

# HOUSE BILL REPORT

## SSB 5665

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### As Passed House - Amended:

April 9, 2009

**Title:** An act relating to a joint self-insurance program for affordable housing entities.

**Brief Description:** Authorizing a joint self-insurance program for two or more affordable housing entities.

**Sponsors:** Senate Committee on Financial Institutions, Housing & Insurance (originally sponsored by Senators Berkey, Benton, Franklin, Parlette, Hobbs and Shin).

### Brief History:

#### Committee Activity:

Financial Institutions & Insurance: 3/19/09, 3/26/09 [DPA].

#### Floor Activity

Passed House - Amended: 4/9/09, 97-1.

### Brief Summary of Substitute Bill (As Amended by House)

- Authorizes affordable housing entities to join or create joint self-insurance programs.
- Requires the State Risk Manager to adopt rules governing the management and operation of joint self-insurance programs for affordable housing entities.

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## HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** Do pass as amended. Signed by 11 members: Representatives Kirby, Chair; Kelley, Vice Chair; Bailey, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Hurst, McCoy, Nelson, Roach, Rodne, Santos and Simpson.

**Staff:** Alison Hellberg (786-7152)

### Background:

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Local government entities, including local housing authorities, have the authority to individually or jointly self-insure against risks, jointly purchase insurance or reinsurance, and contract for risk management, claims, and administrative services.

Local government joint self-insurance risk pools are authorized to create and delegate powers to a separate legal or administrative entity, and to obligate the pool's participants to pledge revenues or contribute money to secure the obligations or pay the expenses of the pool, including the establishment of a reserve or fund for coverage. Risk pools are authorized to sell revenue bonds and short-term obligations and establish lines of credit. Subject to specified conditions, local government entities may enter into joint self-insurance pools with similar entities from other states (multistate risk pools). The Risk Management Division within the Office of Financial Management (OFM) is responsible for the regulation of these pools. These pools are excluded from the definition of "insurer" under the insurance code.

Nonprofit organizations may form or join self-insurance risk pools with other nonprofit corporations and local government entities, but have no authorization to join risk pools that include entities in other states.

### **Summary of Amended Bill:**

#### Authority.

An affordable housing entity is authorized to join or form a self-insurance program with other affordable housing entities, and may jointly purchase insurance or reinsurance for property and liability risks. These risk pools are similar to existing local government and nonprofit entity risk pools. An "affordable housing entity" includes housing authorities, certain nonprofit corporations engaged in providing affordable housing, and partnerships or limited liability companies affiliated with a housing authority or nonprofit corporation engaged in providing affordable housing.

Affordable housing entities may contract for or hire personnel to provide risk management, claims, and administrative services. They may also organize a separate legal or administrative entity, with powers delegated to that entity, as part of the agreement to form a joint self-insurance program (program).

#### Approval by the State Risk Manager.

Before the establishment of a joint self-insurance program the entities must obtain the approval of the State Risk Manager (Risk Manager). The entities proposing the program must submit a report to the Risk Manager containing the following information:

- the risk or risks to be covered, including any coverage definitions, terms, conditions, and limitations;
- the amount and method of funding the covered risks, including the initial capital and proposed rates and projected premiums;
- the proposed claim reserving practices;
- the proposed purchase and maintenance of insurance or reinsurance in excess of the amounts retained by the joint self-insurance program;
- the legal form of the program including bylaws, charter, or trust agreement;
- the agreement defining the responsibilities and benefits of each participant and management;

- the proposed accounting, depositing, and investment practices of the program;
- the proposed frequency of actuarial analysis;
- a designation of the individual to whom service of process must be forwarded by the Risk Manager;
- contracts between the program and private persons providing risk management, claims, or other administrative services;
- a professional analysis of the feasibility of the creation and maintenance of the program;
- a legal determination of the potential federal and state tax liabilities of the program; and
- any other information required by rule of the Risk Manager.

Within 120 days of receipt of a plan of management and operation, the Risk Manager must either approve or disapprove of the formation of the program. If approval is denied, the Risk Manager must specify in detail the reasons for denial and the manner in which the program fails to meet the requirements. Each approved joint self-insurance program must annually file a report with the Risk Manager providing:

- details of any changes in the articles of incorporation, bylaws, charter, or trust agreement or other agreement among the participating affordable housing entities;
- copies of all the insurance coverage documents;
- a description of the program structure, including participants' retention, program retention, and excess insurance limits and attachment point;
- an actuarial analysis;
- a list of contractors and service providers;
- the financial and loss experience of the program; and
- other information required by the Risk Manager.

An approved program may not engage in an act or practice that significantly differs from the management and operation plan that formed the basis for the approval of the program without obtaining approval. The Risk Manager shall approve or disapprove the proposed change within 60 days. If a program is determined to violate any of the requirements or is operating in an unsafe financial condition, the Risk Manager may issue an order to cease and desist from the violation or practice.

#### Multistate Program Participants.

An affordable housing entity may participate in a joint self-insurance program covering property or liability risks with similar affordable housing entities from other states if the program satisfies the following requirements:

- an ownership interest in the program is limited to some or all of the affordable housing entities of this state and affordable housing entities of other states that are provided insurance by the program;
- the participating affordable housing entities of this state and other states shall elect a board of directors to manage the program;
- the program must provide coverage through the delivery to each participating affordable housing entity of one or more written policies affecting insurance of covered risks;

- the program must be financed, including the payment of premiums and the contribution of initial capital, in accordance with the plan of management and operation submitted to the Risk Manager;
- the financial statements of the program must be audited annually by the certified public accountants for the program, and audited financial statements must be submitted to the Risk Manager;
- the investments of the program must be initiated only with financial institutions or broker-dealers doing business in those states in which participating affordable housing entities are located, and these investments must be audited annually by the certified public accountants for the program;
- the treasurer of a multistate joint self-insurance program must be designated by resolution of the program and the treasurer must be located in the state of one of the participating entities;
- the participating affordable housing entities may have no contingent liabilities for covered claims, other than liabilities for unpaid premiums, if assets of the program are insufficient to cover the program's liabilities; and
- the program must obtain approval from the Risk Manager and remain in compliance.

#### Rulemaking and Fees.

The Risk Manager is required to adopt rules governing the management and operation of joint self-insurance programs for affordable housing entities. Specifically, the rules must include standards for:

- the management, operation, and solvency of joint-insurance programs, including the necessity and frequency of actuarial analyses and claims audits;
- claims management procedures;
- contracts between joint self-insurers programs and private businesses; and
- precluding housing authorities or public entities participating in the joint self-insurance program from subsidizing affordable housing entities that are not housing authorities or public entities.

The Risk Manager, prior to the approval of a multistate joint self-insurance program, must also adopt rules further clarifying:

- the definitions of "affordable housing" and "affordable housing entity;" and
- the conditions and limitations under which affordable housing entities may participate or be expelled from the joint self-insurance program.

The Risk Manager must also establish and charge a fee to cover the costs of the initial review and approval of a joint self-insurance program.

#### Other.

Risk pools created under these provisions are excluded from the definition of "insurer" under the insurance code.

These provisions do not apply to an affordable housing entity that:

- individually self-insures for property and liability risks; or
- participates in a risk pooling arrangement, including a risk retention group or a risk purchasing group, or is a captive insurer authorized by its state of domicile.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect January 1, 2010.

**Staff Summary of Public Testimony:**

(In support) This bill provides the option for affordable housing entities to jointly self-insure. This is a good, affordable option for many nonprofits. The Housing Authorities Risk Retention Pool (HARRP) was created in 1987. The HARRP is a joint self-insurance pool that includes over 90 public housing authorities from Washington, Oregon, California, and Nevada. Thirty-seven Washington housing authorities are insured through the HARRP. The HARRP is subject to oversight of the Risk Manager. The HARRP is also subject to oversight in the other states where it operates, and by the U.S. Department of Housing and Urban Development. There are national changes in the affordable housing arena. Today, many private and nonprofit entities are providing the financing for affordable housing. Many public housing projects are transferred to nonprofit entities in response to federal regulation and decreasing federal funding. The bill will allow nonprofit affordable housing entities to jointly self-insure across state lines. The bill is limited to just affordable housing entities. Those qualified entities will be able to pool together and get quality service, broad coverage, and lower rates.

(Opposed) None.

**Persons Testifying:** Senator Berkey, prime sponsor; and Jim Kennedy, Housing Authorities Risk Retention Pool.

**Persons Signed In To Testify But Not Testifying:** None.