

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5665

Chapter 314, Laws of 2009

61st Legislature
2009 Regular Session

AFFORDABLE HOUSING ENTITIES--JOINT SELF-INSURANCE

EFFECTIVE DATE: 01/01/10

Passed by the Senate April 20, 2009
YEAS 44 NAYS 4

BRAD OWEN

President of the Senate

Passed by the House April 9, 2009
YEAS 97 NAYS 1

FRANK CHOPP

Speaker of the House of Representatives

Approved April 30, 2009, 11:46 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5665** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 1, 2009

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5665

AS AMENDED BY THE HOUSE

Passed Legislature - 2009 Regular Session

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 on a basis that is
10 affordable to households with an income of eighty percent or less of
11 the county median family income, adjusted for family size.

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 and is necessary for the completion, management, or operation
21 of a project because of its access to funding sources that are not
22 available to a housing authority, as described in this section; or

23 (c) A general or limited partnership or limited liability company,
24 whether organized under the laws of this state or another state, that
25 is engaged in providing affordable housing as defined in this section.
26 A partnership or limited liability company may only be considered an
27 affordable housing entity if a housing authority or nonprofit
28 corporation, as described in this subsection, satisfies any of the
29 following conditions: (i) It has, or has the right to acquire, a
30 financial or ownership interest in the partnership or limited liability
31 company; (ii) it possesses the power to direct management or policies
32 of the partnership or limited liability company; or (iii) it has
33 entered into a contract to lease, manage, or operate the affordable
34 housing owned by the partnership or limited liability company.

35 (3) "Property and liability risks" includes the risk of property
36 damage or loss sustained by an affordable housing entity and the risk

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

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

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

9 NEW SECTION. **Sec. 3.** Prior to the approval of a multistate joint
10 self-insurance program for affordable housing entities, the state risk
11 manager shall adopt rules further clarifying the definitions of
12 "affordable housing" and "affordable housing entity" as defined in
13 section 2 of this act, and the conditions and limitations under which
14 affordable housing entities may participate or be expelled from the
15 joint self-insurance program.

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

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

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

32 (a) Contract or otherwise provide for risk management and loss
33 control services;

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

1 (c) Consult with the state insurance commissioner and the state
2 risk manager;

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

5 (e) Obligate the program's participants to pledge revenues or
6 contribute money to secure the obligations or pay the expenses of the
7 program, including the establishment of a reserve or fund for coverage;
8 and

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

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

15 (a) Service upon the state risk manager as attorney constitutes
16 service upon the program. Service upon joint self-insurance programs
17 subject to this chapter may only occur by service upon the state risk
18 manager. At the time of service, the plaintiff shall pay to the state
19 risk manager a fee to be set by the state risk manager, taxable as
20 costs in the action.

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

26 (c) The appointment of the state risk manager as attorney is
27 irrevocable, binds any successor in interest or to the assets or
28 liabilities of the joint self-insurance program, and remains in effect
29 as long as there is in force in this state any contract made by the
30 joint self-insurance program or liabilities or duties arising from the
31 contract.

32 (d) The state risk manager shall keep a record of the day and hour
33 of service upon him or her of all legal process. A copy of the
34 process, by registered mail with return receipt requested, must be sent
35 by the state risk manager to the person designated to receive legal
36 process by the joint self-insurance program in its most recent
37 designation filed with the state risk manager. Proceedings must not

1 commence against the joint self-insurance program, and the program must
2 not be required to appear, plead, or answer, until the expiration of
3 forty days after the date of service upon the state risk manager.

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

- 6 (1) Individually self-insures for property and liability risks; or
- 7 (2) Participates in a risk pooling arrangement, including a risk
8 retention group or a risk purchasing group, regulated under chapter
9 48.92 RCW, or is a captive insurer authorized in its state of domicile.

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

- 15 (1) Standards for the management, operation, and solvency of joint
16 self-insurance programs, including the necessity and frequency of
17 actuarial analyses and claims audits;
- 18 (2) Standards for claims management procedures;
- 19 (3) Standards for contracts between joint self-insurance programs
20 and private businesses, including standards for contracts between
21 third-party administrators and programs; and
- 22 (4) Standards that preclude housing authorities or other public
23 entities participating in the joint self-insurance program from
24 subsidizing, regardless of the form of subsidy, affordable housing
25 entities that are not housing authorities or public entities. These
26 standards do not apply to the consideration attributable to the
27 ownership interest of a housing authority or public entity in a
28 separate legal or administrative entity organized with respect to the
29 program.

30 NEW SECTION. **Sec. 7.** Before the establishment of a joint self-
31 insurance program covering property or liability risks by affordable
32 housing entities, the entities must obtain the approval of the state
33 risk manager. The entities proposing the creation of a joint self-
34 insurance program requiring prior approval shall submit a plan of

1 management and operation to the state risk manager that provides at
2 least the following information:

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

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

7 (3) The proposed claim reserving practices;

8 (4) The proposed purchase and maintenance of insurance or
9 reinsurance in excess of the amounts retained by the joint self-
10 insurance program;

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

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

16 (7) The proposed accounting, depositing, and investment practices
17 of the program;

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

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

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

24 (11) A professional analysis of the feasibility of the creation and
25 maintenance of the program;

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

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

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

36 (1) An ownership interest in the program is limited to some or all

1 of the affordable housing entities of this state and affordable housing
2 entities of other states that are provided insurance by the program;

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

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

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

14 (5) The financial statements of the program must be audited
15 annually by the certified public accountants for the program, and these
16 audited financial statements must be delivered to the state risk
17 manager not more than one hundred twenty days after the end of each
18 fiscal year of the program;

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

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

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

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

34 NEW SECTION. **Sec. 9.** (1) Within one hundred twenty days of
35 receipt of a plan of management and operation, the state risk manager
36 shall either approve or disapprove of the formation of the joint self-

1 insurance program after reviewing the plan to determine whether the
2 proposed program complies with this chapter and all rules adopted in
3 accordance with this chapter.

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

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

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

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

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

33 (4) Each joint self-insurance program approved by the state risk
34 manager shall annually file a report with the state risk manager
35 providing:

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

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

2 (c) A description of the program structure, including participants'
3 retention, program retention, and excess insurance limits and
4 attachment point;

5 (d) An actuarial analysis;

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

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

8 (g) Other information as required by rule of the state risk
9 manager.

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

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

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

32 NEW SECTION. **Sec. 11.** (1) An employee or official of a
33 participating affordable housing entity in a joint self-insurance
34 program may not directly or indirectly receive anything of value for
35 services rendered in connection with the operation and management of a
36 self-insurance program other than the salary and benefits provided by

1 his or her employer or the reimbursement of expenses reasonably
2 incurred in furtherance of the operation or management of the program.
3 An employee or official of a participating affordable housing entity in
4 a joint self-insurance program may not accept or solicit anything of
5 value for personal benefit or for the benefit of others under
6 circumstances in which it can be reasonably inferred that the
7 employee's or official's independence of judgment is impaired with
8 respect to the management and operation of the program.

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

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

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

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

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

33 NEW SECTION. **Sec. 14.** (1) Any person who files reports or
34 furnishes other information required under this title, required by the
35 state risk manager under the authority granted under this title, or

1 which is useful to the state risk manager in the administration of this
2 title, is immune from liability in any civil action or suit arising
3 from the filing of any such report or furnishing such information to
4 the state risk manager, unless actual malice, fraud, or bad faith is
5 shown.

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

11 (3) The immunity granted under this section is in addition to any
12 common law or statutory privilege or immunity enjoyed by such person.
13 This section is not intended to abrogate or modify in any way such
14 common law or statutory privilege or immunity.

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

17 NEW SECTION. **Sec. 16.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

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

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

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

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

1 under any provision of law, that join together and organize to form an
2 organization for the purpose of jointly self-insuring or self-funding
3 are not an "insurer" under this code. Two or more affordable housing
4 entities that join together and organize to form an organization for
5 the purpose of jointly self-insuring or self-funding under chapter
6 48.-- RCW (the new chapter created in section 18 of this act) are not
7 an "insurer" under this code. Two or more persons engaged in the
8 business of commercial fishing who enter into an arrangement with other
9 such persons for the pooling of funds to pay claims or losses arising
10 out of loss or damage to a vessel or machinery used in the business of
11 commercial fishing and owned by a member of the pool are not an
12 "insurer" under this code.

Passed by the Senate April 20, 2009.

Passed by the House April 9, 2009.

Approved by the Governor April 30, 2009.

Filed in Office of Secretary of State May 1, 2009.