

HOUSE BILL REPORT

HB 1249

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to nonprofit risk pools.

Brief Description: Providing authority for two or more nonprofit corporations to participate in a joint self-insurance program covering property or liability risks.

Sponsors: Representatives Clibborn, Fagan and Santos.

Brief History:

Committee Activity:

Business & Financial Services: 1/27/15, 1/28/15 [DP].

Brief Summary of Bill

- Authorizes nonprofit corporations to join or create self-insured risk pools with other nonprofit corporations in Washington and in other states.
- Creates a new chapter within Title 48.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass. Signed by 10 members: Representatives Kirby, Chair; Ryu, Vice Chair; Vick, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Blake, Hurst, Kochmar, McCabe, Santos and Stanford.

Minority Report: Without recommendation. Signed by 1 member: Representative G. Hunt.

Staff: Linda Merelle (786-7092).

Background:

Local government entities, including local housing authorities, and affordable housing entities, have the authority to individually, or jointly, self-insure against risks, jointly purchase insurance or reinsurance, and contract for risk management, claims, and administrative services.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Local government joint self-insurance risk pools are authorized to create and delegate powers to a separate legal or administrative entity, and to obligate the pool's participants to pledge revenues or contribute money to secure the obligations or pay the expenses of the pool, including the establishment of a reserve or fund for coverage. Risk pools are authorized to sell revenue bonds and short-term obligations and establish lines of credit. Subject to specified conditions, local government entities may enter into joint self-insurance pools with similar entities from other states. The Risk Management Division within the Department of Enterprise Services is responsible for the regulation of these pools. These pools are excluded from the definition of "insurer" under the insurance code.

Nonprofit corporations may form or join self-insurance risk pools with other nonprofit corporations and local government entities, but have no authorization to join risk pools that include entities in other states. The authority to enter into joint self-insurance risk pools does not extend to certain nonprofit hospitals, nonprofit corporations that individually self-insure for property and liability risks, or nonprofit corporations that participate in a risk-pooling arrangement that is regulated and governed by the federal Liability Risk Retention Act of 1986, which allows entities with similar liability exposure to form risk-retention groups for the purpose of self-insuring.

Summary of Bill:

Nonprofit corporations may form or join risk pools that include entities from other states. A new chapter governing risk pools for nonprofit corporations is created in Title 48.

Authority.

A nonprofit corporation is authorized to join or form a self-insurance program with other nonprofit corporations and may jointly purchase insurance or reinsurance for property and liability risks. The authority for these risk pools is similar to existing authority for local government and affordable housing-entity risk pools.

Nonprofit corporations may contract for or hire personnel to provide risk management, claims, and administrative services. They may also organize a separate legal or administrative entity, with powers delegated to that entity, as part of the agreement to form a joint self-insurance program.

The provisions of this act do not apply to a nonprofit corporation that:

- individually self-insures for property and liability risks;
- participates in a risk-pooling arrangement, including a risk-retention group, a risk-purchasing group, or is a captive insurer authorized by its state of domicile;
- comprises only units of local government or is a group that comprises local governments joined by an interlocal agreement; or
- is a hospital or entity owned, operated, controlled by, or affiliated with such a hospital that participates in a self-insurance risk pool or other risk-pooling arrangement.

Approval by the State Risk Manager:

Before the establishment of a joint self-insurance program, the nonprofit entities must obtain the approval of the State Risk Manager (Risk Manager). The entities proposing the program must submit a report to the Risk Manager containing the following information:

- the risk or risks to be covered, including any coverage definitions, terms, conditions, and limitations;
- the amount and method of funding the covered risks, including the initial capital and proposed rates and projected premiums;
- the proposed claim-reserving practices;
- the proposed purchase and maintenance of insurance or reinsurance in excess of the amounts retained by the joint self-insurance program;
- the legal form of the program including bylaws, charters, or trust agreements;
- the agreement defining the responsibilities and benefits of each participant and management;
- the proposed accounting, depositing, and investment practices of the program;
- the proposed frequency of actuarial analysis;
- a designation of the individual to whom service of process must be forwarded by the Risk Manager;
- contracts between the program and private persons providing risk management, claims, or other administrative services;
- a professional analysis of the feasibility of the creation and maintenance of the program;
- a legal determination of the potential federal and state tax liabilities of the program; and
- any other information required by rule of the Risk Manager.

Within 120 days of receipt of a plan of management and operation, the Risk Manager must either approve or disapprove of the formation of the program. If approval is denied, the Risk Manager must specify in detail the reasons for denial and the manner in which the program fails to meet the requirements. Each approved joint self-insurance program must annually file a report with the Risk Manager providing:

- details of any changes in the articles of incorporation, bylaws, charters, or trust agreements or other agreements among the participating nonprofit corporations;
- copies of all the insurance coverage documents;
- a description of the program structure, including participants' retention, program retention, and excess insurance limits and attachment points;
- an actuarial analysis;
- a list of contractors and service providers;
- the financial and loss experience of the program; and
- other information required by the Risk Manager.

An approved program may not engage in an act or practice that significantly differs from the management and operation plan that formed the basis for the approval of the program without obtaining approval. The Risk Manager must approve or disapprove a proposed change within 60 days. If a program is determined to violate any of the requirements or is operating in an unsafe financial condition, the Risk Manager may issue an order to cease and desist from the violation or practice.

Multi-state Program Participants.

Nonprofit corporations may participate in a joint self-insurance program covering property or liability risks with similar nonprofit corporations from other states if the program satisfies the following requirements:

- an ownership interest in the program is limited to some or all of the nonprofit corporations of this state and nonprofit corporations of other states that are provided insurance by the program;
- the participating nonprofit corporations of this state and other states shall elect a board of directors to manage the program;
- the program must provide coverage through the delivery to each participating nonprofit corporation of one or more written policies affecting insurance of covered risks;
- the program must be financed, including the payment of premiums and the contribution of initial capital, in accordance with the plan of management and operation submitted to the Risk Manager;
- the financial statements of the program must be audited annually by the certified public accountants for the program, and audited financial statements must be submitted to the Risk Manager;
- the investments of the program must be initiated only with financial institutions or broker-dealers doing business in those states in which participating nonprofit corporations are located, and these investments must be audited annually by the certified public accountants for the program;
- the treasurer of a multi-state joint self-insurance program must be designated by resolution of the program and the treasurer must be located in the state of one of the participating entities;
- the participating nonprofit corporations may have no contingent liabilities for covered claims, other than liabilities for unpaid premiums, if assets of the program are insufficient to cover the program's liabilities; and
- the program must obtain approval from the Risk Manager and remain in compliance.

Rulemaking and Fees.

The Risk Manager is required to adopt rules governing the management and operation of joint self-insurance programs for nonprofit corporations. Specifically, the rules must include standards for:

- the management, operation, and solvency of joint self-insurance programs, including the necessity and frequency of actuarial analyses and claims audits;
- claims management procedures;
- contracts between joint self-insurer programs and private businesses; and
- requiring pool verification of each member's nonprofit status in their state of domicile.

The Risk Manager must also establish and charge a fee to cover the costs of the initial review and approval of a joint self-insurance program. The costs of any subsequent reviews and investigations must be charged to the joint self-insurance program in accordance with actual

time and expenses incurred. Any program failing to remit its assessment when due is subject to denial of permission to operate or to a cease and desist order until the assessment is paid.

Risk Pool Not Insurer.

Risk pools created under these provisions are excluded from the definition of "insurer" under the insurance code. A joint self-insurance program approved in accordance with this act is exempt from insurance premium taxes, certain other fees, and business and occupation taxes.

Liability.

Any person who files, reports, or furnishes other information required pursuant to this act is immune from liability in any civil action or suit arising from the filing of any such report or furnishing such information unless actual malice, fraud, or bad faith is shown.

The Risk Manager is immune from liability in any civil action or suit arising from the publication of any report or bulletin or from dissemination of information related to his or her official duties unless actual malice, fraud, or bad faith is shown. Any immunity granted to any person under this act is in addition to any existing common law or statutory privilege or immunity.

Repealed Provision.

The RCW 48.62.036, which contains provisions in current law under which nonprofit corporations may form or join self-insurance risk pools, is repealed.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Nonprofit corporations have been allowed to participate in joint insurance risk pools since 2003. In the past 10 years the risk pools have shown themselves to be successful and have outgrown the current statute. A new chapter regarding risk pools that only addresses nonprofit corporations and multi-state participation would allow greater flexibility. The bill is modeled on the affordable housing entity provisions and keeps original authorization for nonprofit corporations intact. Many other states also want to do something similar to what Washington has done. This bill would allow risk pools to spread the risk and build stable pools for the long term. Because it was very new when nonprofits were allowed to join risk pools, the authority was placed in the same statutory section already in place for the local governments that were allowed to join risk pools. Now, after a decade of solid

performance, the nonprofit risk pools have earned the opportunity to ask the Legislature to have their own section in statute.

(Opposed) None.

Persons Testifying: Representative Santos; Representative Kirby; Darren Brugmann, Senior Services of Snohomish County and Nonprofit Insurance Program; Eric Homer, Canfield; and Arlen Harris, Department of Enterprise Services.

Persons Signed In To Testify But Not Testifying: None.