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**HOUSE BILL 2467**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Representatives Kirby, Jinkins, and Santos

AN ACT Relating to joint self-insurance programs for property and liability risks; amending RCW 48.62.011, 48.62.021, 48.62.031, 48.62.034, 48.62.111, 48.62.121, and 48.62.141; and adding a new section to chapter 48.62 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 48.62.011 and 1991 sp.s. c 30 s 1 are each amended to read as follows:

(1) This chapter is intended to provide the exclusive source of local government entity authority to individually or jointly self-insure risks, jointly purchase insurance or reinsurance, and to contract for risk management, claims, and administrative services. This chapter shall be liberally construed to grant local government entities maximum flexibility in self-insuring to the extent the self-insurance programs are operated in a safe and sound manner. This chapter is intended to require prior approval for the establishment of every individual local government self-insured employee health and welfare benefit program and every joint local government self-insurance program. In addition, this chapter is intended to require every local government entity that establishes a self-insurance program not subject to prior approval to notify the state of the existence of the program and to comply with the regulatory and statutory standards governing the management and operation of the programs as provided in this chapter. This chapter is not intended to authorize or regulate self-insurance of unemployment compensation under chapter 50.44 RCW, or industrial insurance under chapter 51.14 RCW.

(2) This chapter is further intended to enable qualifying state agencies that are unable to obtain a sufficient amount of property and liability insurance coverage through the private market, or through the state agency self-insurance liability program implemented pursuant to chapter 4.92 RCW, to participate in a local government joint self-insurance program covering property and liability risks.

**Sec.**  RCW 48.62.021 and 2015 c 109 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Health and welfare benefits" means a plan or program established by a local government entity or entities for the purpose of providing its employees and their dependents, and in the case of school districts, its district employees, students, directors, or any of their dependents, with health care, accident, disability, death, and salary protection benefits.

(2) "Local government entity" or "entity" means every unit of local government, both general purpose and special purpose, and includes, but is not limited to, counties, cities, towns, port districts, public utility districts, water-sewer districts, school districts, fire protection districts, irrigation districts, metropolitan municipal corporations, conservation districts, and other political subdivisions, governmental subdivisions, municipal corporations, quasi-municipal corporations, nonprofit corporations comprised of only units of local government, or a group comprised of local governments joined by an interlocal agreement authorized by chapter 39.34 RCW.

(3) "Nonprofit corporation" or "corporation" has the same meaning as defined in RCW 24.03.005((~~(3)~~))(16) or a similar statute with similar intent within the entity’s state of domicile.

(4) "Property and liability risks" includes the risk of property damage or loss sustained by a local government entity and the risk of claims arising from the tortious or negligent conduct or any error or omission of the local government entity, its officers, employees, agents, or volunteers as a result of which a claim may be made against the local government entity.

(5) "Qualifying state agency" or "qualifying state agencies" means a state agency, board, commission, or other entity of the state, other than a local government entity, with a biennial operating budget of not more than five million dollars.

(6) "Risk assumption" 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.

((~~(6)~~)) (7) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

((~~(7)~~)) (8) "State risk manager" means the risk manager of the office of risk management within the department of enterprise services.

NEW SECTION. **Sec.**  A new section is added to chapter 48.62 RCW to read as follows:

(1) A qualifying state agency may participate in a local government joint self-insurance program formed or operating in accordance with this chapter if:

(a) The qualifying state agency determines it is impossible or impracticable for the qualifying state agency to obtain a sufficient amount of property and liability insurance coverage through the private market and the state agency self-insurance liability program implemented pursuant to chapter 4.92 RCW;

(b) The local government joint self-insurance program the qualifying state agency will participate in has never exercised any authority in RCW 48.62.034 to contract indebtedness or issue and sell any type of bond or short-term obligation evidencing indebtedness; and

(c) The qualifying state agency is not obligated to pay or otherwise satisfy the debts or liabilities of the local government joint self-insurance program, or the program's participants, to the extent doing so would result in the creation of state debt within the meaning of Article VIII of the state Constitution.

(2) A qualifying state agency meeting the criteria in this section may join a self-insurance program with local government entities covering property and liability risks, may jointly purchase insurance or reinsurance with other entities for property and liability risks, and may contract for or hire personnel to provide risk management, claims, and administrative services, to the same extent as is authorized for local government entities pursuant to this chapter, except as otherwise provided.

**Sec.**  RCW 48.62.031 and 2015 c 109 s 3 are each amended to read as follows:

(1) The governing body of a local government entity may individually self-insure, may join or form a self-insurance program together with other entities, including qualifying state agencies as provided in section 3 of this act, and may jointly purchase insurance or reinsurance with those other entities for property and liability risks, and health and welfare benefits only as permitted under this chapter. In addition, the entity or entities may contract for or hire personnel to provide risk management, claims, and administrative services in accordance with this chapter.

(2) The agreement to form a joint self-insurance program shall be made under chapter 39.34 RCW and may create a separate legal or administrative entity with powers delegated thereto.

(3) Every individual and joint self-insurance program is subject to audit by the state auditor.

(4) If provided for in the agreement or contract established under chapter 39.34 RCW, a joint self-insurance program may, in conformance with this chapter:

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

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

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

(d) Jointly purchase insurance and reinsurance coverage in such form and amount as the program's participants agree by contract;

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

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

(5) A self-insurance program formed and governed under this chapter that has decided to assume a risk of loss must have available for inspection by the state auditor a written report indicating the class of risk or risks the governing body of the entity has decided to assume.

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

(a) Service upon the risk manager as attorney shall constitute service upon the program. Service upon joint insurance programs subject to chapter 30, Laws of 1991 sp. sess. can be had only by service upon the risk manager. At the time of service, the plaintiff shall pay to the risk manager a fee to be set by the risk manager, taxable as costs in the action.

(b) With the initial filing for approval with the risk manager, each joint self-insurance program shall designate by name and address the person to whom the risk manager shall forward legal process so served upon him or her. The joint self-insurance program may change such person by filing a new designation.

(c) The appointment of the risk manager as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the joint self-insurance program, and shall remain in effect as long as there is in force in this state any contract made by the joint self-insurance program or liabilities or duties arising therefrom.

(d) The risk manager shall keep a record of the day and hour of service upon him or her of all legal process. A copy of the process, by registered mail with return receipt requested, shall be sent by the risk manager, to the person designated for the purpose by the joint self-insurance program in its most recent such designation filed with the risk manager. No proceedings shall be had against the joint self-insurance program, and the program shall not be required to appear, plead, or answer, until the expiration of forty days after the date of service upon the risk manager.

**Sec.**  RCW 48.62.034 and 2005 c 147 s 2 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, for the purpose of carrying out a joint self-insurance program, a joint self-insurance program and a separate legal entity created under RCW 48.62.031 each may:

(a) Contract indebtedness and issue and sell revenue bonds evidencing such indebtedness or establish lines of credit pursuant to and in the manner provided for local governments in chapter 39.46 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a local government under chapter 39.46 RCW and appointing a treasurer to perform the functions to be performed by the treasurer under chapter 39.46 RCW;

(b) Contract indebtedness and issue and sell short-term obligations evidencing such indebtedness pursuant to and in the manner provided for municipal corporations in chapter 39.50 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a municipal corporation under chapter 39.50 RCW; and

(c) Contract indebtedness and issue and sell refunding bonds pursuant to and in the manner provided for public bodies in chapter 39.53 RCW with the joint board under RCW 39.34.030; board of directors under RCW 48.62.081; or governing board of a separate legal entity formed under RCW 48.62.031, performing the functions to be performed by the governing body of a public body under chapter 39.53 RCW.

(2) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and a separate legal entity formed under RCW 48.62.031 each may make loans of the proceeds of revenue bonds issued under this section to a joint self-insurance program or a local government entity that has joined or formed a joint self-insurance program.

(3) For the purpose of carrying out a joint self-insurance program, a joint self-insurance program and each local government entity that has joined or formed a joint self-insurance program may accept loans of the proceeds of revenue bonds issued under this section.

(4) A joint self-insurance program or a separate legal entity created under RCW 48.62.031 that includes one or more qualifying state agencies as participants in the program is prohibited from exercising any authority or power in this section.

**Sec.**  RCW 48.62.111 and 2003 c 248 s 20 are each amended to read as follows:

(1) The assets of a joint self-insurance program governed by this chapter may be invested only in accordance with the general investment authority that participating local government entities possess as a governmental entity, or if the joint self-insurance program has one or more qualifying state agencies as participants, then only in a manner consistent with the investment authority of the local government entities as well as all qualifying state agencies participating in the program.

(2) Except as provided in subsection (3) of this section, a joint self-insurance program may invest all or a portion of its assets by depositing the assets with the treasurer of a county within whose territorial limits any of its member local government entities lie, to be invested by the treasurer for the joint program.

(3) Local government members, and any qualifying state agency members, of a joint self-insurance program may by resolution of the program designate some other person having experience in financial or fiscal matters as treasurer of the program, if that designated treasurer is located in Washington state. The program shall, unless the program's treasurer is a county treasurer, require a bond obtained from a surety company authorized to do business in Washington in an amount and under the terms and conditions that the program finds will protect against loss arising from mismanagement or malfeasance in investing and managing program funds. The program may pay the premium on the bond.

All program funds must be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the treasurer or a person appointed by the program and upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW. The treasurer shall establish a program account, into which shall be recorded all program funds, and the treasurer shall maintain special accounts as may be created by the program into which the treasurer shall record all money as the program may direct by resolution.

(4) The treasurer of the joint program shall deposit all program funds in a public depository or depositories as defined in RCW 39.58.010((~~(2)~~))(15) and under the same restrictions, contracts, and security as provided for any participating local government entity and any qualifying state agency participating in the program, and the depository shall be designated by resolution of the program.

(5) A joint self-insurance program may invest all or a portion of its assets by depositing the assets with the state investment board, to be invested by the state investment board in accordance with chapter 43.33A RCW. The state investment board shall designate a manager for those funds to whom the program may direct requests for disbursement upon orders or vouchers approved by the program or as authorized under chapters 35A.40 and 42.24 RCW.

(6) All interest and earnings collected on joint program funds belong to the program and must be deposited to the program's credit in the proper program account.

(7) A joint program may require a reasonable bond from any person handling money or securities of the program and may pay the premium for the bond.

(8) Subsections (3) and (4) of this section do not apply to a multistate joint self-insurance program governed by RCW 48.62.081.

**Sec.**  RCW 48.62.121 and 2009 c 162 s 29 are each amended to read as follows:

(1) No employee or official of a local government entity or a qualifying state agency may directly or indirectly receive anything of value for services rendered in connection with the operation and management of a self-insurance program other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the program. No employee or official of a local government entity or a qualifying state agency may accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or official's independence of judgment is impaired with respect to the management and operation of the program.

(2)(a) No local government entity may participate in a joint self-insurance program in which local government entities do not retain complete governing control. This prohibition does not apply to:

(i) Local government contribution to a self-insured employee health and welfare benefits plan otherwise authorized and governed by state statute;

(ii) Local government participation in a multistate joint program where control is shared with local government entities from other states; ((~~or~~))

(iii) Local government contribution to a self-insured employee health and welfare benefit trust in which the local government shares governing control with their employees; or

(iv) Local government participation in a joint self-insurance program with one or more qualifying state agencies as members, as authorized in section 3 of this act.

(b) If a local government self-insured health and welfare benefit program, established by the local government as a trust, shares governing control of the trust with its employees:

(i) The local government must maintain at least a fifty percent voting control of the trust;

(ii) No more than one voting, nonemployee, union representative selected by employees may serve as a trustee; and

(iii) The trust agreement must contain provisions for resolution of any deadlock in the administration of the trust.

(3) Moneys made available and moneys expended by school districts and educational service districts for self-insurance under this chapter are subject to such rules of the superintendent of public instruction as the superintendent may adopt governing budgeting and accounting. However, the superintendent shall ensure that the rules are consistent with those adopted by the state risk manager for the management and operation of self-insurance programs.

(4) RCW 48.30.140, 48.30.150, 48.30.155, and 48.30.157 apply to the use of insurance producers and surplus line brokers by local government self-insurance programs.

(5) Every individual and joint local government self-insured health and welfare benefits program that provides comprehensive coverage for health care services shall include mandated benefits that the state health care authority is required to provide under RCW 41.05.170 and 41.05.180. The state risk manager may adopt rules identifying the mandated benefits.

(6) An employee health and welfare benefit program established as a trust shall contain a provision that trust funds be expended only for purposes of the trust consistent with statutes and rules governing the local government or governments creating the trust.

**Sec.**  RCW 48.62.141 and 2015 c 109 s 4 are each amended to read as follows:

(1) Subject to subsection (2) of this section, every joint self-insurance program covering liability or property risks, excluding multistate programs governed by RCW 48.62.081 and nonprofit risk pools formed under ((~~RCW 48.62.036 and~~)) chapter 48.180 RCW, shall provide for the contingent liability of participants in the program if assets of the program are insufficient to cover the program's liabilities.

(2) A qualifying state agency participating in a local government joint self-insurance program is not liable for and is prohibited from satisfying any debts or liabilities of the joint self-insurance program or its participants to the extent doing so would result in the creation of state debt within the meaning of Article VIII of the state Constitution.

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