

**SB 6240 - S AMD 29**

By Senators Eide, Berkey, Keiser, Kauffman, Prentice

ADOPTED 02/09/2010

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** Availability of insurance for loss arising  
4 from flooding in the geographical area protected by any dam on the  
5 Green river is vital to the economy of the state of Washington. If  
6 adequate property insurance for loss arising from this flood is not  
7 available, the security of citizens' property and the viability of  
8 business operations and services are threatened. This chapter gives  
9 the commissioner authority to ensure continued availability of excess  
10 insurance to insure property at risk from, and business that is  
11 interrupted by, flood arising from the failure of a dam on the Green  
12 river or from efforts to prevent the failure of a dam on the Green  
13 river. The commissioner may establish a temporary joint underwriting  
14 association for excess flood insurance to insure property at risk from,  
15 and business that is interrupted by, flood arising from the failure of  
16 a dam on the Green river or from efforts to prevent the failure of a  
17 dam on the Green river if:

18 (1) Excess flood insurance of a particular class or type is not  
19 available from the voluntary market; or

20 (2) There are so few insurers selling excess flood insurance that  
21 a competitive market does not exist.

22 The commissioner may use appropriated funds as needed to establish  
23 and supervise the association.

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

26 (1) "Association" means a nonprofit underwriting association  
27 established under this chapter.

28 (2) "Board" means the governing board of the association.

1 (3) "Casualty insurance" has the same meaning as "general casualty  
2 insurance" in RCW 48.11.070. "Casualty insurance" does not include any  
3 type of:

- 4 (a) Workers' compensation insurance;
- 5 (b) Employers' liability insurance;
- 6 (c) Nuclear liability insurance; or
- 7 (d) Surety insurance.

8 (4) "Excess flood insurance" means insurance against loss,  
9 including business interruption, arising from flood that is in excess  
10 of the limit of liability insurance offered by the national flood  
11 insurance program.

12 (5) "Person" means a natural person, association, partnership, or  
13 corporation.

14 (6) "Property insurance" has the same meaning as in RCW 48.11.040  
15 and does not include surety insurance.

16 NEW SECTION. **Sec. 3.** (1) The commissioner may create an  
17 association to provide excess flood insurance to insure property at  
18 risk from, and business that is interrupted by, flood arising from the  
19 failure of a dam on the Green river or from efforts to prevent the  
20 failure of a dam on the Green river if the requirements of this section  
21 are met.

22 (2) The commissioner must hold a hearing under chapters 48.04 and  
23 34.05 RCW before forming an association.

24 (3) An association may not begin underwriting operations for excess  
25 flood or business interruption insurance until the commissioner finds  
26 that:

27 (a) If a market assistance plan formed under section 15 of this act  
28 finds that there are fewer than four admitted or surplus lines insurers  
29 offering excess flood insurance, exclusive of personal insurance, then  
30 the market assistance plan is inadequate to insure property at risk  
31 from, and business that is interrupted by, flood arising from the  
32 failure of a dam on the Green river or from efforts to prevent the  
33 failure of a dam on the Green river;

34 (b) Persons cannot buy excess flood insurance through the voluntary  
35 market; or

36 (c) There are so few insurers selling excess flood insurance that  
37 a competitive market does not exist.

1 (4) At a hearing to appeal the commissioner's finding that excess  
2 flood insurance is unavailable through the voluntary market or that a  
3 competitive market does not exist, the finding that four or more  
4 admitted or surplus lines insurers are offering excess flood insurance,  
5 exclusive of personal insurance, is prima facie evidence that a  
6 competitive market does exist. A decision of the commissioner, finding  
7 that excess flood insurance is unavailable through the market  
8 assistance plan, voluntary market, or that a competitive market does  
9 not exist, may be appealed under chapters 48.04 and 34.05 RCW.

10 NEW SECTION. **Sec. 4.** (1) The association may offer policies only  
11 as follows:

12 (a) The coverage of any one policy may not exceed five million  
13 dollars; and

14 (b) The total amount of all coverage offered by the association may  
15 never exceed two hundred fifty million dollars.

16 (2) The board, jointly with the commissioner, shall apportion  
17 policies within these limitations on an equitable basis.

18 NEW SECTION. **Sec. 5.** (1) If an association is formed, a person  
19 that is unable to obtain excess flood or business interruption  
20 insurance because it is unavailable in the voluntary market or because  
21 the market is not competitive is eligible to apply to an association  
22 for insurance.

23 (2) The association may decline to insure particular persons that  
24 present an extraordinary risk because of the nature of their  
25 operations, property condition, past claims experience, or inadequate  
26 risk management. However, the location of a property for which  
27 insurance is sought from the association must not, in and of itself,  
28 constitute an extraordinary risk.

29 (3) Any decision to decline coverage must be sent to the applicant  
30 and include:

31 (a) A statement of the actual reason for declination; and

32 (b) A statement that the applicant may appeal the decision to the  
33 commissioner.

34 (4) If the commissioner finds that the decision to decline coverage  
35 is not supported by the criteria in this section, the commissioner may  
36 require the association to provide coverage.

1 (5) A decision of the commissioner to provide or to decline to  
2 provide coverage under this may be appealed under chapters 48.04 and  
3 34.05 RCW.

4 NEW SECTION. **Sec. 6.** (1) The association is composed of all  
5 insurers that have a certificate of authority to write either casualty  
6 or property insurance, or both, in this state. Every property or  
7 casualty insurer, or both, must be a member of the association as a  
8 condition of its authority to continue to transact business in this  
9 state.

10 (2) The association has the general powers and limitations of a  
11 nonprofit corporation under chapter 24.03 RCW and of an insurance  
12 company under Title 48 RCW, as needed to transact its business.

13 (3) To the extent consistent with this chapter, the association and  
14 its member insurers are "persons" under chapter 48.30 RCW.

15 NEW SECTION. **Sec. 7.** (1) A governing board shall administer the  
16 association.

17 (2) The board and the commissioner shall work cooperatively to  
18 achieve the objectives of this chapter.

19 (3) The board may select and employ one or more persons to manage  
20 the operations of an association. Every managing person must be  
21 authorized to transact insurance in the state of Washington and have  
22 demonstrated expertise in excess flood insurance. The board may employ  
23 any advisors that the board deems necessary.

24 (4) The board must consist of seven persons appointed as set forth  
25 in this subsection.

26 (a) Three board members must be member insurers appointed by each  
27 of the following three trade associations: Property casualty insurers  
28 association of America, American insurance association, and national  
29 association of mutual insurance companies. At least one of the three  
30 insurers on the board must be a domestic insurer.

31 (b) Four board members must be residents of the state. One is  
32 appointed by the insurance commissioner. One is appointed by the King  
33 county council. One is appointed by the association of Washington  
34 cities, to represent one or more of the following municipal  
35 governments: Auburn, Kent, Renton, or Tukwila. One is appointed by  
36 the board of directors of the center for advanced manufacturing Puget

1 Sound. None of the resident-appointees may be employed by, serve on  
2 the board of directors of, or have a substantial ownership interest in  
3 any insurer.

4 (c) Original board members must be appointed to serve an initial  
5 term of three years and may be appointed for a second term. Board  
6 members may serve consecutive terms. Successor board members must be  
7 appointed as soon as possible subject to (a) and (b) of this  
8 subsection.

9 (5) The commissioner shall notify the members of the board if he or  
10 she has information that any board member is dishonest, reckless, or  
11 incompetent or is failing to perform any duty of his or her office, and  
12 the board shall meet immediately to consider the matter. The  
13 commissioner must receive notice of the time and place of this meeting.  
14 If the board finds by a majority of the board members, with the accused  
15 board member not voting on this matter, that the commissioner's  
16 objection is well-founded, the accused board member shall be removed  
17 immediately. The successor of a board member removed under this  
18 section must be appointed as soon as possible subject to subsection (4)  
19 of this section.

20 (6) All members of the board shall conduct the business of the  
21 association in a manner that is in the interest of all policyholders of  
22 the association. Board members stand in a fiduciary relationship to  
23 the association and must discharge their duties in good faith and with  
24 that diligence, care, and skill that ordinary, prudent persons would  
25 exercise under similar circumstances in a like position.

26 (7) Each person serving on the board or any subcommittee thereof,  
27 each member insurer of the association, and each officer and employee  
28 of the association must be indemnified by the association against all  
29 costs and expenses actually and necessarily incurred by him, her, or it  
30 in connection with the defense of any action, suit, or proceeding in  
31 which he, she, or it is made a party by reason of his, her, or its  
32 being or having been a member of the board, or a member or officer or  
33 employee of the association, except in relation to matters as to which  
34 he, she, or it has been judged in such action, suit, or proceeding to  
35 be liable by reason of willful misconduct in the performance of his,  
36 her, or its duties as a member of the board, or member, officer, or  
37 employee of the association. This indemnification is not exclusive of

1 other rights as to which the member, officer, or employee may be  
2 entitled as a matter of law.

3 (8) Members of the board may be reimbursed by the association for  
4 actual and necessary expenses incurred to attend meetings.

5 NEW SECTION. **Sec. 8.** (1) The board must adopt a plan of operation  
6 within thirty days of its appointment.

7 (2) The plan of operation may take effect only after it has been  
8 reviewed by the commissioner. Any changes recommended by the  
9 commissioner must be either approved by a majority of the members of  
10 the board or a written statement of the board's reasons for rejection  
11 of any provision provided to the commissioner. The commissioner may  
12 continue to consult with the board to arrive at a plan of operation  
13 that is approved by both the commissioner and the board, or the  
14 commissioner may accept the plan of operation of the board. This  
15 process must conclude with a plan of operation accepted by the board  
16 within thirty days of the first board appointed under this act.

17 (a) The plan of operation may be amended by agreement of a majority  
18 of the members of the board and the commissioner.

19 (b) The association must use rates that are demonstrably sound as  
20 compared to accepted actuarial standards. At the time of filing with  
21 the commissioner, the rates must be accompanied by an actuarial  
22 analysis. The rates must comply with chapter 48.19 RCW and be approved  
23 by the commissioner.

24 NEW SECTION. **Sec. 9.** The association must file a statement  
25 annually with the commissioner that contains information about the  
26 association's transactions, financial condition, and operations during  
27 the preceding year. The statement must be in the form and in a manner  
28 approved by the commissioner. The association must maintain its  
29 records according to the accounting practices and procedures manual  
30 adopted by the national association of insurance commissioners. The  
31 commissioner may require the association to furnish additional  
32 information if the commissioner considers it necessary to evaluate the  
33 scope, operation, and experience of the association.

34 NEW SECTION. **Sec. 10.** (1) The commissioner may examine the  
35 transactions, financial condition, and operations of the association

1 when the commissioner finds it necessary in order to carry out the  
2 purposes of this chapter. Except as set forth in subsections (2) and  
3 (3) of this section, each examination must be conducted in the manner  
4 prescribed for domestic insurance companies in chapter 48.03 or 48.37  
5 RCW.

6 (2) The commissioner is not required to examine any association on  
7 a prescribed cycle or schedule.

8 (3) An association created under this chapter is responsible for  
9 the total costs of its financial and market conduct examinations. RCW  
10 48.03.060 (1) and (2) and 48.37.060(14) (a) and (b) are not applicable  
11 to the examination of an association created under this chapter.

12 NEW SECTION. **Sec. 11.** (1) The association is not a member of the  
13 guaranty fund created under chapter 48.32 RCW. The guaranty fund, this  
14 state, and any political subdivisions are not responsible for losses  
15 sustained by the association.

16 (2) The association is exempt from payment of all fees and all  
17 taxes levied by the state or any of its subdivisions, except taxes  
18 levied on real or personal property.

19 NEW SECTION. **Sec. 12.** (1) The association is funded by premiums  
20 paid by persons insured by the association.

21 (a) All premiums for the association must be deposited into a fund  
22 or funds under management of the board.

23 (b) Premiums must be used to pay claims, administrative costs, and  
24 other expenses of the association.

25 (2) The association may assess its members to pay past and future  
26 financial obligations of the association, not funded by premiums.

27 (3) If the association makes an assessment, an assessed insurer  
28 must pay the association within thirty days after it receives notice of  
29 the assessment. If an insurer does not pay an assessment within thirty  
30 days after it receives notice of the assessment:

31 (a) The assessment accrues interest at the maximum legal rate until  
32 it is paid in full. The interest is paid to the association;

33 (b) The association may collect the assessment in a civil action  
34 and must be awarded its attorneys' fees if it prevails;

35 (c) The commissioner may suspend, revoke, or refuse to renew an  
36 insurer's certificate of authority; and

1 (d) The commissioner may fine the insurer up to ten thousand  
2 dollars.

3 (4) This section may be enforced under RCW 48.02.080.

4 NEW SECTION. **Sec. 13.** (1) The association may operate for a  
5 period of five years. At the end of the five-year period, the  
6 association must be dissolved unless the legislature authorizes its  
7 continued operation.

8 (2) If, at any time, the commissioner or the board of directors  
9 holds a hearing under chapters 48.04 and 34.05 RCW and determines that  
10 excess flood and business interruption insurance is available through  
11 a market assistance plan, in the voluntary market, or that a  
12 competitive market exists, the commissioner must order the association  
13 to end its underwriting operations.

14 (3) If the commissioner or the board of directors orders the  
15 association to end all underwriting operations, the commissioner must  
16 supervise the dissolution of the association, including settlement of  
17 all financial and legal obligations and distribution of any remaining  
18 assets as follows:

19 (a) If there has been an assessment on the members of the  
20 association, and after all creditors of the association are paid in  
21 full, then to the member insurers in a proportional manner and as  
22 determined by rule by the commissioner; or

23 (b) If there has not been an assessment on the members of the  
24 association, or if there are funds remaining after distribution under  
25 (a) of this subsection and after all creditors of the association are  
26 paid in full, then to the policyholders in a proportional manner and as  
27 determined by rule by the commissioner.

28 NEW SECTION. **Sec. 14.** The commissioner may adopt all rules needed  
29 to implement and administer this chapter and to ensure the efficient  
30 operation of the association, including but not limited to rules:

31 (1) Creating sample plans of operation for the assistance of the  
32 board;

33 (2) Requiring or limiting certain policy provisions;

34 (3) Containing the basis and method for assessing members for  
35 operation of the association; and



1 (4) Establishing the order in which the assets of the association  
2 that is dissolved by the commissioner must be distributed.

3 NEW SECTION. **Sec. 15.** (1) The commissioner must by rule require  
4 insurers authorized to write property insurance in this state to form  
5 a market assistance plan to assist persons located in the geographical  
6 area protected by any dam on the Green river that are unable to  
7 purchase excess flood or business interruption insurance in an adequate  
8 amount from either the admitted or nonadmitted market.

9 (2) For the purpose of this section, a market assistance plan means  
10 a voluntary mechanism by insurers writing property insurance in this  
11 state in either the admitted or nonadmitted market to provide excess  
12 flood or business interruption insurance for a class of insurance as  
13 designated in writing to the plan by the commissioner.

14 (3) The bylaws and method of operation of any market assistance  
15 plan must be approved by the commissioner prior to its operation.

16 (4) A market assistance plan must have a minimum of twenty-five  
17 insurers willing to insure risks within the class designated by the  
18 commissioner. If twenty-five insurers do not voluntarily agree to  
19 participate, the commissioner may require either property or property  
20 and casualty, or both, insurers to participate in a market assistance  
21 plan as a condition of continuing to do business in this state. The  
22 commissioner must make this requirement to fulfill the quota of at  
23 least twenty-five insurers. The commissioner must make his or her  
24 designation on the basis of the insurer's premium volume of property  
25 insurance in this state.

26 NEW SECTION. **Sec. 16.** The board and the commissioner shall report  
27 to the respective committees of the house of representatives and senate  
28 having jurisdiction over the insurance code by January 31, 2011, and  
29 each subsequent January 31st of each year that the association remains  
30 in existence.

31 **Sec. 17.** RCW 48.15.040 and 1983 1st ex.s. c 32 s 4 are each  
32 amended to read as follows:

33 If certain insurance coverages cannot be procured from authorized  
34 insurers, such coverages, hereinafter designated as "surplus lines,"

1 may be procured from unauthorized insurers subject to the following  
2 conditions:

3 (1) The insurance must be procured through a licensed surplus line  
4 broker.

5 (2) The insurance must not be procurable, after diligent effort has  
6 been made to do so from among a majority of the insurers authorized to  
7 transact that kind of insurance in this state.

8 (3) Coverage shall not be procured from an unauthorized insurer for  
9 the purpose of securing a lower premium rate than would be accepted by  
10 any authorized insurer nor to secure any other competitive advantage.

11 (4) The commissioner may by regulation establish the degree of  
12 effort required to comply with subsections (2) and (3) of this section.

13 (5) At the time of the procuring of any such insurance an affidavit  
14 setting forth the facts referred to in subsections (2) and (3) of this  
15 section must be executed by the surplus line broker. Such affidavit  
16 shall be filed with the commissioner within thirty days after the  
17 insurance is procured.

18 (6) For purposes of chapter 48.-- RCW (the new chapter created in  
19 section 18 of this act), a joint underwriting association established  
20 or authorized by the legislature is not an authorized insurer.

21 NEW SECTION. **Sec. 18.** Sections 1 through 16 of this act  
22 constitute a new chapter in Title 48 RCW.

23 NEW SECTION. **Sec. 19.** This act is necessary for the immediate  
24 preservation of the public peace, health, or safety, or support of the  
25 state government and its existing public institutions, and takes effect  
26 immediately.

27 NEW SECTION. **Sec. 20.** This act expires December 31, 2016."

**SB 6240** - S AMD

By Senators Eide, Berkey, Keiser, Kauffman, Prentice

**ADOPTED 02/09/2010**

1        On page 1, line 1 of the title, after "associations;" strike the  
2 remainder of the title and insert "amending RCW 48.15.040; adding a new  
3 chapter to Title 48 RCW; providing an expiration date; and declaring an  
4 emergency."

--- END ---