
HOUSE BILL 3042

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By Representatives Santos, Cairnes, Roach, Sullivan, Wallace, Ormsby, Simpson, D., Chase, Benson, Carrell, Newhouse, Simpson, G., Cooper, Schual-Berke, Hatfield, Kagi and Upthegrove

Read first time 01/27/2004. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to authorizing certain entities to participate in
2 self-insurance risk pools; and amending RCW 48.62.011, 48.62.021,
3 48.62.031, 48.62.061, 48.62.071, 48.62.081, 48.62.091, 48.01.050, and
4 39.34.055.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 48.62.011 and 1991 sp.s. c 30 s 1 are each amended to
7 read as follows:

8 This chapter is intended to provide the exclusive source of (~~local~~
9 ~~government entity~~) authority to a local government entity or adult
10 family home to individually or jointly self-insure risks, jointly
11 purchase insurance or reinsurance, and to contract for risk management,
12 claims, and administrative services. However, local government
13 entities and adult family homes may not participate in any activity or
14 program authorized under this chapter in violation of Article VIII,
15 section 5 or 7 of the state Constitution. This chapter shall be
16 liberally construed to grant local government entities or adult family
17 homes maximum flexibility in self-insuring to the extent the self-
18 insurance programs are operated in a safe and sound manner. This
19 chapter is intended to require prior approval for the establishment of

1 every individual local government or adult family home self-insured
2 employee health and welfare benefit program and every joint local
3 government or adult family home self-insurance program. In addition,
4 this chapter is intended to require every local government entity that
5 establishes a self-insurance program not subject to prior approval to
6 notify the state of the existence of the program and to comply with the
7 regulatory and statutory standards governing the management and
8 operation of the programs as provided in this chapter. This chapter is
9 not intended to authorize or regulate self-insurance of unemployment
10 compensation under chapter 50.44 RCW, or industrial insurance under
11 chapter 51.14 RCW.

12 **Sec. 2.** RCW 48.62.021 and 2002 c 332 s 24 are each amended to read
13 as follows:

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout this chapter.

16 (1) "Local government entity" or "entity" means every unit of local
17 government, both general purpose and special purpose, and includes, but
18 is not limited to, counties, cities, towns, port districts, public
19 utility districts, water-sewer districts, school districts, fire
20 protection districts, irrigation districts, metropolitan municipal
21 corporations, conservation districts, and other political subdivisions,
22 governmental subdivisions, municipal corporations, and quasi-municipal
23 corporations.

24 (2) "Risk assumption" means a decision to absorb the entity's
25 financial exposure to a risk of loss without the creation of a formal
26 program of advance funding of anticipated losses.

27 (3) "Self-insurance" means a formal program of advance funding and
28 management of entity financial exposure to a risk of loss that is not
29 transferred through the purchase of an insurance policy or contract.

30 (4) "Health and welfare benefits" means a plan or program
31 established by a local government entity or entities for the purpose of
32 providing its employees and their dependents, and in the case of school
33 districts, its district employees, students, directors, or any of their
34 dependents, with health care, accident, disability, death, and salary
35 protection benefits.

36 (5) "Property and liability risks" includes the risk of property
37 damage or loss sustained by a local government entity and the risk of

1 claims arising from the tortious or negligent conduct or any error or
2 omission of the local government entity, its officers, employees,
3 agents, or volunteers as a result of which a claim may be made against
4 the local government entity.

5 (6) "State risk manager" means the risk manager of the risk
6 management division within the office of financial management.

7 (7) "Adult family home" has the same meaning as in RCW
8 70.128.010(1), which is licensed pursuant to RCW 70.128.050.

9 **Sec. 3.** RCW 48.62.031 and 1991 sp.s. c 30 s 3 are each amended to
10 read as follows:

11 (1) The governing body of a local government entity or adult family
12 home may individually self-insure, may join or form a self-insurance
13 program together with other entities or adult family homes, and may
14 jointly purchase insurance or reinsurance with other entities or adult
15 family homes for property and liability risks, and health and welfare
16 benefits only as permitted under this chapter. In addition, the entity
17 or entities may contract for or hire personnel to provide risk
18 management, claims, and administrative services in accordance with this
19 chapter.

20 (2) The agreement to form a joint self-insurance program shall be
21 made under chapter 39.34 RCW.

22 (3) Every individual and joint self-insurance program is subject to
23 audit by the state auditor.

24 (4) If provided for in the agreement or contract established under
25 chapter 39.34 RCW, a joint self-insurance program may, in conformance
26 with this chapter:

27 (a) Contract or otherwise provide for risk management and loss
28 control services;

29 (b) Contract or otherwise provide legal counsel for the defense of
30 claims and other legal services;

31 (c) Consult with the state insurance commissioner and the state
32 risk manager;

33 (d) Jointly purchase insurance and reinsurance coverage in such
34 form and amount as the program's participants agree by contract; and

35 (e) Possess any other powers and perform all other functions
36 reasonably necessary to carry out the purposes of this chapter.

1 (5) A local government entity or adult family home that has decided
2 to assume a risk of loss must have available for inspection by the
3 state auditor a written report indicating the class of risk or risks
4 the governing body of the entity or adult family home has decided to
5 assume.

6 (6) Every joint self-insurance program governed by this chapter
7 shall appoint the risk manager as its attorney to receive service of,
8 and upon whom shall be served, all legal process issued against it in
9 this state upon causes of action arising in this state.

10 (a) Service upon the risk manager as attorney shall constitute
11 service upon the program. Service upon joint insurance programs
12 subject to chapter 30, Laws of 1991 1st sp. sess. can be had only by
13 service upon the risk manager. At the time of service, the plaintiff
14 shall pay to the risk manager a fee to be set by the risk manager,
15 taxable as costs in the action.

16 (b) With the initial filing for approval with the risk manager,
17 each joint self-insurance program shall designate by name and address
18 the person to whom the risk manager shall forward legal process so
19 served upon him or her. The joint self-insurance program may change
20 such person by filing a new designation.

21 (c) The appointment of the risk manager as attorney shall be
22 irrevocable, shall bind any successor in interest or to the assets or
23 liabilities of the joint self-insurance program, and shall remain in
24 effect as long as there is in force in this state any contract made by
25 the joint self-insurance program or liabilities or duties arising
26 therefrom.

27 (d) The risk manager shall keep a record of the day and hour of
28 service upon him or her of all legal process. A copy of the process,
29 by registered mail with return receipt requested, shall be sent by the
30 risk manager, to the person designated for the purpose by the joint
31 self-insurance program in its most recent such designation filed with
32 the risk manager. No proceedings shall be had against the joint self-
33 insurance program, and the program shall not be required to appear,
34 plead, or answer, until the expiration of forty days after the date of
35 service upon the risk manager.

36 **Sec. 4.** RCW 48.62.061 and 1991 sp.s. c 30 s 6 are each amended to
37 read as follows:

1 The state risk manager, in consultation with the property and
2 liability advisory board, shall adopt rules governing the management
3 and operation of both individual and joint local government and adult
4 family home self-insurance programs covering property or liability
5 risks. The state risk manager shall also adopt rules governing the
6 management and operation of both individual and joint local government
7 and adult family home self-insured health and welfare benefits programs
8 in consultation with the health and welfare benefits advisory board.
9 All rules shall be appropriate for the type of program and class of
10 risk covered. The state risk manager's rules shall include:

11 (1) Standards for the management, operation, and solvency of self-
12 insurance programs, including the necessity and frequency of actuarial
13 analyses and claims audits;

14 (2) Standards for claims management procedures; and

15 (3) Standards for contracts between self-insurance programs and
16 private businesses including standards for contracts between third-
17 party administrators and programs.

18 **Sec. 5.** RCW 48.62.071 and 1991 sp.s. c 30 s 7 are each amended to
19 read as follows:

20 Before the establishment of a joint self-insurance program covering
21 property or liability risks by local government entities and adult
22 family homes, or an individual or joint local government or adult
23 family home self-insured health and welfare benefits program, the
24 entity ~~((or))~~, entities, adult family home, or adult family homes must
25 obtain the approval of the state risk manager. Risk manager approval
26 is not required for the establishment of an individual local government
27 or adult family home self-insurance program covering property or
28 liability risks. The entity ~~((or))~~, entities, adult family home, or
29 adult family homes proposing creation of a self-insurance program
30 requiring prior approval shall submit a plan of management and
31 operation to the state risk manager and the state auditor that provides
32 at least the following information:

33 (1) The risk or risks to be covered, including any coverage
34 definitions, terms, conditions, and limitations or in the case of
35 health and welfare benefits programs, the benefits to be provided,
36 including any benefit definitions, terms, conditions, and limitations;

- 1 (2) The amount and method of financing the benefits or covered
2 risks, including the initial capital and proposed rates and projected
3 premiums;
- 4 (3) The proposed claim reserving practices;
- 5 (4) The proposed purchase and maintenance of insurance or
6 reinsurance in excess of the amounts retained by the self-insurance
7 program;
- 8 (5) In the case of a joint program, the legal form of the program,
9 including but not limited to any bylaws, charter, or trust agreement;
- 10 (6) In the case of a joint program, the agreements with members of
11 the program defining the responsibilities and benefits of each member
12 and management;
- 13 (7) The proposed accounting, depositing, and investment practices
14 of the program;
- 15 (8) The proposed time when actuarial analysis will be first
16 conducted and the frequency of future actuarial analysis;
- 17 (9) A designation of the individual upon whom service of process
18 shall be executed on behalf of the program. In the case of a joint
19 program, a designation of the individual to whom service of process
20 shall be forwarded by the risk manager on behalf of the program;
- 21 (10) All contracts between the program and private persons
22 providing risk management, claims, or other administrative services;
- 23 (11) A professional analysis of the feasibility of creation and
24 maintenance of the program; and
- 25 (12) Any other information required by rule of the state risk
26 manager that is necessary to determine the probable financial and
27 management success of the program or that is necessary to determine
28 compliance with this chapter.

29 **Sec. 6.** RCW 48.62.081 and 1991 sp.s. c 30 s 8 are each amended to
30 read as follows:

31 A local government entity or adult family home may participate in
32 a joint self-insurance program covering property or liability risks
33 with similar local government entities and similar adult family homes
34 from other states if the program satisfies the following requirements:

- 35 (1) Only those local government entities of this state and similar
36 entities of other states that are provided insurance by the program may
37 have ownership interest in the program;

1 (2) Only those adult family homes of this state and similar adult
2 family homes of other states that are provided insurance by the program
3 may have ownership interest in the program;

4 (3) The participating local government entities of this state and
5 other states shall elect a board of directors to manage the program, a
6 majority of whom shall be affiliated with one or more of the
7 participating entities;

8 (~~(3)~~) (4) The program must provide coverage through the delivery
9 to each participating entity or adult family home of one or more
10 written policies effecting insurance of covered risks;

11 (~~(4)~~) (5) The program shall be financed, including the payment of
12 premiums and the contribution of initial capital, in accordance with
13 the plan of management and operation submitted to the state risk
14 manager in accordance with this chapter;

15 (~~(5)~~) (6) The financial statements of the program shall be
16 audited annually by the certified public accountants for the program,
17 and such audited financial statements shall be delivered to the
18 Washington state auditor and the state risk manager not more than one
19 hundred twenty days after the end of each fiscal year of the program;

20 (~~(6)~~) (7) The investments of the program shall be initiated only
21 with financial institutions and/or broker-dealers doing business in
22 those states in which participating entities or adult family homes are
23 located, and such investments shall be audited annually by the
24 certified public accountants for the program, and a list of such
25 investments shall be delivered to the Washington state auditor not more
26 than one hundred twenty days after the end of each fiscal year of the
27 program;

28 (~~(7)~~) (8) The treasurer of a multistate joint self-insurance
29 program shall be designated by resolution of the program and such
30 treasurer shall be located in the state of one of the participating
31 entities or adult family homes;

32 (~~(8)~~) (9) The participating entities or adult family homes may
33 have no contingent liabilities for covered claims, other than
34 liabilities for unpaid premiums, retrospective premiums, or
35 assessments, if assets of the program are insufficient to cover the
36 program's liabilities; and

37 (~~(9)~~) (10) The program shall obtain approval from the state risk

1 manager in accordance with this chapter and shall remain in compliance
2 with the provisions of this chapter, except to the extent that such
3 provisions are modified by or inconsistent with this section.

4 **Sec. 7.** RCW 48.62.091 and 1991 sp.s. c 30 s 9 are each amended to
5 read as follows:

6 (1) Within one hundred twenty days of receipt of a plan of
7 management and operation, the state risk manager shall either approve
8 or disapprove the formation of the self-insurance program after
9 reviewing the plan to determine whether the proposed program complies
10 with this chapter and all rules adopted in accordance with this
11 chapter.

12 (2) If the state risk manager denies a request for approval, the
13 state risk manager shall specify in detail the reasons for denial and
14 the manner in which the program fails to meet the requirements of this
15 chapter or any rules adopted in accordance with this chapter.

16 (3) Whenever the state risk manager determines that a joint self-
17 insurance program covering property or liability risks or an individual
18 or joint self-insured health and welfare benefits program is in
19 violation of this chapter or is operating in an unsafe financial
20 condition, the state risk manager may issue and serve upon the program
21 an order to cease and desist from the violation or practice.

22 (a) The state risk manager shall deliver the order to the
23 appropriate entity ((~~or~~)) entities, adult family home, or adult family
24 homes directly or mail it to the appropriate entity ((~~or~~)) entities,
25 adult family home, or adult family homes by registered mail with return
26 receipt requested.

27 (b) If the program violates the order or has not taken steps to
28 comply with the order after the expiration of twenty days after the
29 cease and desist order has been received by the program, the program is
30 deemed to be operating in violation of this chapter, and the state risk
31 manager shall notify the state auditor and the attorney general of the
32 violation.

33 (c) After hearing or with the consent of a program governed by this
34 chapter and in addition to or in lieu of a continuation of the cease
35 and desist order, the risk manager may levy a fine upon the program in
36 an amount not less than three hundred dollars and not more than ten
37 thousand dollars. The order levying such fine shall specify the period

1 within which the fine shall be fully paid. The period within which
2 such fines shall be paid shall not be less than fifteen nor more than
3 thirty days from the date of such order. Upon failure to pay any such
4 fine when due the risk manager shall request the attorney general to
5 bring a civil action on the risk manager's behalf to collect the fine.
6 The risk manager shall pay any fine so collected to the state treasurer
7 for the account of the general fund.

8 (4) Each self-insurance program approved by the state risk manager
9 shall annually file a report with the state risk manager and state
10 auditor providing:

11 (a) Details of any changes in the articles of incorporation,
12 bylaws, or interlocal agreement;

13 (b) Copies of all the insurance coverage documents;

14 (c) A description of the program structure, including participants'
15 retention, program retention, and excess insurance limits and
16 attachment point;

17 (d) An actuarial analysis, if required;

18 (e) A list of contractors and service providers;

19 (f) The financial and loss experience of the program; and

20 (g) Such other information as required by rule of the state risk
21 manager.

22 (5) No self-insurance program requiring the state risk manager's
23 approval may engage in an act or practice that in any respect
24 significantly differs from the management and operation plan that
25 formed the basis for the state risk manager's approval of the program
26 unless the program first notifies the state risk manager in writing and
27 obtains the state risk manager's approval. The state risk manager
28 shall approve or disapprove the proposed change within sixty days of
29 receipt of the notice. If the state risk manager denies a requested
30 change, the risk manager shall specify in detail the reasons for denial
31 and the manner in which the program would fail to meet the requirements
32 of this chapter or any rules adopted in accordance with this chapter.

33 **Sec. 8.** RCW 48.01.050 and 2003 c 248 s 1 are each amended to read
34 as follows:

35 "Insurer" as used in this code includes every person engaged in the
36 business of making contracts of insurance, other than a fraternal
37 benefit society. A reciprocal or interinsurance exchange is an

1 "insurer" as used in this code. Two or more hospitals that join and
2 organize as a mutual corporation pursuant to chapter 24.06 RCW for the
3 purpose of insuring or self-insuring against liability claims,
4 including medical liability, through a contributing trust fund are not
5 an "insurer" under this code. Two or more local governmental
6 entities(~~(, under any provision of law))~~ or adult family homes as
7 defined in RCW 70.128.010(1), which are licensed pursuant to RCW
8 70.128.050, that join together and organize to form an organization for
9 the purpose of jointly self-insuring or self-funding are not an
10 "insurer" under this code. Two or more persons engaged in the business
11 of commercial fishing who enter into an arrangement with other such
12 persons for the pooling of funds to pay claims or losses arising out of
13 loss or damage to a vessel or machinery used in the business of
14 commercial fishing and owned by a member of the pool are not an
15 "insurer" under this code.

16 **Sec. 9.** RCW 39.34.055 and 1994 c 98 s 1 are each amended to read
17 as follows:

18 The office of state procurement within the department of general
19 administration may enter into an agreement with a public benefit
20 nonprofit corporation or an adult family home to allow the public
21 benefit nonprofit corporation or adult family home to participate in
22 state contracts, including contracts for insurance, and, with respect
23 to public benefit nonprofit corporations only, to participate in
24 contracts for purchases administered by the office of state
25 procurement. Such agreement must comply with the requirements of RCW
26 39.34.030 through 39.34.050. For the purposes of this section "public
27 benefit nonprofit corporation" means a public benefit nonprofit
28 corporation as defined in RCW 24.03.005 that is receiving local, state,
29 or federal funds either directly or through a public agency other than
30 an Indian tribe or a political subdivision of another state. "Adult
31 family home" has the same meaning as in RCW 70.128.010(1), which is
32 licensed pursuant to RCW 70.128.050.

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