

SHB 2560 - H AMD 1080
By Representative

ADOPTED 02/12/2010

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 is vital to
5 the economy of the state of Washington. If adequate property insurance
6 for loss arising from this flood is not available, the security of
7 citizens' property and the viability of business operations and
8 services are threatened. This chapter gives the commissioner authority
9 to ensure continued availability of excess insurance to insure property
10 at risk from, and business that is interrupted by, flood arising from
11 the failure of a dam or from efforts to prevent the failure of a dam.
12 The commissioner may establish a temporary joint underwriting
13 association for excess flood insurance to insure property at risk from,
14 and business that is interrupted by, flood arising from the failure of
15 a dam or from efforts to prevent the failure of a dam if:

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

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

20 The commissioner may use appropriated funds as needed to establish
21 and supervise the association.

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

24 (1) "Association" means a nonprofit underwriting association
25 established under this chapter.

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

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

- 1 (a) Workers' compensation insurance;
- 2 (b) Employers' liability insurance;
- 3 (c) Nuclear liability insurance;
- 4 (d) Personal insurance; or
- 5 (e) Surety insurance.

6 (4) "Dam" means any United States army corps of engineers dam
7 located in a county with a population that exceeds one million.

8 (5) "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 (6) "Person" means a natural person, association, partnership, or
13 corporation.

14 (7) "Personal insurance" means:

- 15 (a) Private passenger automobile coverage;
- 16 (b) Homeowner's coverage, including mobile homeowners, manufactured
17 homeowners, condominium owners, and renter's coverage;
- 18 (c) Dwelling property coverage;
- 19 (d) Earthquake coverage for a residence or personal property;
- 20 (e) Personal liability and theft coverage;
- 21 (f) Personal inland marine coverage; and
- 22 (g) Mechanical breakdown coverage for personal auto or home
23 appliances.

24 (8) "Property insurance" has the same meaning as in RCW 48.11.040
25 and does not include personal insurance or surety insurance.

26 NEW SECTION. **Sec. 3.** (1) The commissioner may create an
27 association to provide excess flood insurance to insure property at
28 risk from, and business that is interrupted by, flood arising from the
29 failure of a dam or from efforts to prevent the failure of a dam if the
30 requirements of this section are met.

31 (2) The commissioner must hold a hearing under chapters 48.04 and
32 34.05 RCW before forming an association.

33 (3) An association may not begin underwriting operations for excess
34 flood or business interruption insurance until the commissioner finds
35 that:

36 (a) If a market assistance plan formed under section 15 of this act
37 finds that there are fewer than four admitted or surplus lines insurers

1 offering excess flood insurance, exclusive of personal insurance, then
2 the market assistance plan is inadequate to insure property at risk
3 from, and business that is interrupted by, flood arising from the
4 failure of a dam or from efforts to prevent the failure of a dam;

5 (b) Persons cannot buy excess flood insurance through the voluntary
6 market; or

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

9 (4) At a hearing to appeal the commissioner's finding that excess
10 flood insurance is unavailable through the voluntary market or that a
11 competitive market does not exist, the finding that four or more
12 admitted or surplus lines insurers are offering excess flood insurance,
13 exclusive of personal insurance, is prima facie evidence that a
14 competitive market does exist. A decision of the commissioner, finding
15 that excess flood insurance is unavailable through the market
16 assistance plan, voluntary market, or that a competitive market does
17 not exist, may be appealed under chapters 48.04 and 34.05 RCW.

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

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

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

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

26 NEW SECTION. **Sec. 5.** (1) If an association is formed, a person
27 that is unable to obtain excess flood or business interruption
28 insurance because it is unavailable in the voluntary market or because
29 the market is not competitive is eligible to apply to an association
30 for insurance.

31 (2) The association may decline to insure particular persons that
32 present an extraordinary risk because of the nature of their
33 operations, property condition, past claims experience, or inadequate
34 risk management. However, the location of a property for which
35 insurance is sought from the association must not, in and of itself,
36 constitute an extraordinary risk.

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

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

4 (b) A statement that the applicant may appeal the decision to the
5 commissioner.

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

9 (5) A decision of the commissioner to provide or to decline to
10 provide coverage under this may be appealed under chapters 48.04 and
11 34.05 RCW.

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

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

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

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

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

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

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

34 (a) Three board members must be member insurers appointed by each
35 of the following three trade associations: Property casualty insurers

1 association of America, American insurance association, and national
2 association of mutual insurance companies. At least one of the three
3 insurers on the board must be a domestic insurer.

4 (b) Four board members must be residents of the state. One is
5 appointed by the insurance commissioner. One is appointed by the King
6 county council. One is appointed by the association of Washington
7 cities, to represent one or more of the following municipal
8 governments: Auburn, Kent, Renton, or Tukwila. One is appointed by
9 the board of directors of the center for advanced manufacturing Puget
10 Sound. None of the resident-appointees may be employed by, serve on
11 the board of directors of, or have a substantial ownership interest in
12 any insurer.

13 (c) Original board members must be appointed to serve an initial
14 term of three years and may be appointed for a second term. Board
15 members may serve consecutive terms. Successor board members must be
16 appointed as soon as possible subject to (a) and (b) of this
17 subsection.

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

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

35 (7) Each person serving on the board or any subcommittee thereof,
36 each member insurer of the association, and each officer and employee
37 of the association must be indemnified by the association against all
38 costs and expenses actually and necessarily incurred by him, her, or it

1 in connection with the defense of any action, suit, or proceeding in
2 which he, she, or it is made a party by reason of his, her, or its
3 being or having been a member of the board, or a member or officer or
4 employee of the association, except in relation to matters as to which
5 he, she, or it has been judged in such action, suit, or proceeding to
6 be liable by reason of willful misconduct in the performance of his,
7 her, or its duties as a member of the board, or member, officer, or
8 employee of the association. This indemnification is not exclusive of
9 other rights as to which the member, officer, or employee may be
10 entitled as a matter of law.

11 (8) Board members shall receive no compensation, but may be
12 reimbursed for all travel expenses as provided in RCW 43.03.050 and
13 43.03.060.

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

16 (2) The plan of operation may take effect only after it has been
17 reviewed by the commissioner. Any changes recommended by the
18 commissioner must be either approved by a majority of the members of
19 the board or a written statement of the board's reasons for rejection
20 of any provision provided to the commissioner. The commissioner may
21 continue to consult with the board to arrive at a plan of operation
22 that is approved by both the commissioner and the board, or the
23 commissioner may accept the plan of operation of the board. This
24 process must conclude with a plan of operation accepted by the board
25 within thirty days of the first board appointed under this act.

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

28 (b) The association must use rates that are demonstrably sound as
29 compared to accepted actuarial standards. At the time of filing with
30 the commissioner, the rates must be accompanied by an actuarial
31 analysis. The rates must comply with chapter 48.19 RCW and be approved
32 by the commissioner.

33 NEW SECTION. **Sec. 9.** The association must file a statement
34 annually with the commissioner that contains information about the
35 association's transactions, financial condition, and operations during
36 the preceding year. The statement must be in the form and in a manner

1 approved by the commissioner. The association must maintain its
2 records according to the accounting practices and procedures manual
3 adopted by the national association of insurance commissioners. The
4 commissioner may require the association to furnish additional
5 information if the commissioner considers it necessary to evaluate the
6 scope, operation, and experience of the association.

7 NEW SECTION. **Sec. 10.** (1) The commissioner may examine the
8 transactions, financial condition, and operations of the association
9 when the commissioner finds it necessary in order to carry out the
10 purposes of this chapter. Except as set forth in subsections (2) and
11 (3) of this section, each examination must be conducted in the manner
12 prescribed for domestic insurance companies in chapter 48.03 or 48.37
13 RCW.

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

16 (3) An association created under this chapter is responsible for
17 the total costs of its financial and market conduct examinations. RCW
18 48.03.060 (1) and (2) and 48.37.060(14) (a) and (b) are not applicable
19 to the examination of an association created under this chapter.

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

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

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

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

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

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

1 member insurer must be assessed a proportionate share based on the sum
2 of direct premiums earned in this state for all property insurance and
3 casualty insurance.

4 (3) If the association makes an assessment, an assessed insurer
5 must pay the association within thirty days after it receives notice of
6 the assessment. If an insurer does not pay an assessment within thirty
7 days after it receives notice of the assessment:

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

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

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

14 (d) The commissioner may fine the insurer up to ten thousand
15 dollars.

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

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

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

27 (3) If the commissioner or the board of directors orders the
28 association to end all underwriting operations, the commissioner must
29 supervise the dissolution of the association, including settlement of
30 all financial and legal obligations and distribution of any remaining
31 assets as follows:

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

36 (b) If there has not been an assessment on the members of the
37 association, or if there are funds remaining after distribution under

1 (a) of this subsection and after all creditors of the association are
2 paid in full, then to the policyholders in a proportional manner and as
3 determined by rule by the commissioner.

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

7 (1) Creating sample plans of operation for the assistance of the
8 board;

9 (2) Requiring or limiting certain policy provisions;

10 (3) Containing the basis and method for assessing members for
11 operation of the association; and

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

14 NEW SECTION. **Sec. 15.** (1) The commissioner must by rule require
15 insurers authorized to write property insurance in this state to form
16 a market assistance plan to assist persons located in the geographical
17 area protected by any dam that are unable to purchase excess flood or
18 business interruption insurance in an adequate amount from either the
19 admitted or nonadmitted market.

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

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

27 (4) A market assistance plan must have a minimum of twenty-five
28 insurers willing to insure risks within the class designated by the
29 commissioner. If twenty-five insurers do not voluntarily agree to
30 participate, the commissioner may require either property or property
31 and casualty, or both, insurers to participate in a market assistance
32 plan as a condition of continuing to do business in this state. The
33 commissioner must make this requirement to fulfill the quota of at
34 least twenty-five insurers. The commissioner must make his or her
35 designation on the basis of the insurer's premium volume of property
36 insurance in this state.

1 NEW SECTION. **Sec. 16.** The board and the commissioner shall report
2 to the respective committees of the house of representatives and senate
3 having jurisdiction over the insurance code by January 31, 2011, and
4 each subsequent January 31st of each year that the association remains
5 in existence.

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

8 If certain insurance coverages cannot be procured from authorized
9 insurers, such coverages, hereinafter designated as "surplus lines,"
10 may be procured from unauthorized insurers subject to the following
11 conditions:

12 (1) The insurance must be procured through a licensed surplus line
13 broker.

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

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

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

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

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

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

32 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
33 preservation of the public peace, health, or safety, or support of the
34 state government and its existing public institutions, and takes effect
35 immediately.

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

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By Representative

ADOPTED 02/12/2010

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

EFFECT: References to the Green river area are removed. Policy
limits of \$10 million are reduced to \$5 million. An aggregate exposure
cap of \$250 million for all in-force policies of the JUA is included.
Personal lines are defined and excluded from the definitions of excess
flood insurance, property insurance, and casualty insurance. The
exclusion from the definition of excess flood insurance means that the
JUA cannot offer personal lines coverage. The exclusion from the
definitions of property insurance and casualty insurance remove
insurers that only offer personal lines coverage from the insurers
required to be members of the JUA. Assessments are proportionate based
on property insurance and casualty insurance premiums in this state.
Composition and selection of the Board is changed. It is clarified
that Board members are not paid for their service.

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