

SSB 5665 - H COMM AMD

By Committee on Financial Institutions & Insurance

ADOPTED 04/09/2009

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

3 NEW SECTION. **Sec. 1.** This chapter is intended to provide
4 authority for two or more affordable housing entities to participate in
5 a joint self-insurance program covering property or liability risks.
6 This chapter provides affordable housing entities with the exclusive
7 source of authority to jointly self-insure property and liability
8 risks, jointly purchase insurance or reinsurance, and to contract for
9 risk management, claims, and administrative services with other
10 affordable housing entities. This chapter must be liberally construed
11 to grant affordable housing entities maximum flexibility in jointly
12 self-insuring to the extent the self-insurance programs are operated in
13 a safe and sound manner. This chapter is intended to require prior
14 approval for the establishment of every joint self-insurance program.
15 In addition, this chapter is intended to require every joint self-
16 insurance program for affordable housing entities established under
17 this chapter to notify the state of the existence of the program and to
18 comply with the regulatory and statutory standards governing the
19 management and operation of the programs as provided in this chapter.
20 This chapter is not intended to authorize or regulate self-insurance of
21 unemployment compensation under chapter 50.44 RCW or industrial
22 insurance under chapter 51.14 RCW.

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

25 (1) "Affordable housing" means housing projects in which some of
26 the dwelling units may be purchased or rented on a basis that is
27 affordable to households with an income of eighty percent or less of
28 the county median family income, adjusted for family size.

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

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

6 (b) A nonprofit corporation, whether organized under the laws of
7 this state or another state, that is engaged in providing affordable
8 housing and is necessary for the completion, management, or operation
9 of a project because of its access to funding sources that are not
10 available to a housing authority, as described in this section; or

11 (c) A general or limited partnership or limited liability company,
12 whether organized under the laws of this state or another state, that
13 is engaged in providing affordable housing as defined in this section.
14 A partnership or limited liability company may only be considered an
15 affordable housing entity if a housing authority or nonprofit
16 corporation, as described in this subsection, satisfies any of the
17 following conditions: (i) It has, or has the right to acquire, a
18 financial or ownership interest in the partnership or limited liability
19 company; (ii) it possesses the power to direct management or policies
20 of the partnership or limited liability company; or (iii) it has
21 entered into a contract to lease, manage, or operate the affordable
22 housing owned by the partnership or limited liability company.

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

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

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

33 NEW SECTION. **Sec. 3.** Prior to the approval of a multistate joint
34 self-insurance program for affordable housing entities, the state risk
35 manager shall adopt rules further clarifying the definitions of
36 "affordable housing" and "affordable housing entity" as defined in

1 section 2 of this act, and the conditions and limitations under which
2 affordable housing entities may participate or be expelled from the
3 joint self-insurance program.

4 NEW SECTION. **Sec. 4.** (1) The governing body of an affordable
5 housing entity may join or form a self-insurance program together with
6 one or more other affordable housing entities, and may jointly purchase
7 insurance or reinsurance with one or more other affordable housing
8 entities for property and liability risks only as permitted under this
9 chapter. Affordable housing entities may contract for or hire
10 personnel to provide risk management, claims, and administrative
11 services in accordance with this chapter.

12 (2) The agreement to form a joint self-insurance program may
13 include the organization of a separate legal or administrative entity
14 with powers delegated to the entity. The entity may be a nonprofit
15 corporation, limited liability company, partnership, trust, or other
16 form of entity, whether organized under the laws of this state or
17 another state.

18 (3) If provided for in the organizational documents, a joint self-
19 insurance program may, in conformance with this chapter:

20 (a) Contract or otherwise provide for risk management and loss
21 control services;

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

24 (c) Consult with the state insurance commissioner and the state
25 risk manager;

26 (d) Jointly purchase insurance and reinsurance coverage in a form
27 and amount as provided for in the organizational documents;

28 (e) Obligate the program's participants to pledge revenues or
29 contribute money to secure the obligations or pay the expenses of the
30 program, including the establishment of a reserve or fund for coverage;
31 and

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

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

1 (a) Service upon the state risk manager as attorney constitutes
2 service upon the program. Service upon joint self-insurance programs
3 subject to this chapter may only occur by service upon the state risk
4 manager. At the time of service, the plaintiff shall pay to the state
5 risk manager a fee to be set by the state risk manager, taxable as
6 costs in the action.

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

12 (c) The appointment of the state risk manager as attorney is
13 irrevocable, binds any successor in interest or to the assets or
14 liabilities of the joint self-insurance program, and remains in effect
15 as long as there is in force in this state any contract made by the
16 joint self-insurance program or liabilities or duties arising from the
17 contract.

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

27 NEW SECTION. **Sec. 5.** This chapter does not apply to an affordable
28 housing entity that:

- 29 (1) Individually self-insures for property and liability risks; or
30 (2) Participates in a risk pooling arrangement, including a risk
31 retention group or a risk purchasing group, regulated under chapter
32 48.92 RCW, or is a captive insurer authorized in its state of domicile.

33 NEW SECTION. **Sec. 6.** The state risk manager shall adopt rules
34 governing the management and operation of joint self-insurance programs
35 for affordable housing entities that cover property or liability risks.

1 All rules must be appropriate for the type of program and class of risk
2 covered. The state risk manager's rules must include:

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

6 (2) Standards for claims management procedures;

7 (3) Standards for contracts between joint self-insurance programs
8 and private businesses, including standards for contracts between
9 third-party administrators and programs; and

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

18 NEW SECTION. **Sec. 7.** Before the establishment of a joint self-
19 insurance program covering property or liability risks by affordable
20 housing entities, the entities must obtain the approval of the state
21 risk manager. The entities proposing the creation of a joint self-
22 insurance program requiring prior approval shall submit a plan of
23 management and operation to the state risk manager that provides at
24 least the following information:

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

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

29 (3) The proposed claim reserving practices;

30 (4) The proposed purchase and maintenance of insurance or
31 reinsurance in excess of the amounts retained by the joint self-
32 insurance program;

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

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

1 (7) The proposed accounting, depositing, and investment practices
2 of the program;

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

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

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

9 (11) A professional analysis of the feasibility of the creation and
10 maintenance of the program;

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

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

17 NEW SECTION. **Sec. 8.** An affordable housing entity may participate
18 in a joint self-insurance program covering property or liability risks
19 with similar affordable housing entities from other states if the
20 program satisfies the following requirements:

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

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

28 (3) The program must provide coverage through the delivery to each
29 participating affordable housing entity of one or more written policies
30 affecting insurance of covered risks;

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

35 (5) The financial statements of the program must be audited
36 annually by the certified public accountants for the program, and these

1 audited financial statements must be delivered to the state risk
2 manager not more than one hundred twenty days after the end of each
3 fiscal year of the program;

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

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

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

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

19 NEW SECTION. **Sec. 9.** (1) Within one hundred twenty days of
20 receipt of a plan of management and operation, the state risk manager
21 shall either approve or disapprove of the formation of the joint self-
22 insurance program after reviewing the plan to determine whether the
23 proposed program complies with this chapter and all rules adopted in
24 accordance with this chapter.

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

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

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

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

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

18 (4) Each joint self-insurance program approved by the state risk
19 manager shall annually file a report with the state risk manager
20 providing:

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

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

25 (c) A description of the program structure, including participants'
26 retention, program retention, and excess insurance limits and
27 attachment point;

28 (d) An actuarial analysis;

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

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

31 (g) Other information as required by rule of the state risk
32 manager.

33 (5) A joint self-insurance program requiring the state risk
34 manager's approval may not engage in an act or practice that in any
35 respect significantly differs from the management and operation plan
36 that formed the basis for the state risk manager's approval of the
37 program unless the program first notifies the state risk manager in
38 writing and obtains the state risk manager's approval. The state risk

1 manager shall approve or disapprove the proposed change within sixty
2 days of receipt of the notice. If the state risk manager denies a
3 requested change, the state risk manager shall specify in detail the
4 reasons for the denial and the manner in which the program would fail
5 to meet the requirements of this chapter or any rules adopted in
6 accordance with this chapter.

7 NEW SECTION. **Sec. 10.** (1) A joint self-insurance program may by
8 resolution of the program designate a person having experience with
9 investments or financial matters as treasurer of the program. The
10 program must require a bond obtained from a surety company in an amount
11 and under the terms and conditions that the program finds will protect
12 against loss arising from mismanagement or malfeasance in investing and
13 managing program funds. The program may pay the premium on the bond.

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

17 NEW SECTION. **Sec. 11.** (1) An employee or official of a
18 participating affordable housing entity in a joint self-insurance
19 program may not directly or indirectly receive anything of value for
20 services rendered in connection with the operation and management of a
21 self-insurance program other than the salary and benefits provided by
22 his or her employer or the reimbursement of expenses reasonably
23 incurred in furtherance of the operation or management of the program.
24 An employee or official of a participating affordable housing entity in
25 a joint self-insurance program may not accept or solicit anything of
26 value for personal benefit or for the benefit of others under
27 circumstances in which it can be reasonably inferred that the
28 employee's or official's independence of judgment is impaired with
29 respect to the management and operation of the program.

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

32 NEW SECTION. **Sec. 12.** A joint self-insurance program approved in
33 accordance with this chapter is exempt from insurance premium taxes,
34 fees assessed under chapter 48.02 RCW, chapters 48.32 and 48.32A RCW,
35 business and occupation taxes imposed under chapter 82.04 RCW, and any

1 assigned risk plan or joint underwriting association otherwise required
2 by law. This section does not apply to, and no exemption is provided
3 for, insurance companies issuing policies to cover program risks, and
4 does not apply to or provide an exemption for third-party
5 administrators or insurance producers serving the joint self-insurance
6 program.

7 NEW SECTION. **Sec. 13.** (1) The state risk manager shall establish
8 and charge an investigation fee in an amount necessary to cover the
9 costs for the initial review and approval of a joint self-insurance
10 program. The fee must accompany the initial submission of the plan of
11 operation and management.

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

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

19 NEW SECTION. **Sec. 14.** (1) Any person who files reports or
20 furnishes other information required under this title, required by the
21 state risk manager under the authority granted under this title, or
22 which is useful to the state risk manager in the administration of this
23 title, is immune from liability in any civil action or suit arising
24 from the filing of any such report or furnishing such information to
25 the state risk manager, unless actual malice, fraud, or bad faith is
26 shown.

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

32 (3) The immunity granted under this section is in addition to any
33 common law or statutory privilege or immunity enjoyed by such person.
34 This section is not intended to abrogate or modify in any way such
35 common law or statutory privilege or immunity.

1 NEW SECTION. **Sec. 15.** The state risk manager shall take all steps
2 necessary to implement this chapter on January 1, 2010.

3 NEW SECTION. **Sec. 16.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 17.** This act takes effect January 1, 2010.

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

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

12 "Insurer" as used in this code includes every person engaged in the
13 business of making contracts of insurance, other than a fraternal
14 benefit society. A reciprocal or interinsurance exchange is an
15 "insurer" as used in this code. Two or more hospitals that join and
16 organize as a mutual corporation pursuant to chapter 24.06 RCW for the
17 purpose of insuring or self-insuring against liability claims,
18 including medical liability, through a contributing trust fund are not
19 an "insurer" under this code. Two or more local governmental entities,
20 under any provision of law, that join together and organize to form an
21 organization for the purpose of jointly self-insuring or self-funding
22 are not an "insurer" under this code. Two or more affordable housing
23 entities that join together and organize to form an organization for
24 the purpose of jointly self-insuring or self-funding under chapter
25 48.-- RCW (the new chapter created in section 18 of this act) are not
26 an "insurer" under this code. Two or more persons engaged in the
27 business of commercial fishing who enter into an arrangement with other
28 such persons for the pooling of funds to pay claims or losses arising
29 out of loss or damage to a vessel or machinery used in the business of
30 commercial fishing and owned by a member of the pool are not an
31 "insurer" under this code."

32 Correct the title.

EFFECT: (1) Modifies the definition of "affordable housing" to

mean housing projects in which some of the dwelling units may be purchased or rented on a basis that is affordable to households with an income of eighty percent or less of the county median family income.

(2) Limits the nonprofit corporations that may be considered "affordable housing entities" for purposes of this act, to those that are necessary to the completion, management, or operation of an affordable housing development because of its access to funding sources that are not available to a housing authority.

(3) Removes from the definition of "affordable housing entity" a partnership or limited liability company that has a material relationship with a housing authority or a nonprofit corporation. Makes clarifying language changes.

(4) Requires the State Risk Manager, prior to the approval of a multistate joint self-insurance program, to adopt rules further clarifying:

(a) The definitions of "affordable housing" and "affordable housing entity"; and

(b) The conditions and limitations under which affordable housing entities may participate or be expelled from the joint self-insurance program.

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