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# LEGISLATIVE POSITION

## Professional Insurance Agents of New York State Inc.

### “Wrap-up” insurance programs

PIANY strongly opposes legislation that would circumvent the current prohibition against “wrap-up” insurance programs, whereby the owner of a public construction project imposes a predetermined insurance program on the contractors.

### Memorandum in opposition to: S.990/A.1920, PART Q

New York insurance law prohibits public contracting entities generally from obtaining insurance for public contracts or from requiring a contractor or subcontractor to obtain insurance or surety bonds from a particular insurer, agent or broker.

There is good reason why this law is on the books. Outrageous abuses were common in the designation of insurance brokers and companies to handle large public jobs when the law was enacted. Any relaxation of the prohibition would just open the door to new scandals. Yet, PART Q of S.990/A.1920 would require contractors to bid net of insurance costs and accept state-mandated coverage on many public construction projects.

Labor also opposes wrap-up programs, again with good reason, as “a workplace safety disincentive.” The AFL-CIO has filed a memorandum opposing similar bills. It states:

“ ‘ Wrap-up’ insurance issued to a developer or a contracting agency permits employers who disregard workplace safety to escape premiums based on their experience. Further, employers who are safety conscious are penalized and their incentive to maintain a safe workplace is lessened . . .”

Wrap-up programs could make it extremely difficult, if not impossible, for our members to properly insure their contractor clients working on the job. Since the owners’ program typically would insure the contractors’ completed operations exposure only for a limited time period, coverage would be needed for future claims. But such coverage is difficult or impossible to procure, and prohibitively expensive.

Wrap-up programs also preclude many good New York domestic insurers from benefiting from the state’s public construction business, since only the largest national carriers would be financially equipped to handle the entire job on a wrap-up basis.

Any projected cost savings from a wrap-up program are just that—projections. Since these large programs are retrospectively rated, it’s anybody’s guess what the true cost

will be. What *is* known is that a wrap-up program involves considerable administrative expenses, normally borne by the contractors, that must be included in the calculation.

For all these reasons, PIANY urges legislators to oppose the provisions of PART Q.

02/05

**Wrap-ups (Owner Controlled Insurance Programs): S.990/A.1920, PART Q**

Section 1. Subsection (c) of section 2504 of the insurance law is amended to read as follows:

(c) {This} NOTHING IN THIS section shall {not, however, prevent the exercise by such officer or employee on behalf of the state or such public corporation or public authority of its right} PREVENT AN OFFICER OR EMPLOYEE OF THIS STATE, OR OF ANY PUBLIC CORPORATION OR PUBLIC AUTHORITY, OR ANY PERSON, FIRM OR CORPORATION ACTING OR PURPORTING TO ACT ON BEHALF OF SUCH OFFICER OR EMPLOYEE FROM:

(1) OBTAINING, FOR INDIVIDUAL PUBLIC CONSTRUCTION PROJECTS OR FOR MULTIPLE PUBLIC CONSTRUCTION PROJECTS ALL INSURANCE POLICIES OR SURETY BONDS REQUIRED IN CONNECTION WITH SUCH PUBLIC CONSTRUCTION WITHOUT REIMBURSEMENT FROM THE CONTRACTOR OR SUBCONTRACTOR;

(2) REQUIRING THAT THE BIDDER, CONTRACTOR OR SUBCONTRACTOR SUBMIT BIDS WITH AND WITHOUT SPECIFIED INSURANCE POLICIES OR SURETY BONDS OR PROVIDE A CREDIT IN ITS BID WHICH REFLECTS THE AMOUNT THE BIDDER, CONTRACTOR OR SUBCONTRACTOR WOULD OTHERWISE ADD IF IT OBTAINED ITS OWN INSURANCE AS REQUIRED IN THE BID SPECIFICATIONS; OR

(3) EXERCISING THE RIGHT to approve the form, sufficiency, or manner of execution, of surety bonds or contracts of insurance furnished by the insurance company selected by the bidder to underwrite such bonds or contracts. {Any provisions in any invitation for bids, or in any of the contract documents, in conflict herewith are contrary to the public policy of this state.}

S 2. Section 2504 of the insurance law is amended by adding two new subsections (d) and (e) to read as follows:

(D) THE PROCUREMENT OF INSURANCE AND SURETY CONTRACTS RELATED TO PUBLIC CONSTRUCTION PROJECTS AUTHORIZED BY SUBSECTION (C) OF THIS SECTION SHALL BE PERFORMED IN ACCORDANCE WITH ARTICLE ELEVEN OF THE STATE FINANCE LAW WHEN THE OWNER IS A STATE DEPARTMENT OR AGENCY.