SB 745

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

Senate Bill 745 (Senator Middleton)
Finance

Owner Controlled Insurance Programs for Public Works Projects

This bill requires State and local government agencies to issue a request for proposals for the purpose of determining whether use of an owner controlled insurance program (OCIP) is cost effective and in the best interest of the State for any public works projects over $100 million. The bill also requires State and local government agencies, to the extent the agency determines it is necessary and in the best interest of the State, to use OCIPs.

The bill is effective June 1, 2003.

Fiscal Summary

State Effect: 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. Special and/or general fund expenditures could increase significantly for State agencies to hire additional personnel needed to implement the bill.

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.

Small Business Effect: None, this bill will only impact general contractors for large projects.

Analysis

Bill Summary: 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 on to the State. An OCIP may not include surety insurance.

This 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. It directs the Board of Public Works to adopt regulations to implement its requirements.

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 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.

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 workers' 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 workers' 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.

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 brokers' 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, few nontransportation 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.

The Maryland Transit Administration (MTA) indicates that it has used OCIPs since the late 1970s, beginning with the first segment of the Baltimore Metro system. MTA has an OCIP in place that began in April 2000 as a three-year term plus two one-year renewal options. This OCIP covers all major MTA capital projects funded with State and federal grants. The largest of the current projects covered in the Light Rail Double-track project. MTA estimated a 5% savings ($320,000) at the program's inception. An October 8, 2002 report by MTA's OCIP insurance broker (Marsh) indicated that savings to date are approximately $2.0 million.

The State Highway Administration (SHA) observes that it can be very difficult to ascertain the true cost of each contractor's 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 Department of General Services estimated that no projects under its management would require an OCIP.

Local Fiscal Effect: Several local jurisdictions (including Kent, Worcester, and Washington counties, Bladensburg, and Annapolis) indicated in 2002 that the bill would have no impact because they do not sponsor projects large enough to trigger the requirement for an OCIP. Montgomery County reported in 2002 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.

Additional Information

Prior Introductions: SB 845 of 2002, a similar bill that required OCIP for any construction project over $100 million, received an unfavorable report in the Finance Committee. Its cross file, HB 1153, received an unfavorable report in the Commerce and Government Matters Committee.

Cross File: None.

Information Source(s): Department of General Services, Board of Public Works, Maryland Insurance Administration, University System of Maryland, Department of Transportation, Department of Legislative Services

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