

Municipalities, owner-controlled insurance program

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Subject:

Municipalities, owner-controlled insurance program

Mr. Harry A. Stewart
City of Fort Lauderdale Attorney
Office of the City Attorney
100 N. Andrews Avenue
Fort Lauderdale, Florida 33301

RE: INSURANCE – PUBLIC PROPERTY – CONSTRUCTION – MUNICIPALITIES – whether owner-controlled insurance program may be used for city construction program. s. 255.0517, Florida Statutes.

Dear Mr. Stewart:

At the request of the City Commission of the City of Fort Lauderdale, you have asked for my opinion on substantially the following question:

What is a "project" within the meaning of section 255.0517, Florida Statutes (2005), providing for the use of owner-controlled insurance programs?

Section 255.0517, Florida Statutes, authorizes public agencies to purchase owner-controlled insurance in connection with public construction projects, under the conditions specified in the statute. Section 255.0517(2), Florida Statutes, provides:

"A state agency, political subdivision, state university, community college, airport authority, or other public agency in this state, or any instrumentality thereof, may only purchase an owner-controlled insurance program in connection with a public construction project if it is determined necessary and in the best interest of the public agency and if all of the following conditions are met:

(a) The estimated total cost of the project is:

1. Seventy-five million dollars or more;
2. Thirty million dollars or more, if the project is for the construction or renovation of two or more public schools during a fiscal year; or
3. Ten million dollars or more, if the project is for the construction or renovation of one public school, regardless of whether the project's duration extends beyond a fiscal year.

(b) The program maintains completed operations insurance coverage for a term during which the coverage is reasonably commercially available, as determined by the public agency, but for no less than 5 years.

(c) The bid or proposal specifications for the project clearly specify, for all bidders or proposers,

the insurance coverage provided under the program and the minimum safety requirements that must be met.

- (d) The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that the contractor or subcontractor believes is necessary for protection against any liability arising out of the contract. The cost of the additional insurance must be disclosed to the public agency.
- (e) The program does not include surety insurance.
- (f) The public agency may only purchase an owner-controlled insurance policy that has a deductible or self-insured retention if the deductible or self-insured retention does not exceed \$1 million per occurrence.
- (g) The public agency is responsible for payment of the applicable deductibles of all claims."

Thus, the statute imposes a number of requirements that must be met before a governmental entity may utilize an owner-controlled insurance program. In addition, certain projects are excluded from the scope of the act: specifically identified projects of the Department of Transportation; an existing project or projects of a public agency that are covered by an ongoing, owner-controlled insurance program issued before October 1, 2004; or any project of a public agency for which receipt of bids or proposals was advertised before October 1, 2004.[1]

Section 255.0517, Florida Statutes, does not define the term "project." Words in common use in a statute are to be construed in their plain and ordinary signification, unless they are used in their technical sense.[2] The word "project" is generally understood to mean a plan or proposal; a scheme; or an undertaking requiring concerted effort.[3] A "project" may also be understood to mean a specific plan or design or a planned undertaking.[4]

The City of Fort Lauderdale Water and Wastewater Capital Improvements Program, "WaterWorks 2011," may involve a number of projects that satisfy the requirements of section 255.0517, Florida Statutes. For example, in Attorney General Opinion 2006-08, this office suggested that the City of St. Petersburg potable water system and wastewater system were interrelated. Under such circumstances it would be appropriate for the city to utilize an "owner-controlled insurance program" in connection with the construction of improvements to the city's water resource system under the city's capital improvement program plan. However, a detailed determination of which aspects of the WaterWorks 2011 Program would qualify as "projects" for purposes of an owner-controlled insurance program is a mixed question of law and fact beyond the scope of this office's authority.[5]

By not specifically defining the term "project" as used in the statute, the Legislature appears to have afforded local governments some flexibility in determining what may constitute a project to effectuate the purposes of the act, that is, saving taxpayer funds while protecting public agencies from liability claims and simplifying insurance coverage for large public construction projects.[6]

In sum, from a reading of the terms of the statute, it appears that a "project" may be any related or interrelated public construction undertakings by a state agency, political subdivision, state university, community college, airport authority, or other public agency or instrumentality thereof that satisfy the conditions of section 255.0517(2)(a) - (g), Florida Statutes. Excluded from the scope of the term are those exemptions set forth in subsection (3), which include any project advertised before October 1, 2004, for the purpose of receiving bids or proposals for the project.

A project may consist of a "specified contracted work site" or "multiple contracted work site[s]" and may require coverage for such things as general liability, property damage, workers' compensation, employer's liability, or pollution liability.[7] A project for purposes of section 255.0517, Florida Statutes, may also be performed over the course of one or more fiscal years.[8]

Sincerely,

Charlie Crist
Attorney General

CC/tgh

[1] Section 255.0517(3), Fla. Stat.

[2] *State v. Tunnicliffe*, 124 So. 279, 281 (Fla. 1929); *Gasson v. Gay*, 49 So. 2d 525, 526 (Fla. 1950); *State v. Egan*, 287 So. 2d 1, 4 (Fla. 1973).

[3] See *The American Heritage Dictionary*, Office Edition (1987) 548.

[4] See *Webster's New Collegiate Dictionary* (1975) 920.

[5] See s. 16.01(3), Fla. Stat.

[6] See Senate Staff Analysis and Economic Impact Statement on CS/SB 2696, dated March 25, 2004.

[7] See s. 255.0517(1)(b), defining "[s]pecified contracted work site" and (c) defining "[m]ultiple contracted work site." And see s. 255.0517(1)(a), Fla. Stat., defining "[o]wner-controlled insurance program" to include the specified types of coverage.

[8] Section 255.0517(1)(c), Fla. Stat.