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Senate Bill 86 (Substitute S-2 as passed by the Senate)

Sponsor: Senator Dick Posthumus

Committee: Human Resources and Senior Citizens

Date Completed: 2-26-89

RATIONALE

Subcontractors are required to carry workers' compensation insurance coverage on all their workers. If, however, a subcontractor does not have coverage or has inadequate coverage and one of his or her employees is injured on a construction project, the employee may file a claim against the general contractor for the project. For their own protection, then, general contractors usually require subcontractors to produce certificates of insurance before they bid for work on a project, and frequently check 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 the 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 reportedly can reduce the apparent problems inherent in having the subcontractors cover their workers is to provide a blanket or "wrap-up" insurance policy for all the workers on a construction project. General contractors, some contend, can save money because they can purchase a master plan for less than several smaller, more

specialized plans and the subcontractors can omit the cost of purchasing workers' compensation insurance from their bid proposals. Further, the general contractors can cease worrying about whether the subcontractor has adequate coverage. The subcontractors, they argue, do not have to be concerned about maintaining perhaps several types of insurance policies for all their workers or purchasing extra coverage in order to bid on projects. And since they do not have to purchase workers' compensation insurance, smaller subcontractors may find it more feasible to bid on the projects. Finally, they claim, the 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. Nevertheless, although wrap-up policies would seem to be advantageous to all concerned, they apparently are used infrequently since by law wrap-up policies are limited to covering workers on projects costing over \$100 million to build. It has been suggested, therefore, that the law be changed to allow wrap-up policies to be issued for workers on smaller scale projects.

CONTENT

The bill would amend the Worker's Disability Compensation Act to lower the amount that construction at a site must cost if a separate policy is to be issued to cover employers at the site. Although the Act generally requires that a workers' compensation insurer cover all

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businesses, employees, enterprises, and activities of an employer in the same policy, a separate policy may be issued to cover employers performing work at a specified construction site if:

- The liability of each employer to all of his or her employees would be fully secured.
- The construction is expected to be completed in 10 years or less.
- The cost of construction at the site will exceed \$100,000,000.

The bill would lower the minimum cost of the construction to \$35,000,000 but in addition, would require that all of the following conditions be met:

- The policy would have to be issued to a general contractor or owner who employed a general contractor. A general contractor would be an employer who had overall responsibility for the construction of the project, hired and coordinated subcontractors and architectural trades, and employed construction workers who performed substantial portions of the work on the project.
- The general contractor or owner would have to employ a full-time construction safety and health director at each construction site. The director would have to have had experience in the field of construction safety and health and would have to be located at or work from the construction site and be present whenever construction activity took place on the site. The duties of the director would be limited to occupational safety and health-related issues.
- The construction safety and health director would be responsible for coordination among all employers at the construction site to provide a safe and healthful worksite. The director would have the authority on behalf of the employers over final resolution of all disputes related to construction safety and health at the worksite.

- All construction contractors at the site would have to accept the services of 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 construction site and file the plan with the Department of Labor before construction could begin. The director would be required to assist all contractors at the site in developing comprehensive accident prevention programs.
- A general contractor would have to provide each subcontractor at a construction site with a written explanation of the subcontractor's coverage under a "wrap-up" policy.

The \$35 million minimum cost and additional conditions would apply until April 1, 1992.

Finally, the Department of Labor would be required to submit the Senate Majority Leader and the Speaker of the House of Representatives an annual report regarding the use of wrap-up insurance policies. The Department would be required to solicit information from general contractors and owners of construction sites to compile the information for the report which would have to detail the number of applications received for such policies during the reporting period, any economic benefits realized from such a policy, the safety record on the construction site including any accidents that occurred during the reporting period, and any other information considered appropriate by the Director of the Department of Labor.

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FISCAL IMPACT

The Bureau of Workers' Compensation in the Department of Labor has indicated that program administrative costs would increase if this bill were to be enacted. More wrap-up policies would need to be reviewed. The Bureau reviews two or three projects a year with the \$100,000,000 project cost limit. The reduction of this limit to \$35,000,000 would increase the number of possible projects to 20

or 30 per year. This increased work load could be handled by one additional analyst. Annual compensation costs for this position would be \$65,000, and would be supported from the General Fund. The position and General Fund support have been added to the Senate version of the Regulatory appropriation bill (Senate Bill 230) for the 1989-90 fiscal year.

If a community or the State government were to be involved in a project costing more than \$35,000,000, the contractor would be required to hire a safety and health director. This requirement could increase the construction costs of such a project, but would not have a fiscal impact on State or local governments. These costs would likely be absorbed within the projected contractor's costs.

ARGUMENTS

Supporting Argument

Lowering the minimum cost criteria so that general contractors could 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 help make economic development more cost-efficient.

Opposing Argument

Requiring the general contractor or the project's owner to hire a safety director could prove to be enough of an administrative headache to discourage the contractor or owner from applying for a wrap-up policy. Since insurers already employ loss control managers on construction sites, it would make more sense to allow them to employ the safety inspector whose job it would be to ensure a safe, healthy, accident free worksite. Moreover, if a safety director had to be hired, it should not be necessary to require the director to be present whenever construction activity took place, as the bill specifies. Because the full-time director would have to file a comprehensive safety plan before construction could begin and coordinate the safety efforts of all employers at the construction site, it is reasonable to believe that adequate safety precautions would be taken at all times.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.