

SENATE BILL REPORT

SB 5387

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 16, 2011

Title: An act relating to additional requirements for the oversight of regulated self-insurance programs by the state risk manager.

Brief Description: Addressing the regulation of self-insurance programs by the state risk manager.

Sponsors: Senators Hobbs, Litzow and Haugen.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/01/11, 2/16/11 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 5387 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Haugen and Litzow.

Minority Report: Do not pass.

Signed by Senators Benton, Ranking Minority Member; Keiser.

Minority Report: That it be referred without recommendation.

Signed by Senator Fain.

Staff: Edward Redmond (786-7471)

Background: Local government entities have the authority to individually or jointly self-insure against risks; jointly purchase insurance or reinsurance; and to contract for risk management, claims, and administrative services. In addition, subject to specified conditions, local government entities may enter into joint self-insurance programs with similar entities from other states. The state Risk Manager (Risk Manager) within the Office of Financial Management (OFM) is responsible for the regulation of such self-insurance activities and may adopt rules governing their operation.

Local government entities must obtain prior approval from the Risk Manager before establishing a joint self-insurance program covering property and liability risks or an

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individual or joint local government self-insured program providing health and welfare benefits. Such prior approval is not required, however, for the creation of an individual self-insurance program covering property and liability risks. Approved self-insurance programs must file annual reports with the Risk Manager and the state Auditor containing specified information regarding their operation.

Summary of Bill (Recommended Substitute): Additional regulatory authority is granted to the Risk Manager for oversight of self-insurance programs. An annual operating certificate, issued by the Risk Manager, is required for all joint-self insurance programs covering property or liability risks, and all joint self-insurance programs providing health and welfare benefits. An operating certificate is not required for individual local government self-insurance programs covering health and welfare benefits, but such entities must receive prior approval from the Risk Manager.

The Risk Manager must decide on the issuance of an initial operating certificate within 120 days from the date an application for certification is submitted. Any joint self-insurance program currently in operation must apply for an initial operating certificate no later than four months from the close of the program's 2013 fiscal year. An operating certificate must be issued to a joint self-insurance program if the Risk Manager finds that the program is in compliance with all statutory and regulatory requirements.

A joint-self insurance program is authorized to purchase an insurance policy or reinsurance certificate to transfer financial exposure to an insurance or reinsurance carrier. The state Risk Manager must only consider those portions of risks not transferred by an insurance policy or reinsurance certificate when determining the joint self-insurance program's liabilities. Such insurance policy or reinsurance certificate must include in its policy a requirement to directly provide the state Risk Manager with (1) a copy of the policy or certificate; and (2) notice in the event of cancellation, termination, or change in the policy.

The Risk Manager may deny, refuse to renew, or revoke an operating certificate under certain conditions including failure to submit all required information at time of application, failure to comply with statutory and regulatory requirements, and operating in an unsafe financial condition. Notice of revocation, and information detailing the reasons for revocation, must be provided to the joint self-insurance program at least 30 days before the revocation's effective date. A joint self-insurance program may appeal the revocation decision by sending a written request for administrative hearing to the Director of the OFM within 90 days from receipt of the revocation notice. The appeal must state the basis for the hearing and the relief sought by the joint self-insurance program.

The annual reporting requirement for approved self-insurance programs is not required for joint self-insurance programs that have an operating certificate.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute): Technical corrections made to clarify that certain provisions of the bill apply to all joint self-insurance programs. New sections are added to address the use of insurance for solvency requirements.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: When the state risk manager program first started there were seven risk pools; today, there are over 1700 organizations that belong to a risk pool. The difference between pools and insurance is that an insurer has to collect all the premiums for all of the claims they have for that year; they do not come back and ask for more funds. With risk pools, you self insure by pooling premiums or assessments together to pay claims. The primary focus for OFM is the solvency of the pools. This is a concern for the members of the pool so that reassessments are minimized; this is also important to the people that have claims because they need to trust there is a solvent party who can pay the claims. With the expansion of the program, solvency has been an issue for some pools. The only tool OFM currently has to enforce compliance is a cease and desist order. The bill creates a license so that OFM can impose a consequence for acting in a financially unstable manner. The State Auditor supports this bill. It is in the public interest to make sure the risk pools are properly regulated. The tools in the bill are reasonable and necessary. Currently, there are five risk pools that have a hard time meeting reporting requirements. The state Risk Manager needs tools to intervene and correct this problem. There are two types of pool operations, one is an insurance-based TPA style system and the other is a pure municipal risk pool model. There are two different divides to this argument: self-insurance and commercial insurance. In 1986 commercial insurance pooled out of public entity business and public entities could not buy commercial insurance which is why risk pools were formed. The state Risk Manager understands self-insurance, whereas the Office of Insurance Commissioner (OIC) understands commercial insurance. You cannot apply commercial insurance regulation to a self-insurance animal, it does not work.

CON: The School Insurance Association of Washington (SIAW) is comfortable with the current regulation. The rates in this pool are 25 percent less than the rates in other pools. The State Auditor bills SIAW for their audits; OFM bills SIAW for their oversight and for the additional cost of an outside audit from an agency in California. This has cost the pools jointly \$125,000 which is then passed on to cities, schools, and other public entities. The United School Insurance Program encourages an annual state audit. OFM, however, does not have the resources or expertise to oversee the industry. All members on the panel propose an alternative. Regulation should be provided from a single agency, not multiple agencies. The OIC should be the agency in charge of regulating the risk pools; they have accredited insurance professionals that speak the insurance language. The City Insurance Association of Washington struggles from the change in regulation from year to year. The OIC is a better fit as they would be focused on insurance instead of budget and policy.

Persons Testifying: PRO: Julie Murray, Lacy Isaki, OFM; Lindsay Long, State Auditor's Office; Lew Leigh, Washington Cities Insurance Authority; Loy Dale, Southwest Washington Risk Management Cooperative; David Hayesaka, Washington Schools Risk Management Pool.

CON: Monte Redal, School Insurance Association of Washington; Dan Hornfelt, United School Insurance Program; Darren Brugman, Nonprofit Insurance Program; Wes Cargo, City Insurance Association of Washington.