

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 354  
By: Carona  
State Affairs  
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Committee Report (Substituted)

### **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.

C.S.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 151.004, 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," "construction project site," "contractor," "insurance credit," "insurer," and "residential construction project."

Sec. 151.002. PRINICPAL. (a) Defines "principal."

(b) Provides that the principal under a consolidated insurance program is responsible the payment of the premium on the insurance coverage and is typically the first named on a general liability insurance policy.

Sec. 151.003. ROLLING CONSOLIDATED INSURANCE PROGRAM. Defines "rolling consolidated insurance program."

Sec. 151.004. RULES. Requires the commissioner of insurance (commissioner) to adopt rules in a certain manner, as necessary to implement and enforce the purposes and intent of this chapter.

[Reserves Sections 151.005-151.050 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 commissioner rules, statutory requirements, and 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 to the construction project to the extent of the type of insurance provided under the policy.

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

Sec. 151.053. NOTICE OF CERTAIN CHANGES. (a) Prohibits the coverages or limits under the program, after the execution of a construction contract by the principal, from being reduced, 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 (b).

(b) 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.

(c) 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.

Sec. 151.054. COVERAGE OF CONTRACTORS. (a) Requires that each contractor on a construction project covered by a consolidated insurance program be listed as a named insured on each general liability insurance policy and contract under this program. Requires each contractor to have equal rights with the principal and other contractors under the general liability policy, subject to industry standards.

(b) Provides that this subsection does not apply to an individually issued policy in the name of the contractor as the first-named insured under a program.

(c) Prohibits the 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.

(d) 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. 151.055. COMPLIANCE BY PRINCIPAL AND OTHER CONTRACTORS. (a) Prohibits a principal who does not comply with the provisions of this chapter from charging a contractor, directly or indirectly, including by deduction from a payment or by requesting an insurance credit, for any insurance coverage provided to the contractor by the program.

(b) Provides that failure by a principal to maintain the structure, management, or insurance coverage, or to reinstate the limits of liability if the limits are fully

expended in a policy year, constitutes a material breach of all construction contracts and subcontracts being performed under the consolidated insurance program. Requires the determination of when limits of liability are fully expended, for the purposes of this subsection, to be based on incurred losses and expenses.

(c) Prohibits a contractor who contracts with a lower-tier contractor from charging that contractor for any insurance coverage if the principal has failed to comply with the requirements of this chapter.

(d) Provides that, for the purposes of this section, noncompliance by a principal does not exclude substantial compliance by a principal with the requirements of this chapter such that the lack of full compliance does not violate the purpose and intent of this chapter and no person is harmed from failure to obtain full compliance.

Sec. 151.056. SUBROGATION. (a) Provides that the principal and contractor do not have subrogation rights against each other for a general liability claim covered by the program.

(b) Establishes the same lack of subrogation rights between contractors.

Sec. 151.057. APPLICATION TO GENERAL LIABILITY COVERAGE. Requires coverage for a contractor under a program to cover a negligent act of a contractor and its ongoing and completed operations if the program includes general liability coverage.

Sec. 151.058. DURATION OF GENERAL LIABILITY COVERAGE. (a) Requires a program that provides general liability coverage to continue completed operations coverage until the expiration of the limitations period for bringing a suit for damages, as defined in Section 16.009, Civil Practice and Remedies Code.

(b) 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. (a) Sets forth specific requirements for an insurer that provides coverages under a consolidated insurance program for a nonresidential and residential construction projects.

(b) Requires insurance policies providing coverage under the program to be issued to the first-named insured not later than the 60th day after the date on which the coverage takes effect.

(c) Requires the requirements under this section to be maintained for the duration of the project.

Sec. 151.060. DEFENSE COVERAGE FOR CLAIM OR SUIT. (a) Requires an insurance policy under the program to provide coverage for the defense of each contractor in the event of a lawsuit or arbitration proceeding covered by a program.

(b) Prohibits defense costs for a contractor under Subsection (a) from being included in the limit of liability of an insurance policy under the program if the defense costs for the principal are not included in the limit of liability.

Sec. 151.061. PAYMENT OF CERTAIN DEDUCTIBLES, LOSSES, OR PENALTIES. (a) Provides that a principal, except as provided by Subsection (b), is solely liable for 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) Requires the contractor, if a contractor covered by the program is the cause of a property damage accident for which insurance is provided under the program, to reimburse the principal for any deductible amount for which the contractor is responsible Subsection (a), which is not to exceed the lesser of certain amounts.

Sec. 151.062. **PREMIUMS ASSESSED TO CONTRACTOR.** Requires that if any coverage premiums subject to experience modification under a program on a single or multiple construction project are assessed to a contractor, the contractor's most recent experience modifier, as of the date on which the contractor submitted the contractor's price proposal, is to be used to compute the premium assessed to the contractor for the duration of the construction project.

Sec. 151.063. **DATA REPORTS FOR WORKERS' COMPENSATION.** (a) Requires the administrator to submit to the contractor who is the subject of the report a detailed report of the contractor's loss and payroll data, at least bimonthly.

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

(c) Requires the administrator to send to each contractor annually a written compilation of all payroll and loss information attributable to the contractor. Requires the report to be sent not later than the 120th day after the expiration date of the workers' compensation policy.

(d) Requires the contractor who is the subject of the report under Subsection (c) to send a written notice of any discrepancies in the payroll or loss information to the administrator not later than the 30th day after the date on which the contractor receives the report.

(e) Requires the administrator to resolve any discrepancies reported under Subsection (a) within a certain timeframe and to report the correct information to the contractor and to the insurer.

(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 compile the report.

Sec. 151.064. **AUDIT REQUIREMENTS.** (a) Requires any required audit of a contractor covered by a program who is subject to a premium charge or deduction for the coverage, except as provided by Subsection (b), to be completed not later than the 90th day after the date on which the contractor completes the contractor's work on the construction project.

(b) Requires the audit completion date under Subsection (a) to be extended by one day for each day the contractor subject of the audit delays completion of a necessary audit by failing to provide the auditor with access to the contractor's records after the contractor has received written notice from the administrator, insurer, or auditor stating the date on which the audit is to be conducted.

(c) Requires the insurer, in complying with this sections, to comply with certain rules of the commissioner.

Sec. 151.065. **LIMITED EXCEPTION TO RATING STANDARDS.** Sets forth certain laws and legislative Acts that that do not apply to rates used for an insurance policy issued under a program under this chapter, to the extent that those laws require an insurer to produce rates for individual risks.

[Reserves Sections 151.066-151.100 for expansion.]

#### SUBCHAPTER C. COVERAGE LIMITS

Sec. 151.101. GENERAL REQUIREMENTS. Subject to Section 151.058, aggregate and per-occurrence limits of all insurance coverages under a consolidated insurance program apply to all contractors under the program for the term of each construction project covered by the program.

Sec. 151.102 PRE-OCCURRENCE LIMITS. (a) Requires the per-occurrence limit, for a residential construction project, to be not less than the greater of 20 percent of the overall construction project value or \$5 million.

(c) Requires that, for a nonresidential construction project that has an overall construction project value that does not exceed \$400 million, the per-occurrence limit be not less than the greater of 25 percent of the overall construction project value or \$50 million.

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

(e) Prohibits the per-occurrence liability limit, for employer liability coverage under a program, from being less than the applicable general liability limit.

Sec. 151.103. ANNUAL REINSTATEMENT OF LIABILITY LIMITS. Requires a consolidated insurance program to reinstate annually the liability limits for each policy or contract subject to the program or be replaced by other policies or contracts that provide equivalent coverage and limits. Provides that this subsection does not apply to completed operations coverage upon completion of the construction project.

Sec. 151.104. NOTICE REGARDING REDUCTION IN LIMIT. (a) Requires the insurer, or the administrator on the insurer's behalf, to notify all contractors in writing not later than the 10th day after the date the total monetary limit of liability coverage for any type of coverage issued under the consolidated insurance program is reduced certain amounts.

(b) Requires the reduction in the limit under Subsection (a) to be computed based on incurred losses and expenses.

(c) Requires the notice under Subsection (a) to describe the initial limit of liability coverage and the limit of liability coverage that remains as of the notice date.

(d) Provides that the notice under Subsection (a), for limits on coverages that have been expended, is required only if the combined monetary limit of all policies providing such coverage has been reached.

(e) Prohibits the limit of liability from being reduced if the insurer fails to comply properly with Subsection (a).

[Reserves Sections 151.105-151.150 for expansion.]

#### SUBCHAPTER D. DISCLOSURE REQUIREMENTS FOR ADMINISTRATION OF CONSOLIDATED INSURANCE PROGRAM

Sec. 151.151. 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. 151.152. GENERAL ELEMENTS OF BID SOLICITATION DISCLOSURE. (a) Requires each disclosure made under Section 151.151 to include information sufficient to reasonably described the insurance coverage and limits that will be provided under the

program and the program operation such that a bidder is able to compare the bidder's own insurance program with the coverages, limits, and operation program under the program.

(b) Provides that the disclosure under Subsection (a) is not required to be as detailed as the disclosure required under Section 151.153.

Sec. 151.153. 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) Requires the principal or contractor that solicited the bid, not later than the 14th day before the date on which a principal or contractor executes a contract for a construction project covered by a program, to make a written disclosure to the contractor that contains detailed information concerning the program.

(c) Authorizes a contractor, upon receipt of written disclosure required under Subsection (b) and without recourse or liability for damage to any person, if the disclosure contains any adverse material change from the disclosure made under Section 151.151, 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.

Sec. 151.154. GENERAL ELEMENTS OF PRE-CONTRACT DISCLOSURE. Sets forth specific content requirements that are to be included in each disclosure made under Section 151.153.

Sec. 151.155. FORMULA FOR INSURANCE CREDITS. (a) Requires that the disclosure required under Section 151.101 include the formula to be used by the contractor in computing insurance credits.

(b) Sets forth the content requirements for the formula.

(c) 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.

[Reserves Sections 151.156-151.200 for expansion.]

#### SUBCHAPTER E. PROGRAM ADMINISTRATION

Sec. 151.201. ADMINISTRATOR. Requires each principal to appoint a qualified administrator for the administration of the program.

Sec. 151.202. POWERS AND DUTIES OF ADMINISTRATION. (a) Requires an administrator to comply in a timely manner with the requirements of this section.

(b) Requires the administrator to administer the enrollment of all contractors covered by the program as necessary to ensure prompt coverage, effective on the date that the contractor begins work on the construction project.

(c) Sets forth specific duties that the administrator is required to perform.

(d) Requires the administrator to obtain from the insurer or a licensed agent of the insurer and deliver a certificate of insurance on behalf of a contractor to evidence the coverages and limits provided by the program not later than the fifth day after receipt of a request from a contractor, in addition to the certificate provided under Subsection (c)(3).

(e) Requires the administrator to ensure that each contractor receives insurance policies, or renewal certificates for previously issued policies, for all coverages provided by the program within a certain timeframe.

- (f) Requires the administrator to coordinate certain activities.
- (g) Requires the administrator to establish and disseminate certain information to contractors.
- (h) Requires the administrator to ensure that all insurance coverages provided by the program are maintained and that all contractors are notified in writing promptly of any changes or cancellation in coverages provided by the consolidated insurance program.
- (i) Requires the administrator to monitor the financial standing of the insurer and provide written notice to the principal and all contractors of any significant negative change not later than the 10th day after the date of the negative change.
- (j) Requires the administrator to prepare and present to a contractor on at least a bimonthly basis any required payroll reports, claims reviews, and loss-control reviews that relate to that contractor.
- (k) Requires the administrator to provide oversight and coordinate the filing of claims for the principal and any affected contractor until the construction project is completed and the operation and administration of the program is closed.
- (l) Requires the administrator, before the date on which the operation and administration of the program is closed, to provide to the principal and each contractor a written notice that contains certain information relating to the contact person.

Sec. 151.203. FIDUCIARY DUTY OF ADMINISTRATOR. Provides that, for the purposes of this chapter and insurance benefits under the program, the administrator owes a fiduciary duty to each contractor that participates in the program.

Sec. 151.204. ERRORS AND OMISSIONS COVERAGE REQUIRED. Requires the administrator to maintain errors and omissions insurance coverage in the minimum amount of \$5 million per occurrence for any liability of the administrator under this chapter.

[Reserves Sections 151.205-151.250 for expansion.]

#### SUBCHAPTER F. ENFORCEMENT PROVISIONS

Sec. 151.251. GENERAL ENFORCEMENT; ADMINISTRATIVE PENALTIES. (a) Authorizes the commissioner to impose a sanction under Chapter 82, issue a cease and desist order under Chapter 83, or assess an administrative penalty under Chapter 84, on any person regulated by the Department of Insurance (DIR) who violates this chapter or a rule or order adopted by the commissioner under this chapter.

- (b) Prohibits an administrative penalty assessed under this chapter from exceeding \$30,000 for each day and for each violation.

[Reserves Sections 151.252-151.300 for expansion.]

#### SUBCHAPTER G. CIVIL LIABILITY

Sec. 151.301. CIVIL LIABILITY FOR VIOLATION OF CHAPTER. (a) Authorizes a contractor who is harmed by a violation of this chapter to bring a suit or pursue other remedies against the violating party for civil damages resulting from the violation, plus reasonable attorney's fees.

- (b) Provides that venue for a suit brought under this section is in the county in which the construction project is located.

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

SECTION 3. Effective date: September 1, 2007.