

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL 1616

By: Coates of the Senate

and

Quinn of the House

7  
8  
9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to controlled insurance programs;  
11 creating the Controlled Insurance Programs Act;  
12 providing short title; defining terms; directing the  
13 Insurance Commissioner to promulgate certain rules;  
14 specifying requirements for rules relating to  
15 controlled insurance programs; specifying  
16 requirements for a controlled insurance program that  
17 includes general liability coverage; specifying  
18 requirement for a controlled insurance program that  
19 includes coverage for the workers' compensation  
20 liabilities of participants; requiring Insurance  
21 Commissioner to promulgate rules; requiring rules to  
22 be promulgated by certain date; amending 61 O.S.  
23 2011, Section 113, which relates to the Public  
24 Competitive Bidding Act of 1974; modifying  
definition; providing for codification; providing an  
effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section 7401 of Title 36, unless there  
is created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Controlled  
2 Insurance Programs Act".

3 SECTION 2. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 7402 of Title 36, unless there  
5 is created a duplication in numbering, reads as follows:

6 As used in the Controlled Insurance Programs Act:

7 1. "Commissioner" means the Insurance Commissioner;

8 2. "Completed operations liability" means liability arising out  
9 of the installation, maintenance or repair of any product at a site  
10 which is not owned or controlled by any person who:

11 a. performs that work, or

12 b. hires an independent contractor to perform that work.

13 Completed operations liability shall include liability for  
14 activities which are completed or abandoned before the date of the  
15 occurrence giving rise to the liability;

16 3. "Contract" means a contract or agreement concerning  
17 construction made and entered into by and between an owner and a  
18 contractor, a contractor and a subcontractor or a subcontractor and  
19 another subcontractor;

20 4. "Contractor" means a person performing construction and  
21 having a contract with an owner of the real property or with a  
22 trustee, agent or spouse of an owner;

23 5. "Controlled insurance program" means a program of general  
24 and excess/umbrella liability or workers' compensation/employer's

1 liability insurance coverage, or both, that is established by an  
2 owner or contractor who contractually requires participation by  
3 contractors or subcontractors who are engaged in work required by a  
4 construction contract. Controlled insurance programs shall include,  
5 but not be limited to, coverage programs that are for a fixed term  
6 of coverage on a single construction site or project or multiple  
7 projects. A controlled insurance program subject to the Controlled  
8 Insurance Programs Act shall not include surety or builders risk;

9 6. "Controlled insurance program instructions to bidders" means  
10 that information pertaining to the controlled insurance program  
11 which the sponsoring participant shall provide prior to bid;

12 7. "Construction" means furnishing labor, equipment, material  
13 or supplies used or consumed for the design, construction,  
14 alteration, renovation, repair or maintenance of a building, water  
15 or waste water treatment facility, appurtenance or other improvement  
16 to real property, including any moving, demolition or excavation.  
17 The term construction shall not include oil and gas facilities,  
18 refineries, power plants, gas operating plants and related  
19 facilities;

20 8. "Owner" means a person who holds an ownership interest in  
21 real property;

22 9. "Participant" means any contractor or subcontractor whose  
23 participation in a controlled insurance program is required by a  
24 construction contract;

1 10. "Person" means an individual, corporation, estate, trust,  
2 partnership, limited liability company, association, joint venture  
3 or any other legal entity;

4 11. "Sponsoring participant" means the owner or contractor who  
5 establishes the controlled insurance program;

6 12. "Subcontractor" means any person performing construction  
7 covered by a contract between an owner and a contractor, but not  
8 having a direct contract with the owner; and

9 13. "Substantial completion" means the stage of a construction  
10 project where the project, or a designated portion thereof, is  
11 sufficiently complete in accordance with the contract, so that the  
12 owner can occupy or utilize the constructed project for its intended  
13 use.

14 SECTION 3. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 7403 of Title 36, unless there  
16 is created a duplication in numbering, reads as follows:

17 The Insurance Commissioner shall promulgate rules which shall  
18 require that:

19 1. Controlled insurance programs shall:

20 a. establish a method for quarterly reporting of the  
21 participant's respective claims details and loss  
22 information to that participant,

23 b. provide that termination including cancellation of any  
24 or all of the coverage provided to a participant prior

- 1 to completion of work on the applicable project shall  
2 require the owner or contractor who establishes a  
3 controlled insurance program to either replace the  
4 insurance or pay the subcontractor's cost to do so,  
5 c. not charge enrolled participants who are not the  
6 sponsoring participants per occurrence loss costs  
7 including but not solely deductibles in excess of Two  
8 Thousand Five Hundred Dollars (\$2,500.00), or the  
9 subcontractor's policy deductible, whichever is  
10 greater, at the time the contract is awarded,  
11 d. keep self-insured retentions fully funded or  
12 collateralized by the sponsoring participant. This  
13 paragraph shall not apply to deductible programs, and  
14 e. disclose specific minimum requirements for safety or  
15 equipment prior to accepting bids from contractors and  
16 subcontractors on a construction project;

17 2. If a controlled insurance program includes general liability  
18 coverage for the participants, then:

- 19 a. coverage by an insurer for completed operations  
20 liability shall not, after substantial completion of a  
21 construction project, be canceled, lapse or expire  
22 before the limitation on actions has expired as  
23 provided in Section 93 of Title 12 of the Oklahoma  
24 Statutes, but in no case greater than ten (10) years,

- 1           b.    general liability coverage shall not be required of  
2                project participants except for liabilities not  
3                arising on the site or sites of the construction  
4                project.  Any general liability coverage maintained by  
5                the participants shall cover liabilities not arising  
6                on the site or sites of the construction project,  
7           c.    the general liability coverage provided to  
8                participants shall provide for severability of  
9                interest, except with respect to limits of liability,  
10              so that participants shall be treated as if separately  
11              covered under the policy,  
12           d.    shared limits of liability coverage shall be disclosed  
13              to all participants under the controlled insurance  
14              program instructions to bidders, and  
15           e.    participants shall not be required to waive rights of  
16              recovery for claims covered by the controlled  
17              insurance program against another participant in the  
18              controlled insurance program covered by general  
19              liability insurance provided by the controlled  
20              insurance program;

21           3.  If a controlled insurance program includes coverage for the  
22 workers' compensation liabilities of the participants, then:

- 23           a.    workers' compensation coverage shall include all  
24              workers' compensation for which payroll attributable

1 to the contract has been reported and the premiums  
2 collected covering all services performed at the  
3 construction site or sites as defined in the contract  
4 and as disclosed in the controlled insurance program  
5 instructions to bidders, and

6 b. participants shall not be required to provide  
7 employment to a worker who has been injured on the job  
8 unless:

9 (1) the worker's treating health care provider  
10 certifies that the worker is fit to perform the  
11 participant's work on the job site consistent  
12 with the treating physician's limitations, and

13 (2) the employer has the pre-injury job or modified  
14 work available accommodating such limitations, if  
15 any.

16 Nothing in this section or any rules adopted pursuant to the  
17 Controlled Insurance Program Act shall affect any rights, remedies  
18 or duties under the Workers' Compensation Code or any other state or  
19 federal employment law; and

20 4. Participants may pay compensation for amounts excluded from  
21 contract deductions or credits to their designated agent/broker.

22 SECTION 4. NEW LAW A new section of law to be codified  
23 in the Oklahoma Statutes as Section 7404 of Title 36, unless there  
24 is created a duplication in numbering, reads as follows:

1       A. The Insurance Commissioner shall promulgate any rules  
2 necessary to carry out the provisions of the Controlled Insurance  
3 Programs Act.

4       B. The Commissioner shall promulgate all rules required by the  
5 Controlled Insurance Programs Act by January 1, 2013.

6       SECTION 5.        AMENDATORY        61 O.S. 2011, Section 113, is  
7 amended to read as follows:

8       Section 113. A. Except as otherwise provided by law, within  
9 the period of time, not to exceed sixty (60) days, specified in the  
10 bid notice by the awarding public agency, a contract embodying the  
11 terms set forth in the bidding documents shall be executed by the  
12 awarding public agency and the successful bidder. No bidder shall  
13 obtain any property right in a contract awarded under the provisions  
14 of the Public Competitive Bidding Act of 1974 until the contract has  
15 been fully executed by both the bidder and the awarding public  
16 agency.

17       B. Except as otherwise provided by law, within the period of  
18 time specified in subsection A of this section, the following shall  
19 be provided by the contractor to the awarding public agency for  
20 contracts exceeding Fifty Thousand Dollars (\$50,000.00):

21       1. A bond or irrevocable letter of credit complying with the  
22 provisions of Section 1 of this title;

23       2. A bond in a sum equal to the contract price, with adequate  
24 surety, or an irrevocable letter of credit containing terms



1 prescribed by the Construction and Properties Division of the  
2 Department of Central Services issued by a financial institution  
3 insured by the Federal Deposit Insurance Corporation or the Federal  
4 Savings and Loan Insurance Corporation for the benefit of the state,  
5 on behalf of the awarding public agency, in a sum equal to the  
6 contract price, to ensure the proper and prompt completion of the  
7 work in accordance with the provisions of the contract and bidding  
8 documents;

9       3. A bond in a sum equal to the contract price or an  
10 irrevocable letter of credit containing terms as prescribed by the  
11 Division issued by a financial institution insured by the Federal  
12 Deposit Insurance Corporation or the Federal Savings and Loan  
13 Insurance Corporation for the benefit of the state, on behalf of the  
14 awarding public agency, in a sum equal to the contract price, to  
15 protect the awarding public agency against defective workmanship and  
16 materials for a period of one (1) year after acceptance of the  
17 project; and

18       4. Public liability and workers' compensation insurance during  
19 construction in reasonable amounts. A public agency may require the  
20 contractor to name the public agency and its architects or  
21 engineers, or both, as an additional assured under the public  
22 liability insurance, which requirement, if made, shall be  
23 specifically set forth in the bidding documents.

24

1 C. A single irrevocable letter of credit may be used to satisfy  
2 paragraphs 1, 2 and 3 of subsection B of this section, provided such  
3 single irrevocable letter of credit meets all applicable  
4 requirements of subsection B of this section.

5 If the contractor needs additional time in which to obtain the  
6 bond required pursuant to subsection B of this section, the  
7 contractor may request and the awarding agency may allow the  
8 contractor an additional sixty (60) days in which to obtain the  
9 bond.

10 D. 1. After the award of a contract, but prior to its  
11 execution, an awarding public agency, upon discovery of an  
12 administrative error in the award process that would void an  
13 otherwise valid award, may suspend the time of execution of the  
14 contract. The agency may rescind the award and readvertise for  
15 bids, or may direct correction of the error and award the contract  
16 to the lowest responsible bidder, whichever shall be in the best  
17 interests of the state.

18 2. If the awarding public agency has a governing body, the  
19 agency shall, at the next regularly scheduled public business  
20 meeting of the governing body of the agency, upon the record,  
21 present to the governing body that an error has been made in the  
22 award process and shall state the nature of the error. The  
23 governing body, upon presentation of the facts of the error, may  
24 rescind the award and readvertise for bids, or may direct correction

1 of the error and award the contract to the lowest responsible  
2 bidder, whichever shall be in the best interests of the state.

3 E. No public agency shall require for any public construction  
4 project, nor shall any general contractor submit a project bid based  
5 on acquiring or participating in, any wrap-up, wrap-around, or  
6 controlled insurance program. For the purposes of this subsection,  
7 "wrap-up, wrap-around, or controlled insurance program" means any  
8 insurance program that has the effect of disabling or rendering  
9 inapplicable any workers' compensation, commercial general  
10 liability, builders' risk, completed operations, or excess liability  
11 insurance coverage carried by a subcontractor that is engaged or to  
12 be engaged on a public construction project unless this is a cost  
13 savings to the public or the need exists for a specialized or  
14 complex insurance program and shall not apply to contracts less than  
15 ~~Seventy-five Million Dollars (\$75,000,000.00)~~ Twenty-five Million  
16 Dollars (\$25,000,000.00).

17 F. This act shall not apply to the public construction projects  
18 of constitutional agencies which had authorized a wrap-up, wrap-  
19 around, or controlled insurance program on or before April 11, 2000.

20 SECTION 6. This act shall become effective July 1, 2012.

21 SECTION 7. It being immediately necessary for the preservation  
22 of the public peace, health and safety, an emergency is hereby  
23  
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1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

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