
SENATE BILL 5665

State of Washington

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By Senators Berkey, Benton, Franklin, Parlette, Hobbs, and Shin

Read first time 01/28/09. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to a joint self-insurance program for affordable
2 housing and nonprofit entities; amending RCW 48.01.050; adding a new
3 chapter to Title 48 RCW; prescribing penalties; and providing an
4 effective date.

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

6 NEW SECTION. **Sec. 1.** This chapter is intended to provide
7 authority for two or more affordable housing entities or nonprofit
8 entities to participate in a joint self-insurance program covering
9 property or liability risks. This chapter provides affordable housing
10 and nonprofit entities with the exclusive source of authority to
11 jointly self-insure property and liability risks, jointly purchase
12 insurance or reinsurance, and to contract for risk management, claims,
13 and administrative services with other affordable housing entities or
14 nonprofit entities. This chapter must be liberally construed to grant
15 affordable housing entities and nonprofit entities maximum flexibility
16 in jointly self-insuring to the extent the self-insurance programs are
17 operated in a safe and sound manner. This chapter is intended to
18 require prior approval for the establishment of every joint self-
19 insurance program. In addition, this chapter is intended to require

1 every joint self-insurance program for affordable housing entities and
2 nonprofit entities established under this chapter to notify the state
3 of the existence of the program and to comply with the regulatory and
4 statutory standards governing the management and operation of the
5 programs as provided in this chapter. This chapter is not intended to
6 authorize or regulate self-insurance of unemployment compensation under
7 chapter 50.44 RCW or industrial insurance under chapter 51.14 RCW.

8 NEW SECTION. **Sec. 2.** The definitions in this section apply
9 throughout this chapter unless the context clearly requires otherwise.

10 (1) "Affordable housing" means housing projects in which some of
11 the dwelling units may be purchased or rented, with or without
12 government assistance, on a basis that is affordable to persons of low
13 income.

14 (2) "Affordable housing entity" means any of the following:

15 (a) A housing authority created under the laws of this state or
16 another state and any agency or instrumentality of a housing authority
17 including, but not limited to, a legal entity created to conduct a
18 joint self-insurance program for housing authorities that is operating
19 in accordance with chapter 48.62 RCW;

20 (b) A nonprofit corporation, whether organized under the laws of
21 this state or another state, that is engaged in providing affordable
22 housing; or

23 (c) A partnership (whether general or limited) or limited liability
24 company, whether organized under the laws of this state or another
25 state, that is engaged in providing affordable housing and is
26 affiliated with a housing authority as described in (a) of this
27 subsection or a nonprofit corporation as described in (b) of this
28 subsection. For the purposes of this subsection (2)(c), a partnership
29 or limited liability company is affiliated with a housing authority as
30 described in (a) of this subsection or a nonprofit corporation as
31 described in (b) of this subsection if the housing authority or
32 nonprofit corporation (i) has, or has the right to acquire, a financial
33 or ownership interest in the partnership or limited liability company,
34 (ii) possesses the power to direct the management or policies of the
35 partnership or limited liability company, (iii) has entered into a
36 contract to lease, manage, or operate the affordable housing owned by

1 the partnership or limited liability company, or (iv) has any other
2 material relationship with the partnership or limited liability
3 company.

4 (3) "Nonprofit entity" means a nonprofit corporation or other form
5 of entity organized on a not-for-profit basis, whether organized under
6 the laws of this state or another state.

7 (4) "Property and liability risks" includes the risk of property
8 damage or loss sustained by an affordable housing entity or a nonprofit
9 entity and the risk of claims arising from the tortious or negligent
10 conduct or any error or omission of the entity, its officers,
11 employees, agents, or volunteers as a result of which a claim may be
12 made against the entity.

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

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

18 NEW SECTION. **Sec. 3.** (1) The governing body of an affordable
19 housing entity or nonprofit entity may join or form a self-insurance
20 program together with one or more other affordable housing entities or
21 nonprofit entities, and may jointly purchase insurance or reinsurance
22 with one or more other affordable housing entities or nonprofit
23 entities for property and liability risks only as permitted under this
24 chapter. Affordable housing entities or nonprofit entities may
25 contract for or hire personnel to provide risk management, claims, and
26 administrative services in accordance with this chapter.

27 (2) The agreement to form a joint self-insurance program may
28 include the organization of a separate legal or administrative entity
29 with powers delegated to the entity. The entity may be a nonprofit
30 corporation, limited liability company, partnership, trust, or other
31 form of entity, whether organized under the laws of this state or
32 another state.

33 (3) If provided for in the organizational documents, a joint self-
34 insurance program may, in conformance with this chapter:

35 (a) Contract or otherwise provide for risk management and loss
36 control services;

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

3 (c) Consult with the state insurance commissioner and the state
4 risk manager;

5 (d) Jointly purchase insurance and reinsurance coverage in a form
6 and amount as provided for in the organizational documents;

7 (e) Obligate the program's participants to pledge revenues or
8 contribute money to secure the obligations or pay the expenses of the
9 program, including the establishment of a reserve or fund for coverage;
10 and

11 (f) Possess any other powers and perform all other functions
12 reasonably necessary to carry out the purposes of this chapter.

13 (4) Every joint self-insurance program governed by this chapter
14 must appoint the state risk manager as its attorney to receive service
15 of, and upon whom must be served, all legal process issued against the
16 program in this state upon causes of action arising in this state.

17 (a) Service upon the state risk manager as attorney constitutes
18 service upon the program. Service upon joint self-insurance programs
19 subject to this chapter may only occur by service upon the state risk
20 manager. At the time of service, the plaintiff shall pay to the state
21 risk manager a fee to be set by the state risk manager, taxable as
22 costs in the action.

23 (b) With the initial filing for approval with the state risk
24 manager, each joint self-insurance program must designate by name and
25 address the person to whom the state risk manager must forward legal
26 process that is served upon him or her. The joint self-insurance
27 program may change this person by filing a new designation.

28 (c) The appointment of the state risk manager as attorney is
29 irrevocable, binds any successor in interest or to the assets or
30 liabilities of the joint self-insurance program, and remains in effect
31 as long as there is in force in this state any contract made by the
32 joint self-insurance program or liabilities or duties arising from the
33 contract.

34 (d) The state risk manager shall keep a record of the day and hour
35 of service upon him or her of all legal process. A copy of the
36 process, by registered mail with return receipt requested, must be sent
37 by the state risk manager to the person designated to receive legal
38 process by the joint self-insurance program in its most recent

1 designation filed with the state risk manager. Proceedings must not
2 commence against the joint self-insurance program, and the program must
3 not be required to appear, plead, or answer, until the expiration of
4 forty days after the date of service upon the state risk manager.

5 NEW SECTION. **Sec. 4.** This chapter does not apply to an affordable
6 housing entity or nonprofit entity that:

- 7 (1) Individually self-insures for property and liability risks;
- 8 (2) Participates in a risk pooling arrangement, including a risk
9 retention group or a risk purchasing group, regulated under chapter
10 48.92 RCW, or is a captive insurer authorized in its state of domicile;
11 or
- 12 (3) Is a hospital licensed under chapter 70.41 RCW or an entity
13 owned, operated, controlled by, or affiliated with a hospital licensed
14 under chapter 70.41 RCW that participates in a self-insurance risk pool
15 or other risk pooling arrangement.

16 NEW SECTION. **Sec. 5.** The state risk manager shall adopt rules
17 governing the management and operation of joint self-insurance programs
18 for affordable housing entities and nonprofit entities that cover
19 property or liability risks. All rules must be appropriate for the
20 type of program and class of risk covered. The state risk manager's
21 rules must include:

- 22 (1) Standards for the management, operation, and solvency of joint
23 self-insurance programs, including the necessity and frequency of
24 actuarial analyses and claims audits;
- 25 (2) Standards for claims management procedures; and
- 26 (3) Standards for contracts between joint self-insurance programs
27 and private businesses, including standards for contracts between
28 third-party administrators and programs.

29 NEW SECTION. **Sec. 6.** Before the establishment of a joint self-
30 insurance program covering property or liability risks by affordable
31 housing entities or nonprofit entities, the entities must obtain the
32 approval of the state risk manager. The entities proposing the
33 creation of a joint self-insurance program requiring prior approval
34 shall submit a plan of management and operation to the state risk
35 manager that provides at least the following information:

1 (1) The risk or risks to be covered, including any coverage
2 definitions, terms, conditions, and limitations;

3 (2) The amount and method of funding the covered risks, including
4 the initial capital and proposed rates and projected premiums;

5 (3) The proposed claim reserving practices;

6 (4) The proposed purchase and maintenance of insurance or
7 reinsurance in excess of the amounts retained by the joint self-
8 insurance program;

9 (5) The legal form of the program including, but not limited to,
10 any articles of incorporation, bylaws, charter, or trust agreement or
11 other agreement among the participating entities;

12 (6) The agreements with participants in the program defining the
13 responsibilities and benefits of each participant and management;

14 (7) The proposed accounting, depositing, and investment practices
15 of the program;

16 (8) The proposed time when actuarial analysis will be first
17 conducted and the frequency of future actuarial analysis;

18 (9) A designation of the individual to whom service of process must
19 be forwarded by the state risk manager on behalf of the program;

20 (10) All contracts between the program and private persons
21 providing risk management, claims, or other administrative services;

22 (11) A professional analysis of the feasibility of the creation and
23 maintenance of the program;

24 (12) A legal determination of the potential federal and state tax
25 liabilities of the program; and

26 (13) Any other information required by rule of the state risk
27 manager that is necessary to determine the probable financial and
28 management success of the program or that is necessary to determine
29 compliance with this chapter.

30 NEW SECTION. **Sec. 7.** An affordable housing entity or nonprofit
31 entity may participate in a joint self-insurance program covering
32 property or liability risks with similar affordable housing entities or
33 nonprofit entities from other states if the program satisfies the
34 following requirements:

35 (1) An ownership interest in the program is limited to some or all
36 of the affordable housing entities or nonprofit entities of this state

1 and similar entities of other states that are provided insurance by the
2 program;

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

6 (3) The program must provide coverage through the delivery to each
7 participating entity of one or more written policies affecting
8 insurance of covered risks;

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

13 (5) The financial statements of the program must be audited
14 annually by the certified public accountants for the program, and these
15 audited financial statements must be delivered to the state risk
16 manager not more than one hundred twenty days after the end of each
17 fiscal year of the program;

18 (6) The investments of the program must be initiated only with
19 financial institutions or broker-dealers, or both, doing business in
20 those states in which participating entities are located, and these
21 investments must be audited annually by the certified public
22 accountants for the program;

23 (7) The treasurer of a multistate joint self-insurance program must
24 be designated by resolution of the program and the treasurer must be
25 located in the state of one of the participating entities;

26 (8) The participating entities may have no contingent liabilities
27 for covered claims, other than liabilities for unpaid premiums, if
28 assets of the program are insufficient to cover the program's
29 liabilities; and

30 (9) The program must obtain approval from the state risk manager in
31 accordance with this chapter and must remain in compliance with this
32 chapter, except if provided otherwise under this section.

33 NEW SECTION. **Sec. 8.** (1) Within one hundred twenty days of
34 receipt of a plan of management and operation, the state risk manager
35 shall either approve or disapprove of the formation of the joint self-
36 insurance program after reviewing the plan to determine whether the

1 proposed program complies with this chapter and all rules adopted in
2 accordance with this chapter.

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

7 (3) If the state risk manager determines that a joint self-
8 insurance program covering property or liability risks is in violation
9 of this chapter or is operating in an unsafe financial condition, the
10 state risk manager may issue and serve upon the program an order to
11 cease and desist from the violation or practice.

12 (a) The state risk manager shall deliver the order to the
13 appropriate entity or entities directly or mail it to the appropriate
14 entity or entities by certified mail with return receipt requested.

15 (b) If the program violates the order or has not taken steps to
16 comply with the order after the expiration of twenty days after the
17 cease and desist order has been received by the program, the program is
18 deemed to be operating in violation of this chapter, and the state risk
19 manager shall notify the attorney general of the violation.

20 (c) After hearing or with the consent of a program governed under
21 this chapter and in addition to or in lieu of a continuation of the
22 cease and desist order, the state risk manager may levy a fine upon the
23 program in an amount not less than three hundred dollars and not more
24 than ten thousand dollars. The order levying the fine must specify the
25 period within which the fine must be fully paid. The period within
26 which the fines must be paid must not be less than fifteen and no more
27 than thirty days from the date of the order. Upon failure to pay the
28 fine when due, the state risk manager shall request the attorney
29 general to bring a civil action on the state risk manager's behalf to
30 collect the fine. The state risk manager shall pay any fine collected
31 to the state treasurer for the account of the general fund.

32 (4) Each joint self-insurance program approved by the state risk
33 manager shall annually file a report with the state risk manager
34 providing:

35 (a) Details of any changes in the articles of incorporation,
36 bylaws, charter, or trust agreement or other agreement among the
37 participating entities;

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

1 (c) A description of the program structure, including participants'
2 retention, program retention, and excess insurance limits and
3 attachment point;

4 (d) An actuarial analysis;

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

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

7 (g) Other information as required by rule of the state risk
8 manager.

9 (5) A joint self-insurance program requiring the state risk
10 manager's approval may not engage in an act or practice that in any
11 respect significantly differs from the management and operation plan
12 that formed the basis for the state risk manager's approval of the
13 program unless the program first notifies the state risk manager in
14 writing and obtains the state risk manager's approval. The state risk
15 manager shall approve or disapprove the proposed change within sixty
16 days of receipt of the notice. If the state risk manager denies a
17 requested change, the state risk manager shall specify in detail the
18 reasons for the denial and the manner in which the program would fail
19 to meet the requirements of this chapter or any rules adopted in
20 accordance with this chapter.

21 NEW SECTION. **Sec. 9.** (1) A joint self-insurance program may by
22 resolution of the program designate a person having experience with
23 investments or financial matters as treasurer of the program. The
24 program must require a bond obtained from a surety company in an amount
25 and under the terms and conditions that the program finds will protect
26 against loss arising from mismanagement or malfeasance in investing and
27 managing program funds. The program may pay the premium on the bond.

28 (2) All interest and earnings collected on joint self-insurance
29 program funds belong to the program and must be deposited to the
30 program's credit in the proper program account.

31 NEW SECTION. **Sec. 10.** (1) An employee or official of a
32 participating affordable housing entity or nonprofit entity in a joint
33 self-insurance program may not directly or indirectly receive anything
34 of value for services rendered in connection with the operation and
35 management of a self-insurance program other than the salary and
36 benefits provided by his or her employer or the reimbursement of

1 expenses reasonably incurred in furtherance of the operation or
2 management of the program. An employee or official of a participating
3 affordable housing entity or nonprofit entity in a joint self-insurance
4 program may not accept or solicit anything of value for personal
5 benefit or for the benefit of others under circumstances in which it
6 can be reasonably inferred that the employee's or official's
7 independence of judgment is impaired with respect to the management and
8 operation of the program.

9 (2) RCW 48.30.140, 48.30.150, and 48.30.157 apply to the use of
10 insurance producers by a joint self-insurance program.

11 NEW SECTION. **Sec. 11.** A joint self-insurance program approved in
12 accordance with this chapter is exempt from insurance premium taxes,
13 fees assessed under chapter 48.02 RCW, chapters 48.32 and 48.32A RCW,
14 business and occupation taxes imposed under chapter 82.04 RCW, and any
15 assigned risk plan or joint underwriting association otherwise required
16 by law. This section does not apply to, and no exemption is provided
17 for, insurance companies issuing policies to cover program risks, and
18 does not apply to or provide an exemption for third-party
19 administrators or insurance producers serving the joint self-insurance
20 program.

21 NEW SECTION. **Sec. 12.** (1) The state risk manager shall establish
22 and charge an investigation fee in an amount necessary to cover the
23 costs for the initial review and approval of a joint self-insurance
24 program. The fee must accompany the initial submission of the plan of
25 operation and management.

26 (2) The costs of subsequent reviews and investigations must be
27 charged to the joint self-insurance program being reviewed or
28 investigated in accordance with the actual time and expenses incurred
29 in the review or investigation.

30 (3) Any program failing to remit its assessment when due is subject
31 to denial of permission to operate or to a cease and desist order until
32 the assessment is paid.

33 NEW SECTION. **Sec. 13.** (1) Any person who files reports or
34 furnishes other information required under this title, required by the
35 state risk manager under the authority granted under this title, or

1 which is useful to the state risk manager in the administration of this
2 title, is immune from liability in any civil action or suit arising
3 from the filing of any such report or furnishing such information to
4 the state risk manager, unless actual malice, fraud, or bad faith is
5 shown.

6 (2) The state risk manager and his agents and employees are immune
7 from liability in any civil action or suit arising from the publication
8 of any report or bulletins or arising from dissemination of information
9 related to the official activities of the state risk manager unless
10 actual malice, fraud, or bad faith is shown.

11 (3) The immunity granted under this section is in addition to any
12 common law or statutory privilege or immunity enjoyed by such person.
13 This section is not intended to abrogate or modify in any way such
14 common law or statutory privilege or immunity.

15 NEW SECTION. **Sec. 14.** The state risk manager shall take all steps
16 necessary to implement this chapter on January 1, 2010.

17 NEW SECTION. **Sec. 15.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 16.** This act takes effect January 1, 2010.

22 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act
23 constitute a new chapter in Title 48 RCW.

24 **Sec. 18.** RCW 48.01.050 and 2003 c 248 s 1 are each amended to read
25 as follows:

26 "Insurer" as used in this code includes every person engaged in the
27 business of making contracts of insurance, other than a fraternal
28 benefit society. A reciprocal or interinsurance exchange is an
29 "insurer" as used in this code. Two or more hospitals that join and
30 organize as a mutual corporation pursuant to chapter 24.06 RCW for the
31 purpose of insuring or self-insuring against liability claims,
32 including medical liability, through a contributing trust fund are not
33 an "insurer" under this code. Two or more local governmental entities,

1 under any provision of law, that join together and organize to form an
2 organization for the purpose of jointly self-insuring or self-funding
3 are not an "insurer" under this code. Two or more affordable housing
4 entities or nonprofit entities that join together and organize to form
5 an organization for the purpose of jointly self-insuring or self-
6 funding under chapter 48.-- RCW (the new chapter created in section 17
7 of this act) are not an "insurer" under this code. Two or more persons
8 engaged in the business of commercial fishing who enter into an
9 arrangement with other such persons for the pooling of funds to pay
10 claims or losses arising out of loss or damage to a vessel or machinery
11 used in the business of commercial fishing and owned by a member of the
12 pool are not an "insurer" under this code.

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