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STATE OF WASHINGTON
BEFORE THE DEPARTMENT OF ENTERPRISE SERVICES

SELF-INSURANCE RISK RULES PUBLIC HEARING

TRANSCRIPT OF HEARING

BE IT REMEMBERED, THAT THE ABOVE-ENTITLED
CAUSE CAME ON FOR HEARING ON THURSDAY, JANUARY 9TH AT 2:30
P.M. BEFORE

HAROLD GOLDES, HEARING OFFICER,
AT OLYMPIA, WASHINGTON.

APPEARANCES:

JACK ZEIGLER, POLICY AND RULES MANAGER
SHANNON STUBER, PROGRAM ADMINISTRATOR

WHEREUPON, THE FOLLOWING PROCEEDINGS WERE
HAD.

I N D E X

<u>SPEAKER :</u>	<u>PAGE</u>
MADELYN CARLSON	12
DARREN BRUGMANN	17
DEREK BRYAN	27
ANN BENNETT	31
ALLEN HATTEN	33
VYRLE HILL	35
MARY SUE LINVILLE	46
RICH MOORE	49
ERIC HOMER	55
PEGGY SANDBERG	61
JIM RICHARDS	62

E-X-H-I-B-I-T-S

(NO EXHIBITS)

1 P-R-O-C-E-E-D-I-N-G-S

2 HEARING OFFICER: Good afternoon, ladies
3 and gentlemen. My name is Harold Goldes. I now call
4 this hearing to order. Now, this is a public hearing.
5 It's being sponsored by the Department of Enterprise
6 Services and I am representing Chris Liu, the director of
7 the Department of Enterprise Services, as the hearing
8 officer.

9 For the record, this hearing is being held
10 on January 9, 2014, in Olympia, Washington, beginning at
11 2:30 p.m., pursuant to the Administrative Procedures Act.

12 Now, if you haven't already done so, I would
13 ask you to please fill out the sign-in sheet, which is
14 located in the back of the room, and we are going to use
15 this sheet to call forward individuals for testimony.
16 And later we are going to use it to ensure that the
17 hearing participants are notified of the hearing results.

18 And for those of you that have written
19 comments that you would like to submit, please give them
20 to Jack Zeigler to be recorded. This is Jack, sitting to
21 my left. And we are going to accept written comments
22 until January 11, 2014, for those who are unable to
23 submit their comments today. Comments may also be mailed
24 to the Department of Enterprise Services, attention Jack
25 Zeigler, at Post Office Box 41410. Now, we actually have

1 a sheet with this information on it so you can take a
2 note, but we are interested in making sure that you can
3 you make sure you can reach us, so this information now
4 is also available. You can e-mail any of your comments
5 to rules at des.washington.gov or you can fax them to our
6 fax number. Comments submitted by fax must be 10 pages
7 or less and comments may also be submitted by going to a
8 rule-making page at the Department's website, and that is
9 also on the sign-in sheet.

10 I am now going to introduce the Department
11 staff who are going to be at this meeting. To my left is
12 Jack Zeigler; he is the policy and rules manager. And
13 sitting next to Jack is Shannon Stuber; she is the
14 program administrator, the local self-insurance
15 oversight.

16 The court reporter for this meeting is
17 Michelle Patton of Dixie Cattell & Associates, and
18 transcripts of the proceeding are going to be made
19 available within five business days at our website.

20 Notice of this hearing was published in the
21 Washington State Register 14-01 on December 9, 2013, and
22 sent to interested parties, and I am going to summarize
23 the proposed rules.

24 This hearing is being held to consider oral
25 and written testimony presented on the proposed rules for

1 chapter 200-100 of the WAC self-insurance requirements
2 governing local government and nonprofit self-insurance.
3 Comments received today, any comments received today, as
4 well as any written comments received, will be presented
5 to the director, and the tentative adoption date for
6 these rules is January 22, 2014. The tentative effective
7 date is June 4, 2014. Please refer to the handout
8 provided to you at the door for a copy of the proposed
9 rules. And copies of this handout are located at the
10 sign-in table if you didn't see it. The sign-in table
11 has been relocated to the back.

12 The Department did not prepare a preliminary
13 cost benefit analysis to determine the impact of the cost
14 of the rules versus its benefit. The Department of
15 Enterprise Services is not an agency listed in RCW 34.05.
16 328(5)(a)(i). Further, DES does not voluntarily make
17 section 201 applicable to this rule adoption nor to date
18 has the joint administrative rules committee made section
19 201 applicable to this rule adoption. No small business
20 economic impact statement has been prepared under chapter
21 1985 of the RCW. The implementation of these rules have
22 no or minimal costs to small businesses.

23 At this time Jack Zeigler will provide
24 background information on rules process and the
25 determination to extend the public comment period.

1 MR. ZEIGLER: What I want to do here is just
2 briefly hit some key milestones and timeframes of the
3 rule-making process so that you can get a feel of
4 where we are at in the process and what is going to
5 lie before us after this public hearing. Okay.

6 Rule-making starts off, basically, with an agency
7 raising their hand and saying, hey, we are going to
8 start rule-making, it's really religiousness, a
9 sentence or two on what the topic is; and that is the
10 CR-101.

11 Then the period of time starts, or sometimes
12 before this, where the rules are drafted and a
13 proposed set of rules are developed and when the
14 agency feels that this is what we want to go forward
15 with, they'll release those and we file for what is
16 called a CR-102. Okay.

17 And basically it tells folks, here is the
18 proposed rules, here is where the opportunity to
19 provide comment -- those opportunities will happen,
20 as well as when an intended adoption date will
21 happen. Okay.

22 At the conclusion of that time, the agency will
23 consider all the comments that have come in, discuss
24 them, review them and make one of three decisions.

25 One decision is they are going to adopt the rules

1 with just minor changes and move forward with that.

2 Another decision might be that what we have
3 learned during the comment period has led the agency
4 to make a decision to make substantial changes to the
5 rules. When that happens, you'll circle back around
6 to the 102 process or before that one, and draft
7 those -- re-draft, if you will -- the rules and then
8 file a 102 and then have a public hearing. And
9 basically it's just repeat that circle. Okay.

10 A third possibility is the agency may make a
11 decision to do nothing. By that, I mean it would
12 simply drop the rule-making activity and make no
13 changes to the existing rules.

14 And the director makes that determination. And
15 so what is going to lie before this is, we are coming
16 to the conclusion of the public comment period, that
17 CR-102 timeframe. After this meeting, the public
18 comment ends on the 11th. And after that point,
19 we'll consider the comments that have come in,
20 whether written or orally received here, and make a
21 determination on which of those three choices that
22 DES will make.

23 Depending on the choice, our intention is by the
24 22nd of January to make that decision. And
25 regardless of the decision, everybody that is on a

1 stakeholder list will be informed of that decision.
2 In fact, we intend to provide a concise explanatory
3 statement in advance of that date so that folks will
4 know what, in advance.

5 If we intend to adopt, the director will adopt at
6 that point in time and the rules will not become
7 effective until June, and agencies have a choice as
8 to when rules will become effective. Sometimes it's
9 as short as 31 days. In this case, it's out to June.

10 This rule-making activity has a continuance.
11 That is not typically the norm and we decided to
12 continue -- rather, extend the public comment period,
13 because we want to make absolutely sure that
14 everybody who is interested had a chance to see a
15 preliminary concise explanatory statement that laid
16 out how DES considered the comments and input that
17 were received to date, and how we came to the
18 determination, as a preliminary decision, to adopt
19 the proposed rules.

20 That decision has not been made final, by any
21 means, because we wanted -- again, we wanted to make
22 sure that we heard all the comments and made sure
23 that we had every opportunity to consider any input
24 that folks wanted us to consider. And so that
25 continuance just simply extends the public comment

1 period through the 11th of January. Thank you.

2 HEARING OFFICER: And now Shannon Stuber will
3 provide a summary of the changes to the current rule.

4 MS. STUBER: Thank you all for coming. I
5 think most of you are very familiar with these rules.
6 You have taken the time to come. We appreciate your
7 being here.

8 Just very briefly, I will tell you that we have a
9 few changes in the proposed rules. One of those
10 changes requires risk pools to fund outstanding claim
11 liabilities at the 80 percent confidence level. The
12 proposed change would increase the confidence level
13 from 70 to 80 percent. Most pools are already
14 meeting or exceeding that. The increased funding for
15 claims would reduce reliance on reassessment to local
16 government and non-profit members of risk pools.

17 The 80 percent confidence level means that, in
18 eight out of 10 years, the pools will have collected
19 and maintained enough money to pay all of the
20 outstanding claims.

21 It's worth noting that the current and the
22 proposed funding requirements apply only to claims
23 that are not covered by insurance, whether it's
24 excess insurance, stock loss insurance or
25 reinsurance. These are only the portion of claims or

1 claims' deductibles not covered by insurance.

2 The proposed changes also clarify that actuarial
3 estimates must be written and they standardized the
4 actuarial practices of providing estimates at various
5 confidence levels. These additional estimates allow
6 pools and board members of pools to know exactly what
7 their financial condition is, and to identify the
8 targets where they need to be funding at, and perhaps
9 some areas that they want to look at and fund.

10 The proposed changes also establish a supervisory
11 watch category and that category provides the
12 opportunity for pools and state risk managers to work
13 together if a pool falls below the 80 percent
14 confidence level.

15 The pool can then increase its funding while it
16 operates under a plan that it -- has been approved
17 and that has been agreed upon between the pool and
18 the state risk manager. This process also reduces
19 the need to issue a cease and desist order, and it
20 reduces regulatory costs and gives pools in a
21 declining financial position some tools to improve,
22 while they are continuing to serve their members and
23 operate.

24 The proposed changes also identify the state risk
25 manager's procedure when a pool operates under

1 supervisory watch but continues to decline
2 financially without meeting the 70 percent confidence
3 level.

4 The proposed changes finally identify that
5 audited financial statements are to be provided to
6 the state risk manager within eight months of a
7 pool's fiscal year end. The state auditor's office
8 has indicated that they are adequately staffed to
9 meet this deadline or that pools can use an auditor
10 that is an outside audit firm.

11 Earlier audited financial statements increase
12 transparency to members so that they can know what
13 the financial condition of their pool is, and they
14 also allow pool boards to have better information in
15 planning and funding and structuring their rates to
16 make sure that their claims are safely funded.

17 And that is a brief overview and I'll let Harold
18 continue.

19 HEARING OFFICER: Thank you. So, now, at
20 this time, I am going to take testimony from those of
21 you who have signed up to testify. We are going to
22 use the sign-in sheet as my list, and I am going to
23 ask you to please identify yourself, to spell your
24 name and identify who you represent, for the record.

25 I am going to start with Madelyn Carson.

1 MS. CARLSON: Madelyn Carlson, M-A-D-E-L-Y-N
2 C-A-R-L-S-O-N.

3 I am People For People, and I am a CEO for People
4 for People. And People for People is an Eastern
5 Washington nonprofit. We were established in 1965.
6 We receive over 15 million in federal, state and
7 local funds. And those funds are entrusted to us to
8 provide service to our communities to help the most
9 vulnerable citizens in our communities that we serve
10 in Eastern Washington.

11 People for People provides transportation for
12 special needs individuals, employment and training
13 services, senior nutrition commonly referred to as
14 Meals on Wheels, and we also operate a two-on-one
15 call center.

16 As a nonprofit, we are operating with taxpayer
17 dollars and we really value the transparency,
18 accountability and efficiencies. A decade ago People
19 for People recognized that the increasing costs of
20 insurance was eroding our ability to provide vital
21 services and helped to create the legislation that
22 allowed nonprofits, in 2004, to form their own
23 insurance pool, NPIP, the Nonprofit Insurance
24 Program.

25 NPIP has provided a stable, affordable insurance

1 that allows us and over 550 other non-profits in the
2 state of Washington to have this increased cost
3 savings. NPIP saves taxpayer dollars. It allows
4 non-profits to do what we do best and that is to help
5 our most vulnerable populations in our communities.

6 People for People is opposed to changing the
7 rules governing self-insurance pools by requiring
8 them to increase the funding level from the 70th
9 percentile to the 80th percentile. There is no
10 justification to increase the funding level. NPIP
11 has successfully operated for 10 years at the current
12 funding level and our experience rate is at the 30th
13 to 35th percentile. Requiring NPIP to move to an
14 80th percentile level of funding will significantly
15 over-fund the pool. This change will require over
16 550 nonprofit organizations that serve Washington
17 citizens to pay higher insurance premiums without
18 increased benefit, that return on investment that you
19 spoke about.

20 What does this mean for non-profits? It means
21 that we will have to reduce services to our
22 community. What does that mean for our community?
23 It means that some seniors will not have a hot meal.
24 It means that some medically fragile individuals will
25 not have access to health care. It truly means that

1 individuals and families will lose services.

2 I thank you for the opportunity to share the
3 concerns of non-profits across the state that have
4 struggled with decreased resources during these
5 economic times in order to provide services to some
6 of our most fragile individuals and families.

7 I request that you retain the current rule that
8 requires funding the insurance pool to the 70th
9 percentile and not unnecessarily increase this
10 requirement to the 80th percentile and negatively
11 affect over 550 non-profits in Washington.

12 I also have a letter that I would like to read
13 into testimony from another nonprofit. This is from
14 Paratransit Services.

15 Paratransit Services was formed 33 years ago in
16 response to a need in our local community for
17 accessible transportation services. We are a private
18 nonprofit 501(c)(3) transportation company
19 headquartered in Bremerton. Since 1980 we have been
20 providing transportation services in partnership with
21 transit services, social service agencies,
22 municipalities, counties, our state government and
23 other transportation providers, to deliver a broad
24 catalog of transit services: fixed route,
25 Dial-A-Ride, van pools, employee shuttles, deviated

1 fixed-route service, non-emergency medical
2 transportation, special event transportation and
3 various combinations of these services. We currently
4 operate in three states -- Washington, Oregon and
5 northern California -- with over 300 employees.

6 Paratransit Services has purchased its insurance
7 from NPIP for the last 10 years since its inception
8 in 2004. Prior to insuring with NPIP, our insurance
9 rates had skyrocketed over 900 percent in the prior
10 three years and nearly put Paratransit Services out
11 of business. This would have had a devastating
12 effect on thousands of clients we serve and the
13 difference we make in their lives each and every day,
14 let alone our 300-plus staff.

15 Since insuring with NPIP, we have received stable
16 rates, excellent risk management and outstanding
17 client handling.

18 Paratransit services has been following the
19 recent attempts by DES to make changes to an existing
20 law that has been working well for 10 years. We
21 believe that the proposed changes are in direct
22 conflict with the legislative intent when non-profits
23 were originally allowed to pool within the framework
24 of RCW 48.62.

25 The intent of the legislation was to provide a

1 maximum flexibility to insurance program members
2 while ensuring that the programs remain solvent. The
3 DES-proposed WAC changes continue to erode maximum --
4 the proposed changes would continue to erode maximum
5 flexibility and are being done in the name of
6 solvency.

7 Paratransit believes that the current rules
8 governing self-insurance pools requiring that the
9 programs are funded to the 70th percentile are
10 sufficient, especially in light of the fact that NPIP
11 has maintained an actual claims experience rating in
12 the 30th to 35th percent range. However, in the
13 event of a catastrophic event, the nonprofit pool
14 would be able to reassess over a period of a year,
15 much like any other government pool who has taxing
16 authority. The only time a government entity would
17 consider a tax-authority request would be if there
18 was a program-wide catastrophic loss not covered
19 through insurance.

20 We believe that by increasing the funding
21 requirement over 70 percent, when the actual
22 experience rating runs between 30 to 35 percent,
23 would force members to overpay today for claims that
24 are highly unlikely to develop in the future, thus
25 having less funds to provide valuable services each

1 nonprofit provides to its community.

2 Paratransit services urges DES not to propose
3 that the funding requirement be increased to 80
4 percent, but remain at the 70th percentile.

5 Sincerely, David Baker, president and CEO of
6 Paratransit Services.

7 HEARING OFFICER: Thank you. I would now
8 like to call Darren Brugmann.

9 MR. BRUGMANN: My name is Darren, D-A-R-R-E-N;
10 last name, Brugmann, B-R-U-G-M-A-N-N.

11 I am here wearing two hats here as part of my
12 testimony. I am here as the NPIP, Nonprofit
13 Insurance Program board chair on behalf of the over
14 550 members in that NPIP program, as well as I am
15 here for the agency that I currently work for, which
16 is Senior Services of Snohomish County.

17 For 10 years, NPIP has been able to provide each
18 of our member agencies what has been clearly stated
19 and defined in our mission statement, that is, to
20 ensure the availability of stable and affordable
21 insurance protection for the nonprofit sector.

22 Unfortunately, after over a year -- well, even
23 more than a year -- of contentious meetings,
24 discussions even to a point of name-calling of our
25 agency or our program, DES continues to push proposed

1 changes to WAC 200-100.

2 I think part of the problem -- and I am -- I am
3 kind of very, very extremely bothered by these
4 handouts that were just handed out. The 21 questions
5 here, I am just going to be regurgitating in my
6 testimony. There is clearly a misunderstanding of
7 how our program is run and the effect it has on our
8 nonprofit agencies.

9 When you hand out a brochure of Frequently Asked
10 Questions that we have asked specifically of the
11 regulator, through these meetings as well as at a
12 meeting with the new Director Liu, less than a month
13 ago, to be given the answers finally two minutes
14 before I am ready to speak, I -- I just don't know
15 what to say to that, other than to put that very much
16 I am bothered by that.

17 And the second part of that -- I am bothered
18 by that -- is the answers you are speaking on behalf
19 of non-profits with some of your answers, and they
20 are totally false. For instance, question number 4
21 states, will there be the proposed changes to the 80
22 percent level, will that increase rates for
23 non-profits? Your answer is no. Well, I have got
24 some going in my testimony: It will increase. It
25 has increased our membership. You changed this rule

1 two years ago from 50 percent to 70 percent, it
2 increased our rates. And now that is why we have
3 been vehemently trying to explain our program, our
4 structure and clearly we have missed the boat. There
5 is still not an understanding between our regulator
6 and our program, and that is problematic.

7 As I mentioned, we have had several meetings. We
8 believe these rule changes are unnecessary and will
9 further increase the burden of funding insurance for
10 non-profits. While it is important to note DES has
11 relented on pushing the specific exclusionary
12 language that was originally aimed at non-profits, if
13 the proposed changes go into effect, each and every
14 one of our 550 members will be affected financially
15 and the ability to provide services to representative
16 clients, as madam has spoken to -- that she read in
17 the record from our other non-profit -- we can have
18 550 non-profits stating the same.

19 While NPIP reaffirms objections to other proposed
20 sections, as testified at previous hearings, I am
21 going to speak specifically, obviously, to this
22 competence-level-factor issue.

23 Why is this change unwarranted? Increasing the
24 funding requirement for over 70 percent -- when the
25 actual experience rating runs, we experience between

1 30 to 35 percent -- would force members of my agency
2 to overpay today for claims that are highly unlikely
3 to develop in the future, thus having less funds to
4 provide valuable service to each NPIP member --
5 provides service to its representative community.

6 The DES-regulators-proposed WAC changes are in
7 conflict with legislative intent when non-profits
8 were originally allowed to pool within the framework
9 of RCW 48.62. The intent of the legislation was made
10 to provide maximum flexibility to ensure -- to its
11 insurance program members. The DES-proposed-WAC
12 changes continue to erode that maximum flexibility
13 and are done in the name of solvency. The use of the
14 word solvency by the DES regulators is very
15 misleading. When DES states we do not meet the
16 solvency tests, it would imply that we do not have
17 sufficient funds to pay our bills. That is
18 absolutely not true. Under the current solvency
19 requirements, programs are required to fund the 70th
20 percentile. Just a few years ago it was at the 52 to
21 54 percent. Therefore, a program that has a cash
22 reserve below the 70th percentile could be required
23 to reassess its members. The method most likely to
24 be used by most programs would be to adjust their
25 member contributions the following year and increase

1 their cash reserves to the 70th percentile
2 requirement.

3 We believe that impacts to the change from the
4 70th to 80th percentile is by itself -- may appear
5 not hugely impactful. With most of the recent
6 actuary reports, NPIP would have to increase its
7 funding level annually by approximately over \$72,000
8 to move from the 70th to the 80th.

9 Up until 2010, NPIP was required to fund at its
10 expected level of 52 to 54 percent. If NPIP were
11 able to continue funding at the levels required
12 started two years ago, NPIP members would save at
13 least a 100 -- nearly 200,000 annually, which could
14 be used by non-profits to provide more services to
15 the communities they serve. The solvency
16 requirements will only increase as NPIP grows. That
17 is important to note this isn't a one-year, this is
18 -- you implied that it will be ongoing, fully
19 ongoing.

20 The claim -- the difference between the 80th
21 percentile and NPIP's actual claims experience at the
22 35th percentile, as I mentioned, is about 250,000
23 annually. This means that NPIP is significantly
24 over-funding the program each year because of the
25 state-mandated solvency standard, which is not based

1 on actual experience. This also impacts
2 reassessments.

3 Individual members of NPIP are aware they could
4 be reassessed as agreed to in their membership
5 agreement that they sign when they become members. It
6 is not fair to reassess them at the 70th percentile
7 when the actual claims' experience to NPIP is closer
8 to the 35th percentile. That means that members
9 would likely be reassessed for expenditures that are
10 extremely unlikely to materialize.

11 However, before reassessment is implemented,
12 every attempt would be made to create a funding plan
13 that did not require reassessment. For example,
14 let's say that a program is underfunded by 700,000
15 and that reassessment is being considered. If the
16 reassessment was allocated equally to all of the
17 current over 550 members without regarding to size or
18 premium levels, each member would have to pay about
19 \$1200 extra. It is highly unlikely that a government
20 entity would tax its constituents for that small
21 amount. Instead, this shortfall will most likely be
22 addressed during the next budget period, especially
23 since the insurance claim may take up to seven years
24 to fully develop. However, before a reassessment is
25 implemented, every attempt would be made to create a

1 funding plan that did not require reassessment. The
2 rules currently governing self-insurance pools
3 require that a program fund to the 70th percentile.

4 We believe that the current requirement is
5 sufficient to maintain financially insolvent pools.
6 In fact, the 70th percentile requirement was created
7 barely two years ago and there has been not
8 sufficient enough time to determine that we have to
9 increase it again and that more stringent requirement
10 is necessary.

11 NPIP has easily met the 70th percentile
12 requirement, but at an increased cost, as I stated
13 previously.

14 The competition: The regulator would prefer that
15 members, specifically non-profits because we do not
16 have a taxing authority, overpay today claims that
17 are unlikely to develop in the future. And if they
18 do develop, the programs would be able to address
19 them without a reassessment. If, however, a
20 reassessment is required, it could be constructed in
21 such a way as to have minimal impact.

22 The competition to NPIP's program structure has
23 been using the taxing authority issue ever since it
24 appeared that non-profits would be included in RCW
25 48.62. With that said, both the House and the Senate

1 unanimously approved the non-profits' participation
2 even with discussions of that without any
3 exclusionary language in 2004. The only time a
4 government entity would consider a tax authority
5 request would be if there was a program-wide
6 catastrophic loss not covered through insurance. For
7 this reason, we believe the regulator and the WAC
8 rule change is focusing on the wrong problem. Of
9 greater concern, in a potential reassessment that
10 rarely happens, is the inability of the insurance
11 carrier to pay for a catastrophic loss. That is why
12 NPIP will only buy insurance from an A-rated
13 insurance carrier. Buying insurance from a
14 less-than-A-rated-carrier could conceivably put an
15 insurance program at considerable risk if a major
16 claim is not paid.

17 As we have suggested, if one of the regulator's
18 rules is for transparency for members, then recognize
19 there are different pooling models operated. The
20 rules submitted by DES for consideration were
21 generated by a single request from a member pool
22 representative of the committee, not by members of
23 the committees as a whole. At best, the requested
24 rule changes should have been more fully vetted at
25 the committee level and this question enhancer even

1 more confirms that -- should have been more fully
2 vetted at the committee level to determine whether
3 individual members, the committee can support or not
4 not support the changes. The requested rules
5 submitted by DES were not supported by all members of
6 the committee. Frankly, it was undetermined if a
7 simple majority of the program support the changes.

8 The rules changes submitted by one representative
9 of the WRAC committee were driven by the need of that
10 pool member to create a legislative competitive
11 disadvantage for member pools that do not follow a
12 specific insurance pooling model. The role of DES
13 should be to help guide rule-making that provides
14 sufficient oversight, appropriate competition and
15 allows maximum flexibility through member-voted
16 representation. It should not be the role of DES to
17 decide through rule-making which pooling model they
18 support. Most importantly, it should not be the role
19 of DES to rewrite legislation through regulation.

20 In conclusion, many nonprofit entities provide
21 much-needed services, as is well-known within their
22 communities, that would not be available if operating
23 margins are increased by arbitrary regulation and
24 rule changes. These rule changes are contrary to the
25 intent of the legislation passed ten years ago that

1 created the ability for government and nonprofits to
2 self-insure. That legislation allowed for a prudent
3 financially responsive process to provide less
4 expensive options to entities that serve the public.
5 By singling out one-cycle pool model, these proposed
6 rule changes will not enhance fiduciary
7 responsibility. They will, however, make it more
8 difficult for non-profits to serve their communities.
9 That is why we have been vehemently objecting to
10 these rules, even ones implemented more than two
11 years ago.

12 So, in essence, by paying today for claims
13 unlikely to come and increasing our insurance costs,
14 DES is driving the non-profits to the choices around
15 resources that we are fearing the most: cuts in
16 service, cuts in staff, obtaining more funding.
17 Meaning, if we have to pay 1000 more in insurance now
18 and forever due to the rule change, we have to make
19 the same choices around where to get that money as if
20 we were in a reassessment situation, but this time it
21 is not due to anything real, like actual claims, but
22 unnecessary regulation because DES regulators don't
23 understand the business model of how we have already
24 mitigated risk and successfully done that for 10
25 years.

1 550 non-profits with increased costs for no gains
2 in safety or any other public policy purpose is not
3 good rule-making. We respectfully request the rules
4 remain as written. Thank you.

5 HEARING OFFICER: Derek Bryan.

6 MR. BRYAN: Derek, D-E-R-E-K; last name,
7 Bryan, B-R-Y-A-N.

8 Thank you for the opportunity to testify on
9 behalf of the Association of Washington Cities Risk
10 Management Service Agency. I'm just going to talk
11 today, really, about why we support the increase in
12 solvency standards, why we support solvency standards
13 to begin with.

14 You know, I think for a lot of people, a lot of
15 risk pools talk to individual members about how we
16 are not insurance and we are not an insurance company
17 and we are risk pools, but I think what we have to
18 realize, what I think a lot of us in here at this
19 level realize is, there are certain areas in what we
20 do, that we have to be similar to an insurance
21 company.

22 One of those is our claims investigating and
23 handling, one of those is the way we interpret and
24 handle coverage issues, and the most important of
25 which is the way we reserve and the way we stand

1 financially.

2 The word solvency gets thrown around, I think, a
3 lot and what it means to me is, it's an ability to
4 deliver on the promise to pay for what you have said
5 you can pay for, without giving someone the concern
6 that later on they'll have to -- even though they are
7 signatory to being reassessed -- there is a promise
8 that is made that we'll do everything we can to not
9 reassess you.

10 There is a term also that gets thrown around that
11 I think a lot of people don't think a lot about,
12 which is the term, contract of adhesion. An
13 insurance policy is, in fact, a contract of adhesion,
14 which is: One party creates and writes a contract,
15 delivers it to another party and gives them the
16 opportunity to either accepted or reject it, but not
17 modify it and negotiate it. So the party that writes
18 that contract is the one who has been put in the
19 position of being responsible to interpret that
20 contract of adhesion as well.

21 And so those that sign it, our members, for
22 example -- those that sign it are doing so with this
23 blind trust that they are going to be given promises
24 and that we are going to deliver on those promises.
25 And, in fact, they even called and asked us to

1 interpret the contract which we have asked them to
2 sign.

3 Every day that I get in my car and I put my kids
4 in the back seat, I tell them to buckle their seat
5 belts and we hit the road, and we go 60-plus miles an
6 hour down the freeway. Now, I am a guy that when I
7 buy a car, I am pretty meticulous; I check the oil,
8 the brakes, make sure the heater works, the seats
9 work, the windows work, but what I don't do is start
10 taking apart the seat belt plastic covers and making
11 sure that those are all intact and that they are
12 perfectly designed. The reason I do that is not
13 because I trust myself or -- I definitely don't trust
14 the other drivers -- it's not even that I trust the
15 manufacturer of the car that I am in. It's because I
16 trust the agency that is charged with the
17 responsibility to set standards and require that
18 those standards be met. And I do so, again, with
19 blind trust, knowing that I am going to be protected
20 and I am allowing other people to tell me that I am
21 going to be protected and I am going to put my trust
22 in them.

23 So, we didn't bring any members here with us
24 today and the reason that we didn't is because, for
25 the exact same reason, that they would blindly trust

1 us, that they do blindly trust us, to testify on
2 their behalf and to provide them with the service
3 that they have asked for. Because every day, they
4 are not thinking about risk management, but we are
5 thinking about risk management, every day. And they
6 have asked us to be the ones, on their behalf,
7 thinking about risk management. They would come here
8 and regurgitate exactly what we would tell them to
9 say. And I would be disappointed if the manufacturer
10 of the car I am driving was to lobby to lower
11 standards in which they have to meet to install seat
12 belts in cars, air bags in cars.

13 I'll close by saying that what amazes me the most
14 coming through insurance -- I have been in insurance
15 for many years, and what surprises me the most is
16 that there is a whole lot of things in the insurance
17 industry that aren't very constant, but one thing
18 that is very constant is inflation. The fact that
19 claims today cost more than they did 10, 15, 20 years
20 ago, and they'll cost more 10 or 15 or 20 years from
21 now, than they do today.

22 And I recall looking at old policies in contracts
23 when we are handling claims that come out of nowhere
24 from past years, and we see the limits are a million
25 dollars, and I remember asking someone why is the

1 limit a million dollars on this policy from 10 years
2 ago or 15 years ago, and the answer is because that
3 was enough to cover most claims that occurred.

4 Today, one million dollars, then, is 10 million
5 dollars now and will be 20 million dollars in the
6 future. We can't continue to set low standards and
7 maintain those low standards. We completely support
8 higher standards, and even at 80 percent, we don't
9 believe that that is still meeting the high standard
10 and the promise that we have made to our members to
11 deliver, which is why we make every effort to go
12 above and beyond the lowest standard that is
13 available.

14 I thank you for allowing me to testify today.

15 HEARING OFFICER: I would now like to call Ann
16 Bennett.

17 MS. BENNETT: My name is Ann Bennett, A-N-N
18 B-E-N-N-E-T-T.

19 I am the executive director from Washington
20 Cities Insurance Authority. I have read a lot of the
21 comments that have come through and there is a lot of
22 discussion about our entity proposing the rule for a
23 business advantage.

24 We proposed the rule because it the right thing
25 to do. Promises made need to be promises kept. If

1 we have learned anything since this recent financial
2 crisis, it's that regulators are important. The
3 insurance industry really was able to survive a lot
4 of the issues in this recent crisis because of state
5 regulators. Now, I am not insurance; I am a risk
6 pool. But much like my colleague Derek said, my
7 members expect me to act like that.

8 Solvency from 70 to 80 percent confidence levels
9 in the insurance industry would be laughable. In
10 fact, if you follow the industry right now, in Europe
11 they are raising the bar on solvency. These are
12 minimum levels. We wholly support raising from 70 to
13 80. We have heard from members who have had cash
14 calls with other organizations. They do not need
15 surprises. They were stunned that that was the way
16 business was done. They assumed that when they
17 bought that coverage, that coverage would pay. That
18 is what insurance is for.

19 We wholly support the changes and the raise in
20 confidence level, and frankly, I would like to say I
21 am offended that had there is any notion that we
22 propose bettering solvency for a business advantage.

23 Thank you for the opportunity to address this.

24 HEARING OFFICER: I would now like to call
25 Linda Triplett.

1 MS. TRIPLETT: I will not be testifying.

2 HEARING OFFICER: Thank you. Moving on to
3 Allen Hatten.

4 MR. HATTEN: My name is Allen Hatten,
5 A-L-L-E-N H-A-T-T-E-N, and I want to thank you for
6 this opportunity to speak.

7 It's good to see my colleagues and friends out
8 here addressing what I believe is a very fundamental
9 important issue that needs to be addressed, and I
10 will support the comment from my colleagues from the
11 Washington Cities and from the Washington Authority
12 Pool on their support of this bill.

13 The Washington State Transit Insurance Pool is a
14 consortium of 25 public transits throughout the
15 state. To give some depth to the size, it represents
16 about a 100 million miles a year in exposures that we
17 would have. We began operating in 1989. We serve a
18 large, vast community throughout our state and the
19 issue of insurance is very much an important part of
20 their business models.

21 The actuarial determination of the confidence
22 level is done with a due diligence of understanding
23 what is your risk. You have a history of claims and
24 claims settlements as you go along and it is up to
25 the actuary to look at the history and determine,

1 based upon whatever actuarial prognostication he goes
2 through, to estimate what that exposure will be in
3 the near future, in the upcoming year. And the
4 question is, well, how much of that do you want to
5 buy into; do you want to buy a 100 percent of that,
6 do you want to buy 90 percent, or do you want to buy
7 70 percent? We have a practice in our organization
8 to vote 90 percent. Our program here is one that we
9 don't need surprises. One of the fundamental, you
10 know, processes of the government is no surprises;
11 you set a budget, that is the number. If you are
12 able to reap a benefit from that, in time, that will
13 offset the initial due diligence you took, but this
14 is a case where we want to define ourselves outside
15 of the arena of the minimums that have already been
16 stated. We want to increase the responsibility we
17 have to our members and for them, to their
18 constituents.

19 So, if you already have the claimed event and you
20 have an actuary who is telling you what they expect
21 that number to be in the following year, the
22 estimate, why would you do less? Why would you
23 consider that you are going to roll the dice and hope
24 that you are going to do better than what the actuary
25 said? So, we are saying that we would like to see it

1 go to 80 percent; that is still a 20-percent risk.
2 How many of them want that in their next surgical
3 operation, a 20-percent risk? You know what,
4 especially when the unfortunate circumstances might
5 come up.

6 So, we want to support this bill. We want this
7 ruling to go forward. We think it's appropriate for
8 us to do that and we would encourage the board and
9 those with the decision-making responsibilities to go
10 forward and implement it as soon as is practical.
11 Thank you.

12 HEARING OFFICER: Now, I am going to
13 apologize if I get this wrong. Vyrle Hill.

14 MR. HILL: You are very correct, thank you.

15 HEARING OFFICER: Thank you.

16 MR. HILL: Yes, it is Vyrle Hill. And it's
17 spelled V-Y-R-L-E H-I-L-L.

18 I am the executive director of the Washington
19 Counties Risk Pool and I have been such for the last
20 nine years. Prior to that, I was the county
21 administrative officer for Pacific County for some 30
22 years. During that period of time with Pacific
23 County, I was one of the steering committee members,
24 and then had one of founding directors of the
25 Washington Counties Risk Pool and Pacific Counties

1 representatives to its board of directors. So, I
2 have more than 25 years of experience with the
3 Washington Counties Risk Pool. The risk pool was
4 formed officially in August of 1988 with 15 of
5 Washington's 39 counties participating. We have
6 served 30 of the counties during the tenure of the
7 pool. We presently have 27 of the counties that we
8 are members of.

9 The Washington Counties Risk Pool supports the
10 proposed amendments to the WAC that are being put
11 forward, and without elaborating on those who went
12 before us, I would just like to make a couple of
13 other comments that -- a little bit maybe removed
14 from the discussion, but I think that are pertinent
15 to be able to better clarify the situation.

16 I guess I am, at least, apathetic of the
17 nonprofit issues such as are being brought forward.
18 The legislation authorizing non-profits to pool or to
19 participate in risk pools that was established in
20 2004 by an amendment to RCW 48.62, was chosen, a
21 path. Those of us that were involved at that time
22 argued vehemently against it because 48.62, by its
23 very title, is referred to as local government
24 insurance transactions, and it was designed to
25 respond to the issues relative to local governments,

1 not to corporations, that even though they are
2 nonprofit corporations now. That said, I support the
3 idea of risk-pooling; it just shouldn't have been
4 rolled in together, in my judgment. I think it has
5 caused complications since the beginning and will
6 continue to cause complications until such time as
7 it's separated.

8 Beyond that, I am going to read from -- actually,
9 I am going to read the fourth sentence in RCW 48.01
10 and 050. 48.01 is the state insurance code and 050
11 is the definition of insurer.

12 HEARING OFFICER: I am just going to ask you
13 to read a little bit slowly so that we can be sure to
14 capture that.

15 MR. HILL: Very good. The fourth sentence
16 starts with: Two or more local governmental
17 entities, under any provision of law, that join
18 together and organize to form an organization for the
19 purpose of jointly self-insuring or self-funding are
20 not an "insurer" under this code.

21 Now, there are several other citations within
22 that same section regarding hospitals, regarding
23 affordable housing entities, business of commercial
24 fishing, that are also noted as not being insurers
25 under the code as well too, but no place in 48.01.050

1 is a nonprofit listed as not being an insurer,
2 whether it's by pool or whatever.

3 In 48.62, the authority for nonprofit pooling was
4 added under section 036 as subtitle two -- and
5 without reading it per se, I want to just read the
6 last phrase in that particular section because it
7 does authorize a risk pool to join -- excuse me --
8 non-profits to form a risk pool or to join with a
9 local governmental entity or entities in a risk pool,
10 but the provision is subject to the same rules and
11 regulations that apply to a local government entity
12 or entities under this chapter.

13 I hate to say it, but I want to make sure that we
14 don't end up with a situation where the tail is
15 wagging the dog. I really am appreciative of the
16 concerns of the nonprofit communities that they are
17 raising. I think that there is merit to that issue,
18 but to live within the statutes that exist today
19 without further amendment, there has to be compliance
20 with the rules that are going to be representative to
21 local governments, and local governments are very
22 different circumstances. Certainly, when the
23 hardening market of the early to mid '80s translated
24 in the inability for governments to be able to
25 acquire at least affordable insurance, most were not

1 getting insurance renewals at all. There was a move
2 to form -- to establish 48.62, which was -- which was
3 passed in 1991. There was a precedence before that
4 in another statute -- don't ask me to give that
5 citation right now, because I don't recall -- but it
6 allowed local risk pools to be formed. Then it was
7 separated out as 48.62 in 1991.

8 At that particular point in time there, almost
9 all local governments in this state, at least
10 certainly the cities and towns in this state, and the
11 counties, were either individually or jointly
12 self-insuring for at least their liability concerns.

13 After that time, things have evolved, things have
14 kind of settled down, as our colleague from the
15 Cities communicated, a million dollars was a large
16 policy at that particular point in time on the
17 liability side. Well, we require the smallest of
18 entities to carry three to five million dollars of
19 coverage at this time. So, things have just evolved.
20 The Washington Counties Risk Pool, when it was
21 formed, offered its members -- in a self-funded,
22 totally self-funded, no insurance involved -- in the
23 beginning, a million dollars because that was a
24 common place for occurrence limit. Shortly after
25 that we reformed. We were able to secure an excess

1 policy that raised the limits to five million dollars
2 per occurrence with limitations because the excess
3 policy had exclusions that the underlying agreement
4 amongst the members did not include. Over the years,
5 that has continued to change. When re-insurance was
6 authorized in 1995 by the legislature for local
7 governments, we moved to reinsurance. And as
8 reinsurance came into play, we were able to increase
9 the limits again and again and again and effectively
10 take control of the coverage that the members were
11 willing to jointly share the risk of, because that's
12 really what it amounts to. We went to reinsurance
13 but reinsurance is exactly that, it's reinsurance.
14 The responsibility of the coverage that is provided
15 lies with the pool. If the insurer, the commercial
16 insurer, that is offering the reinsurance contract
17 disappears, as has occurred in the past, then
18 coverage is still there for the membership. There
19 just isn't any insurance company to recover the funds
20 on behalf of the pool. That is where the confidence
21 level comes into play; that is where the concern
22 comes into play.

23 Our pool had probably, I would -- I don't know
24 this for certain because I haven't surveyed them all,
25 but I believe the subject of the largest reassessment

1 of any of the risk pools that are operated in the
2 state. It happened -- we noticed a deficiency about
3 year eight, which because liability claims usually
4 take, year ones, seven to 10 to 11 years to be able
5 to develop, took that period of time. Our initial
6 assessment of the deficiency rose to the requirement
7 of having to levy a six and a half million dollar
8 reassessment against members. To put that into
9 perspective, at that particular time, our annual
10 total contributions of the members was three and a
11 half million dollars. So, the reassessment by itself
12 was almost twice what the annual assessments had
13 been. Before those years finished developing -- by
14 the way, those years continued to develop negatively
15 for about the next three or four years.
16 Coincidentally, it happened to be a time when the
17 weather in the Northwest wasn't the best. So, to put
18 that in relationship, you can imagine what kind of
19 claims they actually were. All in all, we ended up
20 having to supplement the reassessment and collect
21 almost \$12 million dollars. We did it over time,
22 because we didn't need it immediately; it was needed
23 to pay claims later on.

24 When all of the members had finished paying their
25 assessments in early 2007, the first thing that the

1 board of directors chose to do -- now, again, this
2 isn't staff, this isn't via the executive director,
3 it was the board of directors, and in the Washington
4 Counties Risk Pool each member has a representative
5 on the board of directors. The board of directors
6 said what can we do to assure that that never happens
7 again, that we do not have to reassess our membership
8 in the future, and the response that I made, since I
9 was a relatively new executive director at that time,
10 is, there is no assurance, because the statute
11 requires the potential of reassessment. However, if
12 you want to decrease the likelihood, then you
13 increase your surplus. You do that by enhancing your
14 reserve and moving forward.

15 Almost initially after the pool was formed we
16 established a surplus desire of 85 percent, meaning
17 we weren't going to give anything back, we weren't
18 going to use it to offset the costs of the insuring
19 program or anything unless we had a reserving status,
20 a surplus status of at least 85 percent confidence,
21 actual confidence.

22 When the board chose to make the change, they
23 ratcheted that confidence up from 85 to 98 percent,
24 98 percent probability that there were going to be
25 sufficient funds to pay any and all claims; that is a

1 pretty significant chunk, and at the time, it
2 actually amounted to about an additional dollar in
3 reserve for each dollar that was expected by the
4 actual study that had to be paid out for. So, a
5 two-for-one relationship. Things have stabilized
6 until the recession; the national/international
7 recession occurred, and many of the commercial
8 insurers ended up being really shaky. Uncle Sam had
9 to step in and bail out AIG, and although they have
10 recovered from that at this particular point in time,
11 there were many who thought that the largest -- or
12 the strongest -- insurance company in the world was
13 going to go under. We were one of those programs
14 that had reinsurance from an AIG company; we had
15 excess insurance placed with the AIG company.

16 So, our board of directors, since that particular
17 point in time, had continued to express concern about
18 making sure that we were sufficient and stable to be
19 able to address such a crisis in the future, and
20 likewise, to be in a position that should we have,
21 God forbid, a major claim, which was a full-limits
22 claim, leading to the likelihood of either
23 extraordinarily high increases in renewal rates, if
24 any ability to renewal at all anyway, to be able to
25 make that transition from reinsured, to going back to

1 the point of being fully self-funding.

2 We are not this overly aggressive retention
3 entity that we might be accused of being, because the
4 pool's limits of retention at this point in time is
5 \$100,000 per liability occurrence. We reinsure
6 everything beyond that, yet a number of our members
7 actually have deductibles that go up to as much as
8 \$500 dollars per occurrence. So, the pool doesn't
9 have much of an exposure. We look at the terms under
10 48.01 regarding the insurer; we take that verbatim.
11 We are not an insurance company, we are not an
12 insurer. We are a service agency and we serve the
13 local governments that are members of the
14 organization. That is all we are. Yes, we manage
15 their liability claims and we provide an avenue for
16 them to obtain their property coverage for the real
17 and personal properties, and in some cases, some
18 other incidental types of coverages. But in reality,
19 we are not an insurance company; we are a service
20 agency, and we need to make sure that we are prepared
21 to serve the entities.

22 In closing, I just want to communicate, we just
23 received our fiscal year-end reserve and report from
24 our independent actuary, and things have stabilized
25 because, as I mentioned, back in 2007, to reach a 98

1 percent confidence factor meant almost 100 percent
2 surcharge to the expected claims values.

3 Because things have stabilized, as it relates to
4 our organization, that differential at this
5 particular point in time is now down to just under 30
6 percent. The 70 percent confidence level that is the
7 current rule requires our pool to put aside roughly
8 6.3 percent beyond the expected claimed -- the
9 actuarially expected claims' value, about \$920,000.

10 To move to the 80 percent that is recommended at
11 this point in time means to add to that another
12 \$975,000, and raises our differential to 13 percent.
13 Our board didn't stop there. Our board saw the risk
14 that is lying out there and they chose to have a
15 targeted-fund balance. They have done it two years
16 ago. And the conclusion of that was that we, at this
17 time, need a minimum of \$12.5 million, not \$920,000,
18 not \$1,900,000 but \$12.5 million at minimum, to be
19 able to protect ourselves from the risk of either the
20 marketplace hardening to the point we can no longer
21 obtain reinsurance, or having a catastrophic loss
22 that makes the renewal almost impossible.

23 HEARING OFFICER: Excuse me. We have a
24 20-minute limit on presentations and you have three
25 minutes left.

1 MR. HILL: I was just going to close. I was
2 going to say thank you for the opportunity speak.
3 Again, the Washington Counties Reserves Pool does
4 support the particular rule. Appreciate it.

5 HEARING OFFICER: I would like to call Mary
6 Sue Linville.

7 MS. LINVILLE: Thank you. My name is Mary
8 M-A-R-Y; Sue, S-U-E; last name, L-I-N-V-I-L-L-E.

9 I am the current director of risk management for
10 the Washington Schools Risk Management Pool. And
11 prior to coming to the pool, I have been in the
12 commercial insurance industry for some additional 20
13 years. I tell everyone I started when I was five.

14 What I have seen in my history of being with
15 commercial insurance and with the pool is the
16 reliance on reinsurance or excess insurance by our
17 member districts and insurance companies that are not
18 always going to be there tomorrow.

19 Several years ago with the risk pool, we had one
20 of the largest claims that had ever been filed
21 against the risk pool to the tune of \$54 million. We
22 were able to settle that claim for \$11.2 million and
23 walked away feeling pretty good about that until we
24 found out that our reinsurance company, which was put
25 together by a pool of pools, ABRIC, had become

1 insolvent. Had it not been for this foresight of our
2 executive board to make certain that we always
3 maintained a minimum of 90 percent confidence level,
4 we might not have been able to pay out on that \$11.2
5 million loss without having to go back and assess our
6 members. The thing that our members always ask of
7 us, because they are public entities and they are so
8 tied to their budgets, is that please don't ever put
9 us in a position of where we are going to have a cash
10 call or where we were going to have to have a premium
11 raised to the point of having the impact of 50
12 percent increase in premiums, 80 percent increase of
13 premiums, to be able to pay for those losses that are
14 going to be presented to the pool the coming year.

15 I think it was wise on the part of our executive
16 board to require that we have a minimum 90 percent
17 confidence level. I have watched risk pools across
18 the United States fail because their state didn't
19 have the foresight, like the proposed law here for
20 Washington State, to set an adequate minimum amount
21 of money that needs to be in a pool to assure that
22 its members are protected in that promise to pay.

23 I think that the majority of the risk pools that
24 you have heard from today are already insured at 80
25 percent or better. I think that it is the general

1 consensus of most of the risk pools that I have
2 talked to personally, is that is what a prudent
3 person would have normally done under the same
4 circumstances, which is the very definition of risk
5 management, and that is one of the fundamentals of
6 most insurance pools as well.

7 As far as the other changed proposals, I really
8 also want to state that we are definitely -- agree
9 with the proposals that are being made to identify a
10 procedure for which the state risk manager can work
11 with risk pools who find themselves falling below a
12 set confidence level. I think that it in fact
13 removes all of disparate treatment. I think it would
14 be providing the state with a consistency of the way
15 things would be handled, and if nothing more, knowing
16 what it is that the state risk manager would want to
17 do to help a pool to once again become solvent, gives
18 you the guidance of what you should be doing in the
19 first place, and I think that that would be an
20 awesome tool for each of the pool participants to
21 have.

22 I also want to say that we are definitely in
23 favor of requiring the pools to provide audited
24 financials, within a very reasonable amount of
25 time -- eight months seems to be quite reasonable to

1 me, for all the reasons that were explained in the
2 question and fact sheet that was provided us.

3 If our members are wanting to know how we are
4 doing today so that they can prepare for tomorrow,
5 it's very, very difficult for them to figure that out
6 if they are looking at figures that are two years
7 old.

8 So, I want to say that the Washington Schools
9 Risk Pool and our members and our executive board
10 definitely are in favor of the proposals. Thank you.

11 HEARING OFFICER: And now I would like to
12 call Rich Moore.

13 MR. MOORE: Hello. My name is Rich Moore.
14 It's R-I-C-H M-O-O-R-E.

15 I am here today representing the United Schools
16 Insurance Program, the School Insurance Association
17 of Washington, the Cities Insurance Association of
18 Washington, the Washington Risk -- or the Washington
19 Rural Counties Insurance Program. Approximately,
20 with that group, about 445 members stretching from
21 one corner of the state to the other. So, it's a
22 large section of the state of Washington.

23 In addition, I am also the financial officer of
24 Canfield, which is a third-party administrator who
25 performs the insurance services for four of these

1 programs I had previously mentioned. I have worked
2 with Canfield now for three years. Prior to that, I
3 worked as a school district administrator, most
4 recently in the school district of Renton.

5 In 1996, I was a founding board member for the
6 School Insurance Association of Washington. The
7 reason I bring that up is that previously the person
8 that provided testimony mentioned why anyone would
9 want to, perhaps, fund below or why they would even
10 consider funding below the 70th or 80th percentile,
11 and I just wanted to respond to that.

12 As a board member at that time, the reason we
13 enjoyed the opportunity to join a program or pool is,
14 for once we thought we could have more of a say in
15 our insurance needs, what kind of coverage would we
16 have, what would be the funding level, and times were
17 difficult. As you heard from previous testimony,
18 sometimes it was difficult to find insurance
19 coverage. That, I readily admit, and to have a pool
20 option presented to us was a wonderful experience.

21 In addition, there were -- there were a couple of
22 different pool options that were provided to us; one
23 was a higher deductible, less reliance on insurance
24 market. The other option was a lower deductible,
25 more reliance on insurance market. Our thought was,

1 let's try to find the model that keeps as much money
2 as possible in the school district coffer and not put
3 it into a program, and let's try to keep that program
4 amount or the cost of that program as low as possible
5 by aggressive-risk risk management, and therefore
6 controlling our potential liabilities for the future.

7 So, with that, we started. And fortunately, we
8 started in 1996, because I don't believe under
9 today's constraints, we would be able to form another
10 program. That option would not be available to us,
11 and I think in a way that is unfortunate, that the
12 folks in this room are going to be the only option
13 until we regulate ourselves out of business and folks
14 have to go to a first-party insurance option because
15 our pricing has gotten so high that we are no longer
16 competitive with real insurance markets.

17 With that being said, I would like to also offer,
18 so just bear with me for a moment, a kind of -- an
19 analogy here. I live in a small city in Eastern
20 Washington. And within that small city, that small
21 city through local governments, has determined what
22 the rate of speeds are going to be on roads. So they
23 decided which road is 25 miles per hour, which road
24 is 40 miles per hour, which road is 50 miles per
25 hour; they decided that locally. Imagine if my small

1 city were to receive a notice from Olympia, from the
2 department responsible for roads in general, and they
3 say, we've decided that based upon a national
4 standard -- and talked to other cities -- that your
5 speed limits are incorrect; we need you to change
6 your speed limits -- when my city were to ask, why
7 are the speed limits not good for us; we think those
8 speed limits work great for our city. If they were
9 to respond, well, again, it's a standard, that we
10 don't believe you are meeting that standard, and
11 people in the other cities are, we believe that you
12 need to change yours.

13 My example is -- kind of goes to what I have
14 really been bothered by the whole process -- is the
15 diminishing, again, of local control. I believe
16 there should be some standards. I believe that 70
17 percentile is adequate if that is where they want to
18 be. Knowing that, is there a chance there could be
19 some reassessment, possibly. Again, they would have
20 you believe that that reassessment is going to occur
21 -- in the next 10 years, it's going to occur three
22 times. I would say that has not been our experience
23 in any of the pools, that it has not been that there
24 has been a reassessment every three years.

25 The other point I would make is that, I believe,

1 locally, that I would support those that want to be
2 90 percent; I would support those that want to be 150
3 percent. That is the idea of local control, being
4 able to choose where your risk appetite is, and I
5 support the other programs out there in having
6 different models that want to keep more funds in
7 their program and not at the local level. That is
8 okay, folks have chosen to be a part of that. That
9 is what I think competition is all about.

10 Where I start to get a little bit frustrated is
11 someone else at a regulatory level says, I am sorry,
12 your local people don't have the ability to make the
13 right decisions; we are going to make them for you.
14 That is where I start to get a little upset.

15 It was stated by the DES staff that they proposed
16 increase to the 80th percentile will make it more
17 unlikely that members will be reassessed. However,
18 the 70th percentile is the same. It is no more
19 likely that they'll be reassessed. Again, I would
20 challenge the DES to show us where programs
21 nationally that do operate at the 70th or 80th
22 percentile have had to do reassessments. I don't
23 believe that is the case.

24 A lot of other things have been discussed and I
25 won't reiterate the same things, but I would say

1 there is one other issue that I really feel needs to
2 be hammered home again, and that is, we are focusing
3 so much on potential reassessment first on the
4 liability side and I don't believe we have focused
5 near enough on what I consider a far greater
6 exposure. You just heard what happens if an insurance
7 carrier is not able to pay a claim; I totally support
8 that issue. In my mind, that is the far greater
9 concern, and so I have always been somewhat surprised
10 as I joined into the insurance business here, is that
11 I am surprised that the regulator has no rules
12 defining what the appropriate level of insurance that
13 members should have. Meaning, are they getting their
14 insurance through an A-rated carrier? I believe that
15 that probably, in my mind, is a far greater exposure
16 that the regulator has been somewhat silent on. So,
17 as we begin new work with the WRAC process, I really
18 hope that should be a focus, is do we have sufficient
19 coverage to avoid, in my mind, a far bigger risk.

20 As was mentioned earlier, in 2010 was when the
21 ruling was required that the requirement of funding
22 liabilities would change to require funding at the
23 70th percentile. It's been three years. I don't
24 think that is really that much time between when the
25 rules were initially implemented, and between then

1 and now, I don't see any issue that has arisen that
2 would say to us, hey, 70th percentile was not
3 sufficient, we need to go to 80th. I'm afraid in two
4 more years we are back here saying, hey, let's go to
5 90th, a year later, let's go to 100th.

6 So, if that is the case I guess I just want to go
7 on record now, that I am already against that,
8 because I am probably going to be back here saying
9 the same things.

10 I just want to thank you for your time. I
11 appreciate the opportunity to provide testimony.

12 HEARING OFFICER: Thank you. I would like to
13 call Eric Homer.

14 MR. HOMER: My name is Eric Homer, E-R-I-C
15 H-O-M-E-R.

16 I am here representing Canfield, third-party
17 administrator, a small employer in Eastern
18 Washington. We have a 105 full-time and part-time
19 employees in a town with a population of around 7000,
20 and I have had the opportunity to work in this
21 industry for 20-plus years, and have worked closely
22 in forming four pools and worked closely with six
23 pools for over 20 years. So, I have seen the ups and
24 downs and the challenges of lots of different
25 self-insured retention pools and self-insured

1 retention clients as individuals.

2 I believe that the closer I -- the longer I have
3 served our members and our clients, the more I think
4 the founders of the legislation had it right. They
5 obviously spent a lot of time in a crisis mode in the
6 mid '80s to determine how to solve some problems, and
7 they felt, obviously, at that time, that those
8 problems would be best solved at the local level and
9 not in Olympia. So, they wrote the law that way.
10 They wrote the law to say things that aren't in front
11 of other bills that I read, in the preamble, that
12 there should be maximum flexibility solving the
13 problem, and that you should operate in a safe and
14 sound manner, and beyond that, they wanted the local
15 bodies at their local jurisdictions, collectively,
16 that were going to jointly insure, to solve those
17 problems, and not have it be dictated from Olympia,
18 and say I think you ought to operate like this from
19 afar.

20 So, they authorized local bodies to elect boards
21 to move up and down with their funding of claims and
22 purchase or costs of insurance. They authorized them
23 because they understood the volatility of the
24 insurance market and the unpredictability of claims.

25 Speaking specifically to the proposed WAC change

1 for funding requirements of the 80 percent, I have no
2 issue with funding to 80 percent. That should be
3 your local body's -- your board's choice. Having a
4 state mandate to fund higher than 70, that -- that
5 factor alone guts the original intent of the
6 legislative authority granted to the local boards.

7 I would argue that 70 percent every year might be
8 too restrictive. I think I said that in 2010. There
9 will be years where the funding is higher than 80 --
10 might be needed. And there will be years that you
11 could fund at 40 or even less.

12 These rule changes take the critical component of
13 flexibility, and I think is the secret sauce of
14 pooling in our state, away from these organizations
15 and require them to fund that every year.

16 Pooling in our state has been very successful. I
17 think attributed by -- if you look at the landscape
18 in which members are in pools and which ones aren't,
19 it's been extremely successful for all the boards
20 that are working and members that are joining
21 together.

22 I think the testimony for the rule, prior to
23 this, are missing the point. Pools can set their own
24 policy solvency today, set it at 110, set it at 100
25 or 80, 95.

1 The state agency should not impose on each pool
2 and force each pool to look like each other and say
3 you will fund like this because I said so. It
4 doesn't make any sense. We have asked for a problem
5 statement over and over, and there are no unpaid
6 claims that I am aware of from these pools that are
7 covered by their treaties, their reinsurance or their
8 memorandum of coverage or their policies, whatever
9 they call that document.

10 Removing a key ingredient of the success by a
11 state-mandataire funding requirement jeopardizes all
12 pools, the ability to compete in the marketplace.
13 Maybe you don't feel like that today, but it's not a
14 long-term recipe for success, for your pool, for any
15 other pool.

16 A first-dollar market who is not interested in
17 your long-term health will come in and provide a
18 product to your county, your city, your school, your
19 nonprofit, for whatever it is that you insure your
20 pool, for a year or two at a cut-rate cost and undo a
21 significant amount of success over 35 years in
22 pooling in the state of Washington. Do not let a
23 single department in the state or a couple of
24 individual regulators undo what the state Senators
25 and the House of Representatives delivered to these

1 local bodies. They reaffirmed that in '03. I sat in
2 the House committee, I sat in the Senate committee,
3 listened to them debate these very issues of
4 taxability or not-taxability or tax authority, and
5 they decided to implement these laws the way it was
6 written anyway. They decided not to implement
7 restrictive rules and pass a law and say you will
8 fund it like this. They didn't say that. They said
9 let's let the local bodies determine how they fund
10 the risk and what risk they bear.

11 The fact is the regulatory department then, which
12 was OFM, this very department, testified in favor of
13 the law written the way it is today, without the
14 restrictive funding requirement.

15 Let's focus for just a minute on the safe and
16 sound piece for a moment. The largest exposure was
17 already addressed, the excess placement, the excess
18 reinsurance, the ability for them to pay a claim
19 whether it's a reliance going out of business or an
20 AIG wobbling, the largest exposure we have to our
21 pools is not the self-insured portion, and we all
22 know that. It's the insurance placement or
23 reinsurance placement that protects our pool members
24 that we negotiate on annual basis. Let's turn the
25 focus to the solvency of larger risk-bearing partners

1 and not the self-insurance component. If we are
2 going to mandate anything from the state of Olympia,
3 let's mandate that we use an AM best-rated insurance
4 company and allow members to move in and out of
5 programs with one-year's notification. Let's not
6 restrict them for longer than that.

7 We have been asking for the reasons for changes
8 since '08, have yet to receive any answer that makes
9 sense other than it's the industry standard. It
10 appears that the regulators are picking which
11 industry standard they like because of use of an
12 A-rated carrier is an industry standard, but this
13 recommendation remains unconsidered by the
14 regulators.

15 As a program administrator of six programs, a
16 captive, a pool in Oregon, some work in Idaho, I can
17 tell you for sure this is not a good change for any
18 pool model to be told from Olympia how to fund your
19 program in the long term. Thank you very much.

20 HEARING OFFICER: Thank you. I would now
21 like to call Scott Hussle.

22 SPEAKER: He had to leave for another meeting.

23 HEARING OFFICER: Okay. And, finally, I
24 would like to call Peggy Sandberg.

25 MS. SANDBERG: I thought you would never call.

1 Hi. I am Peggy, P-E-G-G-Y; Sandberg,
2 S-A-N-D-B-E-R-G.

3 I am with the Southwest Washington Risk
4 Management Insurance Cooperative. We are a
5 cooperative of 33 school districts and we also buy
6 our excess insurance from another self-insured pool,
7 the Washington Schools Risk Management Pool. So, we
8 are a cooperative and we are a member of the
9 cooperative, very concerned with the solvency.

10 First of all, I would like to say to DES I really
11 appreciate the Frequently Asked Questions which, for
12 the record, were e-mailed to all interested parties
13 with a notice of this hearing yesterday afternoon.
14 So, we did get a chance to review them. What I found
15 incredibly interesting and I didn't know until this,
16 is that all the pools -- all the 50 regulated pools
17 in the state of Washington, except for one, meet the
18 80 percent confidence level. So, it's very
19 interesting to me that this is such an issue when the
20 pools meet it, and the one that doesn't meet it is of
21 concern to me. I put on your table there the state
22 auditor's report that showed that in 2012 this pool
23 is potentially boarding on insolvency. When one pool
24 fails in the state, it affects us all. We are very
25 concerned about that. I thank the state risk manager

1 for offering an option for helping pools recover.
2 And I pray that CIAW recovers and becomes healthy
3 again -- concerned about that.

4 So, thank you for taking the four steps to help
5 the pool recover. Thank you for setting the 80
6 percent confidence level. Look at what it's done for
7 the state of Washington, and thank you for getting
8 SAO to do our audits within a year, because that is
9 something we have not been able to do. We see these
10 as very positive changes and we heartily support the
11 changes proposed by DES. Thank you.

12 HEARING OFFICER: So is there anyone else who
13 would like to testify on the proposed rules?

14 MR. RICHARDS: I would.

15 HEARING OFFICER: Could you state your name?

16 MR. RICHARDS: Sure.

17 HEARING OFFICER: Thank you.

18 MR. RICHARDS: Jim, J-I-M; Richards,
19 R-I-C-H-A-R-D-S.

20 I would normally stand up here representing the
21 nonprofit insurance program, but I think rather
22 instead I'll be up here today as a private citizen,
23 somebody with 30 years of experience in and around
24 Olympia, watching the WAC rule process, participating
25 in the process, sitting on that side of the table as

1 an agency employee, and I think maybe we have heard a
2 lot about the actual rule, but I think I am going to
3 speak a little bit to the process, and I'm just going
4 to ask you some rhetorical questions and maybe they
5 will be thought provoking; maybe they won't be. It's
6 really how you pick it.

7 Number one. Doesn't it seem odd that the pools
8 using a certain business model support this rule
9 while those under another business model oppose it?
10 That should raise questions in your mind about this
11 rule.

12 Isn't it odd that this information-gathering
13 hearing, supposedly of an impartial nature, puts out
14 a propaganda piece against my client, essentially --
15 apparently it was E-mailed, but we didn't see it --
16 essentially right before the start of this hearing
17 and mentions my client specifically by name?

18 Isn't it strange to you that two months after
19 this hearing process was completed another extra --
20 which I might say, during those -- at those two
21 hearings, the testimony was overwhelmingly against
22 this rule -- overwhelmingly against this rule. Now
23 we have an extra hearing at which rule supporters
24 finally decide to show up or perhaps were asked to
25 show up? That should bother you.

1 Doesn't it seem odd that the agency is using the
2 WRAC committee as a reason to push forward this rule
3 change, but at the same time, the very same time,
4 says it has no legislative authority and is just a
5 place to share ideas? How can it be both at once?
6 That should bother you.

7 Here is another strange thing: The regulator,
8 unable to pass legislation that included some of
9 these changes before the legislature, turns to the
10 WAC process to essentially change the legislation.
11 That should bother you. Go to the legislature. You
12 couldn't, so now we are doing it through WRAC -- WAC
13 process.

14 One more. Isn't it odd that those pools
15 supporting the rule, essentially our competition,
16 already funded over 80 percent? So, the rule really
17 doesn't even impact them, just their competition?
18 That should bother you as a regulator; as an
19 impartial regulator, that should bother you.

20 You, sir, representing Director Liu, these
21 actions should raise concerns about what exactly is
22 going on in one of his departments, and I say that
23 bluntly and frankly and perhaps brusquely, but again,
24 I have seen a lot of these processes. This process,
25 while it may certainly live within the rule of law of

1 the WAC process, is certainly outside the spirit of
2 the process. Thank you.

3 HEARING OFFICER: Thank you.

4 Is there anyone else who would like to testify on
5 the proposed rule?

6 So, the deadline for sending in written comments
7 would be January 11, 2014.

8 And I want to thank all of you who testified
9 today, and this hearing is adjourned at 4:04.

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11 (Adjourned at 4:04 p.m.)
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C E R T I F I C A T E

I, MICHELLE L. PATTON, the undersigned
Washington Certified Court Reporter, do hereby certify:

That the foregoing hearing at Department of
Enterprise Services was taken before me and completed on
the 9th day of January, 2014, and thereafter transcribed
by me by means of computer-aided transcription; that the
transcript is a full, true and complete transcript of the
hearing;

That I am herewith securely sealing the
transcript of hearing of Department of Enterprise
Services and promptly serving the same upon Department of
Enterprise Services.

IN WITNESS HEREOF, I have hereunto set my
hand this _____ day of _____, 2014.

MICHELLE L. PATTON, CCR #2500
Certified Court Reporter in and
for the State of Washington
residing at Shelton.