



**House  
Legislative  
Analysis  
Section**

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**WORKER'S COMPENSATION "WRAP-UP" INSURANCE**

Senate Bill 86 (Substitute H-2)  
First Analysis (5-8-89)

**RECEIVED**

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Sponsor: Sen. Dick Posthumus  
House Committee: Labor Mich. State Law Library  
Senate Committee: Human Resources and Senior  
Citizens

**THE APPARENT PROBLEM:**

For their own protection, general contractors usually require subcontractors to produce certificates of worker's disability compensation insurance before they bid for work on a project, since the contractor could be held liable if the subcontractors' workers were injured and there was inadequate or no coverage. The general contractor must then check frequently to ensure that the subcontractors continue to carry the proper type and amount of insurance for the duration of the project. On large construction projects with dozens of subcontractors, there may be dozens of insurers covering workers at the site. The general contractor, therefore, may have to monitor dozens of different insurance policies to ensure that all workers on the project are adequately covered.

Further, the general contractor, subcontractors, and workers may have to cope with frequent visits from the myriad loss control managers or safety inspectors employed by the insurance companies to ensure that adequate safety precautions are being taken at the worksite.

One way a general contractor can reduce the problems inherent in having subcontractors cover their workers is by obtaining a blanket or "wrap-up" insurance policy for all workers on a construction project. General contractors contend that they save money because they can purchase a master plan for less than several smaller, more specialized plans, and they can then cease worrying about whether a subcontractor has adequate coverage. Subcontractors can omit the cost of purchasing worker's compensation insurance from their bid proposals, making it more feasible to bid on the projects, and do not have to be concerned about maintaining several types of insurance policies for all their workers, or about purchasing extra coverage in order to bid on a project. Finally, it is claimed, workers can be assured that they are covered by the proper type and amount of insurance and that adequate safety precautions are taken as a result of the coordinated efforts of a single team of loss control managers. The problem is that wrap-up policies are, by law, limited to projects costing over \$100 million. It has been suggested that the law be changed to allow wrap-up policies to be issued for workers on smaller projects.

**THE CONTENT OF THE BILL:**

At present, under the Worker's Disability Compensation Act, employers may obtain a separate "wrap-up" insurance policy to cover employers at a specified construction site if the liability of each employer to all employees is fully secured, if the construction is expected to be completed in ten years or less, and if the cost of construction at the site will exceed \$100 million. The bill would amend the act to allow employers to obtain a separate insurance policy to cover workers on a

construction project with a cost of more than \$35 million. Under the bill, each employer's liability to all employees would still have to be fully insured, the project would have to be one that would be completed within ten years, and the following additional conditions would have to be met:

- The policy would be issued to a general contractor or owner who employed a general contractor. (Under the bill, "general contractor" would be defined as an employer who had qualified for a policy under the act before May 1, 1989, or who had overall responsibility for the construction of the project, hired and coordinated subcontractors and architectural tradespeople, and employed construction workers who performed substantial portions of the construction work on the project).
- The general contractor at each construction site would be required to employ a full-time experienced construction safety and health director with job duties limited to occupational safety and health related issues. The director would be located at, and work from, the construction site and be present whenever construction activity took place on the site, except that during multiple shift operations and temporary absences of the director, the general contractor could designate an qualified alternate director who would exercise the same authority and responsibility, and who would provide the director with a report on site activities during his or her absence.
- The construction safety and health director would be responsible for coordination among all employers at the site to provide a safe and healthful worksite. The director would have the authority on behalf of the employers for final resolution of all disputes related to construction safety and health at the worksite.
- All construction contractors at the site would be required to accept the services of the education and training personnel from the Departments of Labor or Public Health.
- The safety and health director would be required to develop a written, comprehensive safety and health program for the site and to file a copy with the Department of Labor prior to construction. The director would also be required to assist all contractors at the site in developing comprehensive accident prevention programs.
- The party to whom the policy was issued would be required to provide each subcontractor at the site with a written explanation of the subcontractor's coverage under a "wrap-up" policy.

Under the bill, the Department of Labor would be required to submit to the Speaker of the House of Representatives and to the Senate Majority Leader an annual report on the provisions of the bill, compiled from information solicited from general contractors and owners of construction sites. The report would detail the number of applications received and any economic benefits realized from such

S.B. 86 (5-8-89)

policies during the reporting period, the safety record, including accidents on the construction site, and any other information considered appropriate by the director of the department.

All the above provisions of the bill would apply until April 1, 1992.

MCL 418.621

### **HOUSE COMMITTEE ACTION:**

The House Labor Committee adopted a substitute for the bill to include a "grandfather clause" that would allow those employers who had previously qualified for wrap-up policies to retain their eligibility without meeting the new requirements. The House version of the bill also specifies that only general contractors, and not owners who employ general contractors, must hire safety and health directors.

### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, the bill would have no fiscal impact on state funds. (5-5-89)

### **ARGUMENTS:**

#### **For:**

Lowering the minimum cost criteria so that general contractors may purchase wrap-up insurance policies for smaller construction projects would extend the cost and safety benefits of such policies to many more worthwhile projects and would help make economic development more cost-efficient.

#### **Against:**

If, as is proposed in the bill, the threshold for a separate construction site policy were lowered to \$35 million, it could result in a general lowering of safety standards on a construction project. Some industry representatives fear that the lower threshold cost would allow smaller contractors to work on a project, who would meet the requirements of the act by completing, for example, ten \$3.5 million projects within the required ten-year period. And by removing from subcontractors the responsibility for insuring their own employees, the bill could result in increased risks to workers on construction projects. Subcontractors might not be concerned about safety standards, since the insurance policy would not be their responsibility. Further, since their bid on a project would not have to reflect their insurance cost, subcontractors with poor safety records could qualify and be awarded a project they might otherwise find too expensive to bid on.

**Response:** By requiring that the general contractor hire one full-time construction safety and health director, the bill would ensure that all subcontractors on a project followed adequate safety practices.

#### **Against:**

The bill requires that general contractors hire a safety director to solve the problems inherent in having smaller companies bid on these projects. This, however, would create a conflict of interest: the safety director could shut the job down if safety requirements weren't met, but it is unlikely that he or she would do so, since that action would also result in the loss of the safety director's own job.

### **Against:**

Under the bill, it would probably be difficult for contractors to obtain insurance. Insurance companies have indicated that such policies would yield little profit for them, since the premium on a policy for a \$35 million project (or ten \$3.5 million projects) could be wiped out by the claim of one worker disabled in an accident. (It is estimated that the cost to an insurance company of one permanently disabled worker is at least \$450,000, plus medical costs.)

### **POSITIONS:**

The Plumbers U. A. Local 370, Lapeer, Genessee and Shiawassee Counties, supports the bill. (5-4-89)

The Michigan State Building and Construction Trades Council supports the bill as amended to provide for a safety director. (5-4-89)

The Michigan State AFL-CIO supports the bill. (5-4-89)

The Department of Labor has no position on the bill. (5-5-89)

The National Electrical Contractors Association, Michigan Chapter, opposes the bill. (5-4-89)

The Lansing Mechanical Contractors Association does not support the bill. (5-4-89)

The Michigan Association of Home Builders opposes the bill. (5-4-89)

The following organizations oppose the bill on the grounds that it discriminates against those contractors who participate in self-insured worker's compensation group policies, who have good safety records, and whose bids on projects are therefore lower than others with poor safety records. Under the bill, these contractors would lose the bidding advantage they now have since, under wrap-up insurance, insurance costs need not be included. (5-4-89)

The Plumbing, Heating, Cooling Contractors Association of Southeastern Michigan.

The Detroit Chapter of the Sheet Metal and Air Conditioning Contractors National Association.

The Metropolitan Detroit Plumbing and Mechanical Contractors Association.

The Michigan Plumbing and Mechanical Contractors Association.