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**SUBSTITUTE SENATE BILL 6443**

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**State of Washington**

**65th Legislature**

**2018 Regular Session**

**By** Senate Financial Institutions & Insurance (originally sponsored by Senators Fortunato, Mullet, and Angel)

READ FIRST TIME 01/26/18.

1       AN ACT Relating to joint self-insurance programs for property and  
2 liability risks; amending RCW 48.62.011, 48.62.021, 48.62.031,  
3 48.62.111, and 48.62.121; and adding a new section to chapter 48.62  
4 RCW.

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  
7 to read as follows:

8       (1) This chapter is intended to provide the exclusive source of  
9 local government entity authority to individually or jointly self-  
10 insure risks, jointly purchase insurance or reinsurance, and to  
11 contract for risk management, claims, and administrative services.  
12 This chapter shall be liberally construed to grant local government  
13 entities maximum flexibility in self-insuring to the extent the self-  
14 insurance programs are operated in a safe and sound manner. This  
15 chapter is intended to require prior approval for the establishment  
16 of every individual local government self-insured employee health and  
17 welfare benefit program and every joint local government self-  
18 insurance program. In addition, this chapter is intended to require  
19 every local government entity that establishes a self-insurance  
20 program not subject to prior approval to notify the state of the  
21 existence of the program and to comply with the regulatory and

1 statutory standards governing the management and operation of the  
2 programs as provided in this chapter. This chapter is not intended to  
3 authorize or regulate self-insurance of unemployment compensation  
4 under chapter 50.44 RCW, or industrial insurance under chapter 51.14  
5 RCW.

6 (2) This chapter is further intended to enable qualifying state  
7 agencies to participate in a local government joint self-insurance  
8 program covering property and liability risks.

9 **Sec. 2.** RCW 48.62.021 and 2015 c 109 s 2 are each amended to  
10 read as follows:

11 Unless the context clearly requires otherwise, the definitions in  
12 this section apply throughout this chapter.

13 (1) "Health and welfare benefits" means a plan or program  
14 established by a local government entity or entities for the purpose  
15 of providing its employees and their dependents, and in the case of  
16 school districts, its district employees, students, directors, or any  
17 of their dependents, with health care, accident, disability, death,  
18 and salary protection benefits.

19 (2) "Local government entity" or "entity" means every unit of  
20 local government, both general purpose and special purpose, and  
21 includes, but is not limited to, counties, cities, towns, port  
22 districts, public utility districts, water-sewer districts, school  
23 districts, fire protection districts, irrigation districts,  
24 metropolitan municipal corporations, conservation districts, and  
25 other political subdivisions, governmental subdivisions, municipal  
26 corporations, quasi-municipal corporations, nonprofit corporations  
27 comprised of only units of local government, or a group comprised of  
28 local governments joined by an interlocal agreement authorized by  
29 chapter 39.34 RCW.

30 (3) "Nonprofit corporation" or "corporation" has the same meaning  
31 as defined in RCW 24.03.005(~~(+3)~~)(16) or a similar statute with  
32 similar intent within the entity's state of domicile.

33 (4) "Property and liability risks" includes the risk of property  
34 damage or loss sustained by a local government entity and the risk of  
35 claims arising from the tortious or negligent conduct or any error or  
36 omission of the local government entity, its officers, employees,  
37 agents, or volunteers as a result of which a claim may be made  
38 against the local government entity.

1           (5) "Qualifying state agency" or "qualifying state agencies"  
2 means a state agency, board, commission, or other entity of the  
3 state, other than a local government entity, with a biennial  
4 operating budget of not more than five million dollars.

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

8           (~~(6)~~) (7) "Self-insurance" means a formal program of advance  
9 funding and management of entity financial exposure to a risk of loss  
10 that is not transferred through the purchase of an insurance policy  
11 or contract.

12           (~~(7)~~) (8) "State risk manager" means the risk manager of the  
13 office of risk management within the department of enterprise  
14 services.

15           NEW SECTION. Sec. 3. A new section is added to chapter 48.62  
16 RCW to read as follows:

17           A qualifying state agency may participate in a local government  
18 joint self-insurance program formed or operating in accordance with  
19 this chapter. A qualifying state agency may participate in the  
20 program to obtain property and liability insurance coverage.

21           **Sec. 4.** RCW 48.62.031 and 2015 c 109 s 3 are each amended to  
22 read as follows:

23           (1) The governing body of a local government entity may  
24 individually self-insure, may join or form a self-insurance program  
25 together with other entities, including qualifying state agencies,  
26 and may jointly purchase insurance or reinsurance with those other  
27 entities for property and liability risks, and health and welfare  
28 benefits only as permitted under this chapter. In addition, the  
29 entity or entities may contract for or hire personnel to provide risk  
30 management, claims, and administrative services in accordance with  
31 this chapter.

32           (2) The agreement to form a joint self-insurance program shall be  
33 made under chapter 39.34 RCW and may create a separate legal or  
34 administrative entity with powers delegated thereto.

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

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

4 (a) Contract or otherwise provide for risk management and loss  
5 control services;

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

8 (c) Consult with the state insurance commissioner and the state  
9 risk manager;

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

12 (e) Obligate the program's participants to pledge revenues or  
13 contribute money to secure the obligations or pay the expenses of the  
14 program, including the establishment of a reserve or fund for  
15 coverage; and

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

18 (5) A self-insurance program formed and governed under this  
19 chapter that has decided to assume a risk of loss must have available  
20 for inspection by the state auditor a written report indicating the  
21 class of risk or risks the governing body of the entity has decided  
22 to assume.

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

27 (a) Service upon the risk manager as attorney shall constitute  
28 service upon the program. Service upon joint insurance programs  
29 subject to chapter 30, Laws of 1991 sp. sess. can be had only by  
30 service upon the risk manager. At the time of service, the plaintiff  
31 shall pay to the risk manager a fee to be set by the risk manager,  
32 taxable as costs in the action.

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

38 (c) The appointment of the risk manager as attorney shall be  
39 irrevocable, shall bind any successor in interest or to the assets or  
40 liabilities of the joint self-insurance program, and shall remain in

1 effect as long as there is in force in this state any contract made  
2 by the joint self-insurance program or liabilities or duties arising  
3 therefrom.

4 (d) The risk manager shall keep a record of the day and hour of  
5 service upon him or her of all legal process. A copy of the process,  
6 by registered mail with return receipt requested, shall be sent by  
7 the risk manager, to the person designated for the purpose by the  
8 joint self-insurance program in its most recent such designation  
9 filed with the risk manager. No proceedings shall be had against the  
10 joint self-insurance program, and the program shall not be required  
11 to appear, plead, or answer, until the expiration of forty days after  
12 the date of service upon the risk manager.

13 **Sec. 5.** RCW 48.62.111 and 2003 c 248 s 20 are each amended to  
14 read as follows:

15 (1) The assets of a joint self-insurance program governed by this  
16 chapter may be invested only in accordance with the general  
17 investment authority that participating (~~local government entities~~)  
18 members possess as a governmental entity.

19 (2) Except as provided in subsection (3) of this section, a joint  
20 self-insurance program may invest all or a portion of its assets by  
21 depositing the assets with the treasurer of a county within whose  
22 territorial limits any of its member local government entities lie,  
23 to be invested by the treasurer for the joint program.

24 (3) Local government members, and any qualifying state agency  
25 members, of a joint self-insurance program may by resolution of the  
26 program designate some other person having experience in financial or  
27 fiscal matters as treasurer of the program, if that designated  
28 treasurer is located in Washington state. The program shall, unless  
29 the program's treasurer is a county treasurer, require a bond  
30 obtained from a surety company authorized to do business in  
31 Washington in an amount and under the terms and conditions that the  
32 program finds will protect against loss arising from mismanagement or  
33 malfeasance in investing and managing program funds. The program may  
34 pay the premium on the bond.

35 All program funds must be paid to the treasurer and shall be  
36 disbursed by the treasurer only on warrants issued by the treasurer  
37 or a person appointed by the program and upon orders or vouchers  
38 approved by the program or as authorized under chapters 35A.40 and  
39 42.24 RCW. The treasurer shall establish a program account, into

1 which shall be recorded all program funds, and the treasurer shall  
2 maintain special accounts as may be created by the program into which  
3 the treasurer shall record all money as the program may direct by  
4 resolution.

5 (4) The treasurer of the joint program shall deposit all program  
6 funds in a public depository or depositories as defined in RCW  
7 39.58.010(~~(+2)~~)(15) and under the same restrictions, contracts, and  
8 security as provided for any participating (~~local government~~  
9 ~~entity~~) member, and the depository shall be designated by resolution  
10 of the program.

11 (5) A joint self-insurance program may invest all or a portion of  
12 its assets by depositing the assets with the state investment board,  
13 to be invested by the state investment board in accordance with  
14 chapter 43.33A RCW. The state investment board shall designate a  
15 manager for those funds to whom the program may direct requests for  
16 disbursement upon orders or vouchers approved by the program or as  
17 authorized under chapters 35A.40 and 42.24 RCW.

18 (6) All interest and earnings collected on joint program funds  
19 belong to the program and must be deposited to the program's credit  
20 in the proper program account.

21 (7) A joint program may require a reasonable bond from any person  
22 handling money or securities of the program and may pay the premium  
23 for the bond.

24 (8) Subsections (3) and (4) of this section do not apply to a  
25 multistate joint self-insurance program governed by RCW 48.62.081.

26 **Sec. 6.** RCW 48.62.121 and 2009 c 162 s 29 are each amended to  
27 read as follows:

28 (1) No employee or official of a local government entity or a  
29 qualifying state agency may directly or indirectly receive anything  
30 of value for services rendered in connection with the operation and  
31 management of a self-insurance program other than the salary and  
32 benefits provided by his or her employer or the reimbursement of  
33 expenses reasonably incurred in furtherance of the operation or  
34 management of the program. No employee or official of a local  
35 government entity or a qualifying state agency may accept or solicit  
36 anything of value for personal benefit or for the benefit of others  
37 under circumstances in which it can be reasonably inferred that the  
38 employee's or official's independence of judgment is impaired with  
39 respect to the management and operation of the program.

1 (2)(a) No local government entity may participate in a joint  
2 self-insurance program in which local government entities do not  
3 retain complete governing control. This prohibition does not apply  
4 to:

5 (i) Local government contribution to a self-insured employee  
6 health and welfare benefits plan otherwise authorized and governed by  
7 state statute;

8 (ii) Local government participation in a multistate joint program  
9 where control is shared with local government entities from other  
10 states; ~~((or))~~

11 (iii) Local government contribution to a self-insured employee  
12 health and welfare benefit trust in which the local government shares  
13 governing control with their employees; or

14 (iv) Local government participation in a joint self-insurance  
15 program with one or more qualifying state agencies as members, as  
16 authorized in section 3 of this act.

17 (b) If a local government self-insured health and welfare benefit  
18 program, established by the local government as a trust, shares  
19 governing control of the trust with its employees:

20 (i) The local government must maintain at least a fifty percent  
21 voting control of the trust;

22 (ii) No more than one voting, nonemployee, union representative  
23 selected by employees may serve as a trustee; and

24 (iii) The trust agreement must contain provisions for resolution  
25 of any deadlock in the administration of the trust.

26 (3) Moneys made available and moneys expended by school districts  
27 and educational service districts for self-insurance under this  
28 chapter are subject to such rules of the superintendent of public  
29 instruction as the superintendent may adopt governing budgeting and  
30 accounting. However, the superintendent shall ensure that the rules  
31 are consistent with those adopted by the state risk manager for the  
32 management and operation of self-insurance programs.

33 (4) RCW 48.30.140, 48.30.150, 48.30.155, and 48.30.157 apply to  
34 the use of insurance producers and surplus line brokers by local  
35 government self-insurance programs.

36 (5) Every individual and joint local government self-insured  
37 health and welfare benefits program that provides comprehensive  
38 coverage for health care services shall include mandated benefits  
39 that the state health care authority is required to provide under RCW

1 41.05.170 and 41.05.180. The state risk manager may adopt rules  
2 identifying the mandated benefits.

3 (6) An employee health and welfare benefit program established as  
4 a trust shall contain a provision that trust funds be expended only  
5 for purposes of the trust consistent with statutes and rules  
6 governing the local government or governments creating the trust.

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