

**WSR 22-16-109  
PROPOSED RULES  
DEPARTMENT OF  
ENTERPRISE SERVICES**

[Filed August 3, 2022, 7:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-086.

Title of Rule and Other Identifying Information: Chapter 200-100 WAC, Self-insurance transactions as to local governments.

Hearing Location(s): On September 6, 2022, at 2:00 p.m., virtual public hearing via Zoom. Join Zoom meeting online <https://des-wa.zoom.us/j/99668881760?pwd=RTRTdTlYNUplMUZBbFZ3S3BOa1BNZz09>; or call-in. Dial by your location 877 853 5247 US Toll-free, 888 788 0099 US Toll-free, Meeting ID 996 6888 1760, Password 870039.

Date of Intended Adoption: September 16, 2022.

Submit Written Comments to: Jack Zeigler, online at <https://des.wa.gov/about/policies-laws-rules/rulemaking>, local government self-insurance health and welfare program rules, by September 9, 2022.

Assistance for Persons with Disabilities: Contact Jack Zeigler, by September 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal aligns the rules with statutory changes, including but not limited to, allowing the state board of pilotage commissioners to participate in a local government self-insurance program covering liability risks. Other content changes align the rules with recent changes to other self-insurance rules addressing purchasing requirements and independent audit requirements.

Reasons Supporting Proposal: The office of risk management is the regulator for local government risk pools. In 2019, the legislature passed HB 1431 Concerning joint self-insurance programs for property and liability. This bill amends state law under chapter 48.62 RCW to allow the state board of pilotage commissioners (the board), a Washington state agency, to participate in a local government joint self-insurance program covering liability risks. Previously, no state agency was allowed to join a local government self-insurance pool.

During review of the current rules, it became clear that other language may need to be amended to align with the statute to accommodate a state agency such as the board. Some language applicable to local government members of a self-insurance pool does not necessarily apply to the board.

Statutory Authority for Adoption: RCW 48.62.061 Rule making by state risk manager—Standards.

Statute Being Implemented: Chapter 48.62 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of enterprise services, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Shannon Stuber, 1500 Jefferson [Street], Olympia, WA, 360-407-8153; Enforcement: Jason Siems, 1500 Jefferson [Street], Olympia, WA, 360-742-6348.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This proposed change only relates to internal governmental operations that are not subject to violation by a nongovernment party.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4) (does not affect small businesses).

August 3, 2022

Jack Zeigler

Policy and Rules Manager

## OTS-4001.1

AMENDATORY SECTION (Amending WSR 15-22-011, filed 10/22/15, effective 11/22/15)

**WAC 200-100-020 Definitions.** (1) "Actuary" means any person who is a fellow of the Casualty Actuarial Society and a member of the American Academy of Actuaries.

(2) "Assessment" means the moneys paid by the members to a joint self-insurance program, excluding member claim deductibles and fees for supplementary services.

(3) "Broker of record" means the insurance producer licensed in the state of Washington who, through a contractual agreement with the joint self-insurance program, procures insurance on behalf of the joint self-insurance program.

(4) "Case reserves" means the total of all claims and claims adjustment expenses for covered events which have occurred and have been reported to the joint and individual self-insurance programs as of the date of the financial statement. Case reserves include an estimate for each reported claim based on the undiscounted jury verdict value of said claim.

(5) "Claim adjustment expense" means expenses, other than claim payments, incurred in the course of investigating and settling claims.

(6) "Claim" means a demand for payment for damages or policy benefit because of the occurrence of an event that includes, but is not limited to, the destruction or damage of property or reputation, bodily injury or death and alleged civil rights violations.

(7) "Claims auditor" means a person who has the following qualifications:

(a) A minimum of five years in claims management and investigative experience;

(b) A minimum of three years of experience in auditing the same manner of claims filed against the program being audited;

(c) Proof of professional liability insurance; and

(d) Provides a statement that the auditor is independent from the program being audited, its vendors, insurers, brokers, and third-party administrators.

(8) "Competitive process" means a formal sealed, electronic, or web-based bid procedure used for all nonclaims related purchases for

goods and services over (~~(fifty thousand dollars)~~) \$50,000. For purchases between (~~(five thousand dollars and fifty thousand dollars)~~) \$5,000 and \$50,000, competitive process means quotations obtained from at least three vendors by telephone or written quotations, or both, and supported by evidence of competition. Purchases up to (~~(five thousand dollars)~~) \$5,000 are exempt from competitive bids providing procurement is based on obtaining maximum quality at minimum cost.

(9) "Competitive solicitation" means a documented formal process requiring sealed bids, providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(10) "Consultant" means an independent individual or firm contracting with a joint self-insurance program to perform actuarial, claims auditing or third-party administration services, represent the program as broker of record, or render an opinion or recommendation according to the consultant's methods, all without being subject to the control of the program, except as to satisfaction of the contracted deliverables.

(11) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(12) "Incurred but not reported, or IBNR" means claims and claim adjustment expenses for covered events which have occurred but have not yet been reported to the self-insurance program as of the date of the financial statement. IBNR claims include (a) known loss events that are expected to be presented later as claims, (b) unknown loss events that are expected to become claims, and (c) future development on claims already reported.

(13) "Individual self-insurance program" means a formal program established and maintained by a local government entity to provide advance funding to self-insure for property and liability risks on its own behalf as opposed to risk assumption, which means a decision to absorb the entity's financial exposure to a risk of loss without the creation of a formal program of advance funding of anticipated losses.

(14) "Interlocal agreement" means an agreement established under the Interlocal Cooperation Act defined in chapter 39.34 RCW.

(15) "Joint self-insurance program" means any two or more local government entities which have entered into a cooperative risk sharing agreement subject to regulation under chapter 48.62 RCW.

(16) "Jury verdict value" means the claim value established on an individual case basis by the entity's analysis of the jury verdict results within a jurisdiction in addition to other factors including, but not limited to, severity of injury or damage, length of recovery, credibility of parties and witnesses, ability of attorney, sympathy factors, degree of negligence of the parties and contribution or recovery from other sources.

(17) "Member" means:

(a) A local government entity that:

~~((a))~~ (i) Is a signatory to a joint insurance program's interlocal agreement;

~~((b))~~ (ii) Agrees to future assessments or reassessments as part of the program's joint self-insurance program; and

~~((e))~~ (iii) Is a past or present participant in the excess or self-insured retention portion of the pool's insurance program subject to regulation under chapter 48.62 RCW; and

(b) The board of pilotage commissioners that:

(i) Is a signatory to a joint insurance program's interlocal agreement;

(ii) Agrees to future assessments or reassessments as part of the program's joint self-insurance program; and

(iii) Is a past or present participant in the excess or self-insured retention portion of the pool's insurance program subject to regulation under chapter 48.62 RCW; and

(iv) Participates in the liability coverage offered by the program, but may not participate in property or other coverages as authorized in RCW 48.62.011(2).

(18) "Primary assets" means cash, short-term investments, and long-term investments (~~((less any nonclaims liabilities))~~). Primary assets may not include member receivables billed in advance of the coming year. The amount of the primary assets must be reduced by all nonclaims liabilities. At fiscal year ending 2025 and from thereon, both primary assets and secondary assets will also include all pension-related assets and liabilities.

(19) "Reassessment" means additional moneys paid by the members to a joint self-insurance program for previous years in which annual member assessments were not sufficient to cover costs.

(20) "Risk sharing" means a decision by the members of a joint self-insurance program to jointly absorb certain or specified financial exposures to risks of loss through the creation of a formal program of advance funding of actuarially determined anticipated losses; and/or joint purchase of insurance or reinsurance as a member of a joint self-insurance program formed under chapter 48.62 RCW.

(21) "Secondary assets" means insurance and member receivables, real estate or other assets (~~((less any nonclaims liabilities))~~) the value of which can be independently verified by the state risk manager. Secondary assets may not include member receivables billed in advance of the coming year. At fiscal year ending 2025 and from thereon, both primary assets and secondary assets will also include all pension-related assets and liabilities.

(22) "Self-insurance program" means any individual or joint self-insurance program required by chapter 48.62 RCW to comply with this chapter.

(23) "Services" means administrative, electronic, management, loss prevention, training or other support services which do not include the participation in or purchase of the pools excess or self-insured insurance programs.

(24) "Stop-loss insurance" means a promise by an insurance company that it will cover losses of the entity it insures over and above an agreed-upon aggregated amount.

(25) "Third-party administrator" means an independent association, agency, entity or enterprise which, through a contractual agreement, provides one or more of the following ongoing services: Pool management or administration services, claims administration services, risk management services, or services for the design, implementation, or termination of an individual or joint self-insurance program.

(26) "Unallocated loss adjustment expense (ULAE)" means costs that cannot be associated with specific claims but are related to the

claims adjustment process, such as administrative and internal expenses related to settlement of claims at the termination of the program.

(27) "Unpaid claims" means the obligations for future payment resulting from claims due to past events. This liability includes loss and adjustments expenses, incurred but not reported claims (IBNR), case reserves, and unallocated loss adjustment expenses (ULAE).

[Statutory Authority: 2015 c 109. WSR 15-22-011, § 200-100-020, filed 10/22/15, effective 11/22/15. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-100-020, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-01-072, § 82-60-020, filed 12/14/09, effective 1/14/10; WSR 05-04-072, amended and recodified as § 82-60-020, filed 2/1/05, effective 3/4/05. Statutory Authority: Chapter 48.62 RCW. WSR 93-16-079, § 236-22-020, filed 8/3/93, effective 9/3/93.]

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

**WAC 200-100-02009 Standards for operation—Communication with members—Annual membership report.** The joint self-insurance program shall make available to each member a copy of the program's annual membership report. The annual membership report shall include, at a minimum, financial information which includes the (~~comparative~~) balance sheet and statement of revenues, expenses and net assets. The reports shall be delivered to each member by electronic or regular mail. Programs may meet the delivery requirement by publishing and maintaining the membership report on the official website of the program for a minimum of three years from the date of publication.

[Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-100-02009, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-01-072, § 82-60-02009, filed 12/14/09, effective 1/14/10.]

AMENDATORY SECTION (Amending WSR 15-22-011, filed 10/22/15, effective 11/22/15)

**WAC 200-100-050 Standards for claims management—Claims administration.** (1) All joint self-insurance programs shall adopt a written claims administration program which includes, as a minimum, the following procedures:

(a) Claims filing procedures and forms.

(b) Standards requiring case reserves for each claim be established in the amount of the jury verdict value.

(c) Standards requiring case reserves be reviewed every (~~nine~~~~ty~~) 90 days or when reasonably practicable and such review is documented in the claims diary.

(d) Standards requiring appropriate adjuster work loads.

(e) Standards requiring claims payment procedures include sufficient internal controls to ensure adequate review and approval by claims management staff.

(f) Standards requiring file documentation be complete and up-to-date.

(g) Standards requiring timely and appropriate claim resolution practices.

(h) Standards requiring opportunities for recoveries be reviewed and documented for each claim.

(i) Standards requiring compliance with Internal Revenue Service (IRS) rules for 1099MISC regulations.

(j) Standards requiring claims files be audited on the following categories: Staffing, caseloads, supervision, diary, coverage, reserves, promptness of contacts, field investigations, file documentation, settlements, litigation management and subrogation.

(2) All joint self-insurance programs may perform claims administration services on their own behalf or may contract for claims administration services with a qualified third-party administrator, provided all of the specific requirements under subsection (1) of this section are included in the contract.

(3) All joint self-insurance programs shall have a written member coverage appeal procedure that contains, as a minimum, procedures for a member filing an appeal with the joint self-insurance program, including the time limit for filing, a time limit for response, and a provision for an additional level of review.

(4) All joint self-insurance programs shall maintain a financial system that identifies claim and claim adjustment expenses.

(5) All joint self-insurance programs shall provide for the purchase of goods and services to replace or repair property in a manner which will, in the judgment of the governing body of the joint self-insurance program, avoid further damage, injury, or loss of use to a member or third-party claimant.

(6) All joint self-insurance programs shall maintain claim expense reports for all claims made against the joint self-insurance program and its members.

(7) All joint self-insurance programs shall obtain an independent audit of claim reserving, adjusting and payment procedures every three years at a minimum. The audit shall be conducted by an independent qualified claims auditor not affiliated with the program, its insurers, its broker of record, or its third-party administrator. Such review shall be in writing and identify strengths, areas of improvement, findings, conclusions and recommendations. Such review shall be provided to the governing body and retained for a period not less than six years. The scope of the claims audit shall include claims administration procedures listed in subsection (1) of this section. The number, date, and scope of claims audited will be determined by the auditor based upon level of error and risk assessed by the auditor.

(8) The state risk manager may require more frequent claims audits for programs that, in the state risk manager's opinion, are not operationally or financially sound. Failure to obtain the requested independent claims audit when required may result in the procurement of such audit by the state risk manager on behalf of the program. Costs of these services shall be the responsibility of the joint self-insurance program.

[Statutory Authority: 2015 c 109. WSR 15-22-011, § 200-100-050, filed 10/22/15, effective 11/22/15. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-100-050, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-01-072, § 82-60-050, filed 12/14/09, effective 1/14/10; WSR 05-04-072, amended

and recodified as § 82-60-050, filed 2/1/05, effective 3/4/05. Statutory Authority: Chapter 48.62 RCW. WSR 93-16-079, § 236-22-050, filed 8/3/93, effective 9/3/93.]

AMENDATORY SECTION (Amending WSR 15-22-011, filed 10/22/15, effective 11/22/15)

**WAC 200-100-220 Standards for contracts—Standards for operation—Purchases of goods and services not related to claims.** Joint self-insurance programs comprised of one common entity type must comply with bidding and purchasing requirements as prescribed by law or regulation for that entity type. Joint self-insurance programs comprised of multiple entity types (~~(shall use a competitive process for the purchase of goods and services not described in WAC 200-100-215)~~) must comply with bidding and purchasing requirements as prescribed by law or regulation for multiple entity types joined by interlocal agreements. Vendor selection shall be based on fees or costs, ability, capacity, experience, reputation, and responsiveness to time limitations. These regulations do not apply to the purchase of goods and services described in WAC 200-100-050(5).

[Statutory Authority: 2015 c 109. WSR 15-22-011, § 200-100-220, filed 10/22/15, effective 11/22/15. Statutory Authority: 2011 c 43. WSR 11-23-093, recodified as § 200-100-220, filed 11/17/11, effective 11/17/11. Statutory Authority: RCW 48.62.061. WSR 10-01-072, § 82-60-220, filed 12/14/09, effective 1/14/10.]