
SECOND SUBSTITUTE HOUSE BILL 1840

State of Washington

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By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Clibborn, Jarrett, Rockefeller, O'Brien, Skinner, Hankins, Edwards, Nixon, Pettigrew, Sullivan, Hunt, Moeller, Schindler, Mielke, Kenney, Haigh, Linville, Lovick, Chase, Darneille and Tom)

READ FIRST TIME 01/27/04.

1 AN ACT Relating to authorizing nonprofit corporations to
2 participate in self-insurance risk pools; and amending RCW 48.62.011,
3 48.62.021, 48.62.031, 48.62.061, 48.62.071, 48.62.081, 48.62.091,
4 48.01.050, and 24.03.035.

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 to
7 read as follows:

8 This chapter is intended to provide the exclusive source of (~~local~~
9 ~~government~~ entity)) authority to a local government entity or a
10 nonprofit corporation to individually or jointly self-insure risks,
11 jointly purchase insurance or reinsurance, and to contract for risk
12 management, claims, and administrative services. However, local
13 government entities and nonprofit corporations may not participate in
14 any activity or program authorized under this chapter in violation of
15 Article VIII, section 5 of the state Constitution. This chapter shall
16 be liberally construed to grant local government entities or nonprofit
17 corporations maximum flexibility in self-insuring to the extent the
18 self-insurance programs are operated in a safe and sound manner. This
19 chapter is intended to require prior approval for the establishment of

1 every individual local government or nonprofit corporation self-insured
2 employee health and welfare benefit program and every joint local
3 government or nonprofit corporation self-insurance program. In
4 addition, this chapter is intended to require every local government
5 entity or nonprofit corporation that establishes a self-insurance
6 program not subject to prior approval to notify the state of the
7 existence of the program and to comply with the regulatory and
8 statutory standards governing the management and operation of the
9 programs as provided in this chapter. This chapter is not intended to
10 authorize or regulate self-insurance of unemployment compensation under
11 chapter 50.44 RCW, or industrial insurance under chapter 51.14 RCW.

12 **Sec. 2.** RCW 48.62.021 and 2002 c 332 s 24 are each amended to read
13 as follows:

14 Unless the context clearly requires otherwise, the definitions in
15 this section apply throughout this chapter.

16 (1) "Local government entity" or "entity" means every unit of local
17 government, both general purpose and special purpose, and includes, but
18 is not limited to, counties, cities, towns, port districts, public
19 utility districts, water-sewer districts, school districts, fire
20 protection districts, irrigation districts, metropolitan municipal
21 corporations, conservation districts, and other political subdivisions,
22 governmental subdivisions, municipal corporations, and quasi-municipal
23 corporations.

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

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

30 (4) "Health and welfare benefits" means a plan or program
31 established by a local government entity or entities for the purpose of
32 providing its employees and their dependents, and in the case of school
33 districts, its district employees, students, directors, or any of their
34 dependents, with health care, accident, disability, death, and salary
35 protection benefits.

36 (5) "Property and liability risks" includes the risk of property
37 damage or loss sustained by a local government entity and the risk of

1 claims arising from the tortious or negligent conduct or any error or
2 omission of the local government entity, its officers, employees,
3 agents, or volunteers as a result of which a claim may be made against
4 the local government entity.

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

7 (7) "Nonprofit corporation" or "corporation" has the same meaning
8 as defined in RCW 24.03.005(3).

9 **Sec. 3.** RCW 48.62.031 and 1991 sp.s. c 30 s 3 are each amended to
10 read as follows:

11 (1) The governing body of a local government entity or nonprofit
12 corporation may individually self-insure, may join or form a self-
13 insurance program together with other entities or nonprofit
14 corporation, and may jointly purchase insurance or reinsurance with
15 other entities or corporations for property and liability risks, and
16 health and welfare benefits only as permitted under this chapter. In
17 addition, the entity or entities may contract for or hire personnel to
18 provide risk management, claims, and administrative services in
19 accordance with this chapter.

20 (2) The agreement to form a joint self-insurance program shall be
21 made under chapter 39.34 RCW.

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

24 (4) If provided for in the agreement or contract established under
25 chapter 39.34 RCW, a joint self-insurance program may, in conformance
26 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 such
34 form and amount as the program's participants agree by contract; and

35 (e) Possess any other powers and perform all other functions
36 reasonably necessary to carry out the purposes of this chapter.

1 (5) A local government entity or nonprofit corporation that has
2 decided to assume a risk of loss must have available for inspection by
3 the state auditor a written report indicating the class of risk or
4 risks the governing body of the entity or corporation has decided to
5 assume.

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

10 (a) Service upon the risk manager as attorney shall constitute
11 service upon the program. Service upon joint insurance programs
12 subject to chapter 30, Laws of 1991 1st sp. sess. can be had only by
13 service upon the risk manager. At the time of service, the plaintiff
14 shall pay to the risk manager a fee to be set by the risk manager,
15 taxable as costs in the action.

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

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

27 (d) The risk manager shall keep a record of the day and hour of
28 service upon him or her of all legal process. A copy of the process,
29 by registered mail with return receipt requested, shall be sent by the
30 risk manager, to the person designated for the purpose by the joint
31 self-insurance program in its most recent such designation filed with
32 the risk manager. No proceedings shall be had against the joint self-
33 insurance program, and the program shall not be required to appear,
34 plead, or answer, until the expiration of forty days after the date of
35 service upon the risk manager.

36 **Sec. 4.** RCW 48.62.061 and 1991 sp.s. c 30 s 6 are each amended to
37 read as follows:

1 The state risk manager, in consultation with the property and
2 liability advisory board, shall adopt rules governing the management
3 and operation of both individual and joint local government and
4 nonprofit corporation self-insurance programs covering property or
5 liability risks. The state risk manager shall also adopt rules
6 governing the management and operation of both individual and joint
7 local government and nonprofit corporation self-insured health and
8 welfare benefits programs in consultation with the health and welfare
9 benefits advisory board. All rules shall be appropriate for the type
10 of program and class of risk covered. The state risk manager's rules
11 shall include:

12 (1) Standards for the management, operation, and solvency of self-
13 insurance programs, including the necessity and frequency of actuarial
14 analyses and claims audits;

15 (2) Standards for claims management procedures; and

16 (3) Standards for contracts between self-insurance programs and
17 private businesses including standards for contracts between third-
18 party administrators and programs.

19 **Sec. 5.** RCW 48.62.071 and 1991 sp.s. c 30 s 7 are each amended to
20 read as follows:

21 Before the establishment of a joint self-insurance program covering
22 property or liability risks by local government entities and nonprofit
23 corporations, or an individual or joint local government or nonprofit
24 corporation self-insured health and welfare benefits program, the
25 entity ~~((or))~~, entities, corporation, or corporations must obtain the
26 approval of the state risk manager. Risk manager approval is not
27 required for the establishment of an individual local government or
28 nonprofit corporation self-insurance program covering property or
29 liability risks. The entity ~~((or))~~, entities, corporation, or
30 corporations proposing creation of a self-insurance program requiring
31 prior approval shall submit a plan of management and operation to the
32 state risk manager and the state auditor that provides at least the
33 following information:

34 (1) The risk or risks to be covered, including any coverage
35 definitions, terms, conditions, and limitations or in the case of
36 health and welfare benefits programs, the benefits to be provided,
37 including any benefit definitions, terms, conditions, and limitations;

- 1 (2) The amount and method of financing the benefits or covered
2 risks, including the initial capital and proposed rates and projected
3 premiums;
- 4 (3) The proposed claim reserving practices;
- 5 (4) The proposed purchase and maintenance of insurance or
6 reinsurance in excess of the amounts retained by the self-insurance
7 program;
- 8 (5) In the case of a joint program, the legal form of the program,
9 including but not limited to any bylaws, charter, or trust agreement;
- 10 (6) In the case of a joint program, the agreements with members of
11 the program defining the responsibilities and benefits of each member
12 and management;
- 13 (7) The proposed accounting, depositing, and investment practices
14 of the program;
- 15 (8) The proposed time when actuarial analysis will be first
16 conducted and the frequency of future actuarial analysis;
- 17 (9) A designation of the individual upon whom service of process
18 shall be executed on behalf of the program. In the case of a joint
19 program, a designation of the individual to whom service of process
20 shall be forwarded by the risk manager on behalf of the program;
- 21 (10) All contracts between the program and private persons
22 providing risk management, claims, or other administrative services;
- 23 (11) A professional analysis of the feasibility of creation and
24 maintenance of the program; and
- 25 (12) Any other information required by rule of the state risk
26 manager that is necessary to determine the probable financial and
27 management success of the program or that is necessary to determine
28 compliance with this chapter.

29 **Sec. 6.** RCW 48.62.081 and 1991 sp.s. c 30 s 8 are each amended to
30 read as follows:

31 A local government entity or nonprofit corporation may participate
32 in a joint self-insurance program covering property or liability risks
33 with similar local government entities and similar nonprofit
34 corporations from other states if the program satisfies the following
35 requirements:

- 36 (1) Only those local government entities of this state and similar

1 entities of other states that are provided insurance by the program may
2 have ownership interest in the program;

3 (2) Only those nonprofit corporations of this state and similar
4 corporations of other states that are provided insurance by the program
5 may have ownership interest in the program;

6 (3) The participating local government entities of this state and
7 other states shall elect a board of directors to manage the program, a
8 majority of whom shall be affiliated with one or more of the
9 participating entities;

10 (~~(3)~~) (4) The program must provide coverage through the delivery
11 to each participating entity or corporation of one or more written
12 policies effecting insurance of covered risks;

13 (~~(4)~~) (5) The program shall be financed, including the payment of
14 premiums and the contribution of initial capital, in accordance with
15 the plan of management and operation submitted to the state risk
16 manager in accordance with this chapter;

17 (~~(5)~~) (6) The financial statements of the program shall be
18 audited annually by the certified public accountants for the program,
19 and such audited financial statements shall be delivered to the
20 Washington state auditor and the state risk manager not more than one
21 hundred twenty days after the end of each fiscal year of the program;

22 (~~(6)~~) (7) The investments of the program shall be initiated only
23 with financial institutions and/or broker-dealers doing business in
24 those states in which participating entities or corporations are
25 located, and such investments shall be audited annually by the
26 certified public accountants for the program, and a list of such
27 investments shall be delivered to the Washington state auditor not more
28 than one hundred twenty days after the end of each fiscal year of the
29 program;

30 (~~(7)~~) (8) The treasurer of a multistate joint self-insurance
31 program shall be designated by resolution of the program and such
32 treasurer shall be located in the state of one of the participating
33 entities or corporations;

34 (~~(8)~~) (9) The participating entities or corporations may have no
35 contingent liabilities for covered claims, other than liabilities for
36 unpaid premiums, retrospective premiums, or assessments, if assets of
37 the program are insufficient to cover the program's liabilities; and

1 (~~(9)~~) (10) The program shall obtain approval from the state risk
2 manager in accordance with this chapter and shall remain in compliance
3 with the provisions of this chapter, except to the extent that such
4 provisions are modified by or inconsistent with this section.

5 **Sec. 7.** RCW 48.62.091 and 1991 sp.s. c 30 s 9 are each amended to
6 read as follows:

7 (1) Within one hundred twenty days of receipt of a plan of
8 management and operation, the state risk manager shall either approve
9 or disapprove the formation of the self-insurance program after
10 reviewing the plan to determine whether the proposed program complies
11 with this chapter and all rules adopted in accordance with this
12 chapter.

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

17 (3) Whenever the state risk manager determines that a joint self-
18 insurance program covering property or liability risks or an individual
19 or joint self-insured health and welfare benefits program is in
20 violation of this chapter or is operating in an unsafe financial
21 condition, the state risk manager may issue and serve upon the program
22 an order to cease and desist from the violation or practice.

23 (a) The state risk manager shall deliver the order to the
24 appropriate entity (~~(or)~~), entities, corporation, or corporations
25 directly or mail it to the appropriate entity (~~(or)~~), entities,
26 corporation, or corporations by registered mail with return receipt
27 requested.

28 (b) If the program violates the order or has not taken steps to
29 comply with the order after the expiration of twenty days after the
30 cease and desist order has been received by the program, the program is
31 deemed to be operating in violation of this chapter, and the state risk
32 manager shall notify the state auditor and the attorney general of the
33 violation.

34 (c) After hearing or with the consent of a program governed by this
35 chapter and in addition to or in lieu of a continuation of the cease
36 and desist order, the risk manager may levy a fine upon the program in
37 an amount not less than three hundred dollars and not more than ten

1 thousand dollars. The order levying such fine shall specify the period
2 within which the fine shall be fully paid. The period within which
3 such fines shall be paid shall not be less than fifteen nor more than
4 thirty days from the date of such order. Upon failure to pay any such
5 fine when due the risk manager shall request the attorney general to
6 bring a civil action on the risk manager's behalf to collect the fine.
7 The risk manager shall pay any fine so collected to the state treasurer
8 for the account of the general fund.

9 (4) Each self-insurance program approved by the state risk manager
10 shall annually file a report with the state risk manager and state
11 auditor providing:

12 (a) Details of any changes in the articles of incorporation,
13 bylaws, or interlocal agreement;

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

15 (c) A description of the program structure, including participants'
16 retention, program retention, and excess insurance limits and
17 attachment point;

18 (d) An actuarial analysis, if required;

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

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

21 (g) Such other information as required by rule of the state risk
22 manager.

23 (5) No self-insurance program requiring the state risk manager's
24 approval may engage in an act or practice that in any respect
25 significantly differs from the management and operation plan that
26 formed the basis for the state risk manager's approval of the program
27 unless the program first notifies the state risk manager in writing and
28 obtains the state risk manager's approval. The state risk manager
29 shall approve or disapprove the proposed change within sixty days of
30 receipt of the notice. If the state risk manager denies a requested
31 change, the risk manager shall specify in detail the reasons for denial
32 and the manner in which the program would fail to meet the requirements
33 of this chapter or any rules adopted in accordance with this chapter.

34 **Sec. 8.** RCW 48.01.050 and 2003 c 248 s 1 are each amended to read
35 as follows:

36 "Insurer" as used in this code includes every person engaged in the
37 business of making contracts of insurance, other than a fraternal

1 benefit society. A reciprocal or interinsurance exchange is an
2 "insurer" as used in this code. Two or more hospitals that join and
3 organize as a mutual corporation pursuant to chapter 24.06 RCW for the
4 purpose of insuring or self-insuring against liability claims,
5 including medical liability, through a contributing trust fund are not
6 an "insurer" under this code. Two or more local governmental
7 entities(~~(, under any provision of law)~~) or nonprofit corporations, as
8 defined in RCW 48.62.021, that join together and organize to form an
9 organization for the purpose of jointly self-insuring or self-funding
10 are not an "insurer" under this code. Two or more persons engaged in
11 the business of commercial fishing who enter into an arrangement with
12 other such persons for the pooling of funds to pay claims or losses
13 arising out of loss or damage to a vessel or machinery used in the
14 business of commercial fishing and owned by a member of the pool are
15 not an "insurer" under this code.

16 **Sec. 9.** RCW 24.03.035 and 1991 c 72 s 42 are each amended to read
17 as follows:

18 Each corporation shall have power:

19 (1) To have perpetual succession by its corporate name unless a
20 limited period of duration is stated in its articles of incorporation.

21 (2) To sue and be sued, complain and defend, in its corporate name.

22 (3) To have a corporate seal which may be altered at pleasure, and
23 to use the same by causing it, or a facsimile thereof, to be impressed
24 or affixed or in any other manner reproduced.

25 (4) To purchase, take, receive, lease, take by gift, devise or
26 bequest, or otherwise acquire, own, hold, improve, use and otherwise
27 deal in and with real or personal property, or any interest therein,
28 wherever situated.

29 (5) To sell, convey, mortgage, pledge, lease, exchange, transfer
30 and otherwise dispose of all or any part of its property and assets.

31 (6) To lend money or credit to its employees other than its
32 officers and directors.

33 (7) To purchase, take, receive, subscribe for, or otherwise
34 acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or
35 otherwise dispose of, and otherwise use and deal in and with, shares or
36 other interests in, or obligations of, other domestic or foreign
37 corporations, whether for profit or not for profit, associations,

1 partnerships or individuals, or direct or indirect obligations of the
2 United States, or of any other government, state, territory,
3 governmental district or municipality or of any instrumentality
4 thereof.

5 (8) To make contracts and incur liabilities, borrow money at such
6 rates of interest as the corporation may determine, issue its notes,
7 bonds, and other obligations, and secure any of its obligations by
8 mortgage or pledge of all or any of its property, franchises and
9 income.

10 (9) To lend money for its corporate purposes, invest and reinvest
11 its funds, and take and hold real and personal property as security for
12 the payment of funds so loaned or invested.

13 (10) To individually or jointly with other corporations or local
14 government entities, as defined in RCW 48.62.021, self-insure risks,
15 jointly purchase insurance or reinsurance, and to contract for risk
16 management, claims, and administrative services as authorized in RCW
17 48.62.031.

18 (11) To conduct its affairs, carry on its operations, and have
19 offices and exercise the powers granted by this chapter in any state,
20 territory, district, or possession of the United States, or in any
21 foreign country.

22 ~~((11))~~ (12) To elect or appoint officers and agents of the
23 corporation, and define their duties and fix their compensation.

24 ~~((12))~~ (13) To make and alter bylaws, not inconsistent with its
25 articles of incorporation or with the laws of this state, for the
26 administration and regulation of the affairs of the corporation.

27 ~~((13))~~ (14) Unless otherwise provided in the articles of
28 incorporation, to make donations for the public welfare or for
29 charitable, scientific or educational purposes; and in time of war to
30 make donations in aid of war activities.

31 ~~((14))~~ (15) To indemnify any director or officer or former
32 director or officer or other person in the manner and to the extent
33 provided in RCW 23B.08.500 through 23B.08.600, as now existing or
34 hereafter amended.

35 ~~((15))~~ (16) To make guarantees respecting the contracts,
36 securities, or obligations of any person (including, but not limited
37 to, any member, any affiliated or unaffiliated individual, domestic or
38 foreign, profit or not for profit, corporation, partnership,

1 association, joint venture or trust) if such guarantee may reasonably
2 be expected to benefit, directly or indirectly, the guarantor
3 corporation. As to the enforceability of the guarantee, the decision
4 of the board of directors that the guarantee may be reasonably expected
5 to benefit, directly or indirectly, the guarantor corporation shall be
6 binding in respect to the issue of benefit to the guarantor
7 corporation.

8 ~~((+16+))~~ (17) To pay pensions and establish pension plans, pension
9 trusts, and other benefit plans for any or all of its directors,
10 officers, and employees.

11 ~~((+17+))~~ (18) To be a promoter, partner, member, associate or
12 manager of any partnership, joint venture, trust or other enterprise.

13 ~~((+18+))~~ (19) To be a trustee of a charitable trust, to administer
14 a charitable trust and to act as executor in relation to any charitable
15 bequest or devise to the corporation. This subsection shall not be
16 construed as conferring authority to engage in the general business of
17 trusts nor in the business of trust banking.

18 ~~((+19+))~~ (20) To cease its corporate activities and surrender its
19 corporate franchise.

20 ~~((+20+))~~ (21) To have and exercise all powers necessary or
21 convenient to effect any or all of the purposes for which the
22 corporation is organized.

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