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**SUBSTITUTE SENATE BILL 5665**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Berkey, Benton, Franklin, Parlette, Hobbs, and Shin)

READ FIRST TIME 02/19/09.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 3.** (1) The governing body of an affordable  
12 housing entity may join or form a self-insurance program together with  
13 one or more other affordable housing entities, and may jointly purchase  
14 insurance or reinsurance with one or more other affordable housing  
15 entities for property and liability risks only as permitted under this  
16 chapter. Affordable housing entities may contract for or hire  
17 personnel to provide risk management, claims, and administrative  
18 services in accordance with this chapter.

19 (2) The agreement to form a joint self-insurance program may  
20 include the organization of a separate legal or administrative entity  
21 with powers delegated to the entity. The entity may be a nonprofit  
22 corporation, limited liability company, partnership, trust, or other  
23 form of entity, whether organized under the laws of this state or  
24 another state.

25 (3) If provided for in the organizational documents, a joint self-  
26 insurance program may, in conformance 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 a form  
34 and amount as provided for in the organizational documents;

35 (e) Obligate the program's participants to pledge revenues or  
36 contribute money to secure the obligations or pay the expenses of the

1 program, including the establishment of a reserve or fund for coverage;  
2 and

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

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

9 (a) Service upon the state risk manager as attorney constitutes  
10 service upon the program. Service upon joint self-insurance programs  
11 subject to this chapter may only occur by service upon the state risk  
12 manager. At the time of service, the plaintiff shall pay to the state  
13 risk manager a fee to be set by the state risk manager, taxable as  
14 costs in the action.

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

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

26 (d) The state risk manager shall keep a record of the day and hour  
27 of service upon him or her of all legal process. A copy of the  
28 process, by registered mail with return receipt requested, must be sent  
29 by the state risk manager to the person designated to receive legal  
30 process by the joint self-insurance program in its most recent  
31 designation filed with the state risk manager. Proceedings must not  
32 commence against the joint self-insurance program, and the program must  
33 not be required to appear, plead, or answer, until the expiration of  
34 forty days after the date of service upon the state risk manager.

35 NEW SECTION. **Sec. 4.** This chapter does not apply to an affordable  
36 housing entity that:

37 (1) Individually self-insures for property and liability risks; or

1 (2) Participates in a risk pooling arrangement, including a risk  
2 retention group or a risk purchasing group, regulated under chapter  
3 48.92 RCW, or is a captive insurer authorized in its state of domicile.

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

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

12 (2) Standards for claims management procedures;

13 (3) Standards for contracts between joint self-insurance programs  
14 and private businesses, including standards for contracts between  
15 third-party administrators and programs; and

16 (4) Standards that preclude housing authorities or other public  
17 entities participating in the joint self-insurance program from  
18 subsidizing, regardless of the form of subsidy, affordable housing  
19 entities that are not housing authorities or public entities. These  
20 standards do not apply to the consideration attributable to the  
21 ownership interest of a housing authority or public entity in a  
22 separate legal or administrative entity organized with respect to the  
23 program.

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

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

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

35 (3) The proposed claim reserving practices;

1 (4) The proposed purchase and maintenance of insurance or  
2 reinsurance in excess of the amounts retained by the joint self-  
3 insurance program;

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

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

9 (7) The proposed accounting, depositing, and investment practices  
10 of the program;

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

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

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

17 (11) A professional analysis of the feasibility of the creation and  
18 maintenance of the program;

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

21 (13) Any other information required by rule of the state risk  
22 manager that is necessary to determine the probable financial and  
23 management success of the program or that is necessary to determine  
24 compliance with this chapter.

25 NEW SECTION. **Sec. 7.** An affordable housing entity may participate  
26 in a joint self-insurance program covering property or liability risks  
27 with similar affordable housing entities from other states if the  
28 program satisfies the following requirements:

29 (1) An ownership interest in the program is limited to some or all  
30 of the affordable housing entities of this state and affordable housing  
31 entities of other states that are provided insurance by the program;

32 (2) The participating affordable housing entities of this state and  
33 other states shall elect a board of directors to manage the program, a  
34 majority of whom must be affiliated with one or more of the  
35 participating affordable housing entities;

36 (3) The program must provide coverage through the delivery to each

1 participating affordable housing entity of one or more written policies  
2 affecting insurance of covered risks;

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

7 (5) The financial statements of the program must be audited  
8 annually by the certified public accountants for the program, and these  
9 audited financial statements must be delivered to the state risk  
10 manager not more than one hundred twenty days after the end of each  
11 fiscal year of the program;

12 (6) The investments of the program must be initiated only with  
13 financial institutions or broker-dealers, or both, doing business in  
14 those states in which participating affordable housing entities are  
15 located, and these investments must be audited annually by the  
16 certified public accountants for the program;

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

20 (8) The participating affordable housing entities may have no  
21 contingent liabilities for covered claims, other than liabilities for  
22 unpaid premiums, if assets of the program are insufficient to cover the  
23 program's liabilities; and

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

27 NEW SECTION. **Sec. 8.** (1) Within one hundred twenty days of  
28 receipt of a plan of management and operation, the state risk manager  
29 shall either approve or disapprove of the formation of the joint self-  
30 insurance program after reviewing the plan to determine whether the  
31 proposed program complies with this chapter and all rules adopted in  
32 accordance with this chapter.

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

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

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

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

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

26 (4) Each joint self-insurance program approved by the state risk  
27 manager shall annually file a report with the state risk manager  
28 providing:

29 (a) Details of any changes in the articles of incorporation,  
30 bylaws, charter, or trust agreement or other agreement among the  
31 participating affordable housing entities;

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

33 (c) A description of the program structure, including participants'  
34 retention, program retention, and excess insurance limits and  
35 attachment point;

36 (d) An actuarial analysis;

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

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



1 (g) Other information as required by rule of the state risk  
2 manager.

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

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

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

25 NEW SECTION. **Sec. 10.** (1) An employee or official of a  
26 participating affordable housing entity in a joint self-insurance  
27 program may not directly or indirectly receive anything of value for  
28 services rendered in connection with the operation and management of a  
29 self-insurance program other than the salary and benefits provided by  
30 his or her employer or the reimbursement of expenses reasonably  
31 incurred in furtherance of the operation or management of the program.  
32 An employee or official of a participating affordable housing entity in  
33 a joint self-insurance program may not accept or solicit anything of  
34 value for personal benefit or for the benefit of others under  
35 circumstances in which it can be reasonably inferred that the

1 employee's or official's independence of judgment is impaired with  
2 respect to the management and operation of the program.

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

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

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

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

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

27 NEW SECTION. **Sec. 13.** (1) Any person who files reports or  
28 furnishes other information required under this title, required by the  
29 state risk manager under the authority granted under this title, or  
30 which is useful to the state risk manager in the administration of this  
31 title, is immune from liability in any civil action or suit arising  
32 from the filing of any such report or furnishing such information to  
33 the state risk manager, unless actual malice, fraud, or bad faith is  
34 shown.

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

6 (3) The immunity granted under this section is in addition to any  
7 common law or statutory privilege or immunity enjoyed by such person.  
8 This section is not intended to abrogate or modify in any way such  
9 common law or statutory privilege or immunity.

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

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

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

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

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

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

1 48.-- RCW (the new chapter created in section 17 of this act) are not  
2 an "insurer" under this code. Two or more persons engaged in the  
3 business of commercial fishing who enter into an arrangement with other  
4 such persons for the pooling of funds to pay claims or losses arising  
5 out of loss or damage to a vessel or machinery used in the business of  
6 commercial fishing and owned by a member of the pool are not an  
7 "insurer" under this code.

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