including Kent, Worcester, and Washington counties, the Town of Bladensburg, and the City of Annapolis -- indicated that the bill would have no impact because they do not sponsor projects large enough to would trigger the requirement for an OCIP. Montgomery County reported that it has considered using OCIPs for certain projects and estimates that their use could generate a 1% to 3% savings on the total cost of the project. Due to administrative issues and a patchwork of procurement laws among agencies (e.g., the school board, housing authorities), the county has not opted to use one but is examining the possibility of combining insurance for several projects.

Additional Information

Prior Introductions: None.

Cross File: SB 845 (Senator Currie, *et al.*) - Finance.

Information Source(s): Town of Bladensburg; City of Annapolis; Washington County; Montgomery County; Prince George's County; Kent County; Worcester County; Uninsured Employers' Fund; Department of General Services; Injured Workers' Insurance Fund; State Treasurer's Office; Department of Transportation; Maryland Insurance Administration; Department of Budget and Management; American Road and Transportation Builders Association; Insurance Associates, Inc.; Department of Legislative Services

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