

DEPARTMENT OF ENTERPRISE SERVICES

PUBLIC HEARING FOR ORAL AND WRITTEN COMMENTS

RE: PROPOSED RULE CHANGES TO CHAPTER 200-100
OF THE WASHINGTON ADMINISTRATIVE CODE

COPY

Monday, September 30, 2013

9:15 a.m.

Held at:
Department of Enterprise Services
1500 Jefferson Street Southeast
Olympia, Washington 98051

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APPEARANCES FOR DES

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Officer

DEVIN PROCTOR

DES Rules and Policy Coordinator

SHANNON STUBER

DES Program Administrator - Local
Government Self-Insurance Oversight

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COMMENTING PARTICIPANTS

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P R O C E E D I N G S

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2
3 HEARING OFFICER: So now we go to formally
4 calling the hearing to order. Good morning. My name is
5 Harold Goldes, and I've now called this hearing to
6 order.

7 This is a public hearing that's sponsored by
8 the Department of Enterprise Services. I represent
9 Chris Liu. Chris Liu is the Director of the Department
10 of Enterprise Services, and I'm serving in this capacity
11 as hearing officer.

12 For the record, this hearing is being held on
13 September 30th, 2013, in Olympia, Washington, beginning
14 at 9:15 a.m. pursuant to the Administrative Procedures
15 Act, or the APA.

16 So, just by way of reminder and housekeeping,
17 if you have not already done so, fill out the sign-in
18 sheet. The sheet is what I use to call people forward
19 for testimony, and later will use that to ensure that
20 hearing participants are notified of the hearing
21 results, so we want to get back to you and contact you
22 when results are developed.

23 And written comments. Again, I just would
24 remind you that we're eager to hear what you have to
25 say. If you don't speak today, you can always submit a

1 written comment later. We have a sheet with all the
2 contact information that you would need to provide
3 written comments in various modes.

4 So, again, I've introduced myself. I'd like
5 to introduce Devin Proctor. Devin Proctor is the rules
6 and policy coordinator. And Shannon Stuber, who you
7 already heard from, is the program administrator for the
8 Local Government and Self-Insurance Oversight Program.

9 Karen Grant here today to my right, from Dixie
10 Cattell & Associates, is the court reporter for the
11 hearing, and we're taking a transcript. And the reason
12 why that is important is that when you come up and give
13 your testimony, please speak reasonably slowly, not like
14 me. The transcripts will be available only from the
15 court reporter.

16 So notice of this hearing was published in
17 the Washington State Register 1371 on September 4th,
18 2013, and it was sent to interested parties. This
19 hearing is being held to consider oral and written
20 testimony presented on the proposed rules for
21 Chapter 200-100 of the WAC, the self-insurance
22 requirements governing the local government and
23 non-profit self-insurance.

24 The comments received today, as well as any
25 written comments received, will be presented to the

1 director, Chris Liu. The tentative adoption date for
2 these rules is December 4th, 2013, and the tentative
3 effective date is June 4th, 2014. There's a handout
4 that should have a summary of the -- a copy of those
5 rules.

6 And here's some additional background
7 information regarding the Small Business Economic Impact
8 Statement and Cost-Benefit Analysis. The Department -
9 that's us - did not prepare a preliminary cost-benefit
10 analysis to determine the impact of the cost of the rule
11 versus its benefits. DES is not an agency listed in
12 RCW 34.05.328, Section 5(a)(i).

13 And, further, DES does not voluntarily make
14 Section 201 applicable to this rule adoption, nor, to
15 date, has the Joint Administrative Rules Review
16 Committee made Section 201 applicable to this rule
17 adoption. No Small Business Economic Impact Statement
18 had been prepared under Chapter 19.85, RCW, and the
19 implementation of these rules has no or minimal cost to
20 small business.

21 And now, at this time, I will take testimony
22 from those of you who have signed up to testify. You
23 can come up just to there. Please identify yourself,
24 spell your name, and identify who you represent for the
25 record. And I'm going to use, just for reference, these

1 sign-in sheets. I'm going to start with Luann Hopkins.

2 MS. HOPKINS: My name is Luann Hopkins.
3 L-u-a-n-n, H-o-p-k-i-n-s. I'm the chief operating
4 officer for the Association of Washington Cities, and
5 the director of the Risk Management Service Agency, the
6 risk pool that is commenting on the proposed rule
7 changes.

8 The board of directors of the Risk Management
9 Service Agency, in their capacity representing the 91
10 members of the risk pool, voted in favor of supporting
11 the proposed rule-making in its entirety. I have their
12 written support that I wish to submit. And that
13 completes my testimony.

14 HEARING OFFICER: Thank you.

15 And next -- I hope I have this right. Is it
16 Karl Johanson?

17 MR. JOHANSON: Good morning.

18 HEARING OFFICER: Good morning.

19 MR. JOHANSON: I'm Karl Johanson. 800
20 Northwest Greyhound Way, Pullman, Washington 99163.

21 I'm here representing sort of officially two
22 different entities that are pools currently governed by
23 and would be affected by these proposed changes,
24 negatively affected, in my mind. The first is the
25 not-for-profit insurance pool, which has been around for

1 10 years now. We're over 500 members.

2 The second is -- I'm a long-time school board
3 member, elected school board member of the Pullman
4 School District, which was one of the founders in 1985
5 of the United Schools Insurance Program, both
6 administered by Canfield as our third-party
7 administrator.

8 Before I get into the details of why I think
9 that the changes are unnecessary and targeted toward a
10 certain class of business to create a competitive
11 advantage for one type of pool versus the privately
12 operated pools, of which I'm a board member, I would
13 like to give a little history.

14 I came to this in 2001. I was operating a
15 small agency in Eastern Washington, the Council on Aging
16 and Human Services. With the help of a broker from
17 USF&G, Bill Wigglesworth, he and I had devised a way
18 that we could umbrella under our master policy, the
19 Council on Aging's master policy, nine other non-profit
20 agencies, small non-profit agencies, to jointly purchase
21 under our policy, master policy, their auto side. I've
22 been heavily involved in the rural transportation, lift
23 van, special-needs transportation industry both in Idaho
24 and Washington.

25 When the hard market hit, our insurance per

1 vehicle quadrupled, and we spent almost a year shopping
2 to 27 separate applications we put out. In the end, we
3 were able to get every agency insured, but the smallest
4 amount of increase was three times as much per vehicle.
5 We had 27 -- 47 vehicles in the pool, and we went from
6 an average for one million coverage to -- to -- we were
7 paying around \$1,700 per vehicle. We went to \$5,000 per
8 vehicle, and you can do the math to multiply that times
9 47 vehicles being operated by small nursing homes,
10 head-start centers, and so on.

11 So it was at that time I got involved with the
12 founders of the not-for-profit insurance program, and
13 we're in our tenth policy year now. I was elected to
14 the board in the first election. We've been solvent,
15 we've been meeting every regulation, we've been growing,
16 we have sufficient reserves.

17 I'm particularly objecting to the fact that
18 these increased actuarial levels are said to be
19 costless. We're already spending in the tune of \$50,000
20 a year for actuarial services, and these services don't
21 come cheap. And so when they have to be done at
22 increasingly high confidence levels, it will definitely
23 be an expense to the pools.

24 We've been -- NPIP has been successful since
25 its inception, and it's attracted the attention of other

1 self-insurance programs. These programs are comprised
2 of municipal corporations, such as cities and counties.
3 NPIP is the only program comprised entirely of
4 non-profits.

5 As I mentioned earlier, we don't have any
6 other place to go, and we feel we're being caught
7 somewhat in competition between one model of pools that
8 can -- is administered by the State, and the other
9 privately run pools, and we don't have another place to
10 go.

11 No one was offering me insurance when, on the
12 30th of December of 2002, I was going to shut my doors
13 like the Federal Government is going to shut, maybe,
14 tomorrow. We were going to have to shut because we
15 could not operate the next day. And finally, after 47
16 proposals went out, we were able to be insured.

17 We believe that the rule changes are
18 unnecessary and that they'll further increase the burden
19 of funding insurance to non-profits, and we believe that
20 the self-insurance requirements are currently being met.
21 We're meeting all of the strictures and the particulars
22 that we're required to do. We study hard, we work hard.
23 We work diligently as volunteers working with our
24 third-party administrator, and we see absolutely no
25 reason for these rules to increase the amount and the

1 power of the Risk Manager's office to cease and desist
2 our efforts to insure non-profits in an increasingly
3 tough environment for non-profits to carry out their
4 essential services to the citizens of the State of
5 Washington.

6 I thank you for this opportunity, and I will
7 be submitting similar written testimony by the deadline.

8 HEARING OFFICER: Okay. Thank you.

9 And next would be Jim Richards.

10 MR. RICHARDS: Thank you, sir, and members
11 of the agency. My name is Jim Richards,
12 R-i-c-h-a-r-d-s. I'm here representing the Non-Profit
13 Insurance Program. I am their lobbyist.

14 What you just heard from Mr. Johanson is
15 exactly why the legislature created this program. It
16 was so that non-profit entities with very small margins
17 could get the kind of insurance that they need to
18 provide the services that would otherwise have to be
19 provided by local government or the state or some other
20 entity, or else not even be provided.

21 So there's a legislative intent that these
22 non-profit entities have the ability to insure and to
23 insure affordably. And as long as they meet criteria,
24 in terms of a prudent fiscal fiduciary responsibility,
25 that they could continue to provide that sort of

1 insurance so that these non-profits can function on
2 behalf of us all. And, as you noted, NPIP has more than
3 500 members.

4 So I'm here today really in that regard, but
5 I'm also here today very disappointed in the process, in
6 terms of how this rule-making came about. Some
7 perspective: Two years ago, a bill drafted by OFM,
8 where the self-insurance program used to be housed,
9 would have done many of the things that you see in these
10 rules.

11 That bill somehow overnight became the bill of
12 the competitors to the pools that are like NPIP. The
13 agency essentially disavowed having any notion of where
14 the bill came from, although, when pressed, they did say
15 they did write the bill. This became clear to
16 legislators. Legislators defeated the bill, mainly
17 because of the -- back to the intent issue I just
18 mentioned. They saw this would have impacted the
19 ability of non-profits to actually function.

20 HEARING OFFICER: Excuse me, sir. Just
21 for clarification, you're saying that the bill
22 originated with OFM?

23 MR. RICHARDS: Yes.

24 HEARING OFFICER: Okay. And then from
25 that point forward --

1 MR. RICHARDS: The bill went to the
2 lobbyist for another pool, a pool that is in competition
3 with -- essentially in competition with the business
4 model that is used by NPIP.

5 As I said, the legislation was defeated,
6 mainly because legislators saw that what this was
7 really -- what this really was. It was a case of two
8 competing business models, and one business model
9 essentially, in my view, trying to use the legislature
10 to uneven the playing field.

11 With the defeat of the bill, this WRAC
12 committee was put together. It was supposed to be
13 developed according to Marty Brown, who was then the
14 head of the Department of Financial Management, where
15 the organization was housed, was a place to come to give
16 ideas. It was a place as a sounding board. There was
17 to be no action unless it was by consensus, and I have
18 e-mails from Mr. Brown to that effect. I'd be happy to
19 share that with the group. But that principle went out
20 the door because it became clear that the WRAC was
21 really a place where the business model used by NPIP was
22 going to be challenged by others.

23 And, incidentally, one petitioning party
24 bringing forward a rule change to the WRAC, as we heard,
25 is completely counter to the consensus process that was

1 promised to the people of -- that were participating in
2 the WRAC, and completely counter to the e-mail that I
3 have from Mr. Brown stating that this would be a
4 consensus process. We're here today not through a
5 consensus process.

6 As I said, this really appears to me to be an
7 issue of competition between two different business
8 models, something that should be -- should be addressed
9 in the marketplace. And as long as those business
10 models both meet the required fiduciary responsibility
11 to stay solvent, and if they don't make amends and make
12 good on their ability to be insurance providers, then
13 that should be the market's ability to fix that.

14 I have been in and around Olympia for 25
15 years, and I can honestly say to you that I've never
16 seen such a questionable process as this, and I say that
17 with sincere gravity. I don't say it lightly. I never
18 like to criticize agencies or people within agencies;
19 it's not my style. But I have to say that I really do
20 question this process.

21 Whatever happens with these rules, we will
22 work with the legislature and we will help them
23 understand that the rules that are being looked at today
24 and which may be adopted run counter to the intent of
25 the legislation they created, and we will work to put

1 the program back on track as the legislature intended.

2 And I think I would just simply close by
3 saying, again, there's a reason why programs like NPIP
4 are included in statute, in law. To make the changes
5 you're looking at now would defeat the purpose of the
6 statute and why it's there. Thank you.

7 HEARING OFFICER: Thank you.

8 The next, and as of right now the last,
9 comment would be from Rich Moore.

10 MR. MOORE: Good morning. I am Rich
11 Moore, and that's M-o-o-r-e. I'm the financial officer
12 of Canfield, the third-party administrator for the
13 following insurance programs: The Schools Insurance
14 Association of Washington, which has approximately 40
15 members; the United Schools Insurance Program, which has
16 approximately 150 members; the Washington Rural Counties
17 Insurance Pool, with eight members; the Cities Insurance
18 Association of Washington, with approximately 230
19 members; and, as you just heard, the Non-Profit
20 Insurance Program, which has approximately 560 members.

21 I am here representing the previously
22 mentioned insurance programs and to provide testimony on
23 their behalf regarding the proposed rule-making
24 submitted by the Department of Enterprise Services.

25 The aforementioned pools and programs do not

1 support the DES proposed rule changes. The current
2 Washington Administrative Code has been in place barely
3 two years, and there's been no indication in the last
4 two years that there's a need to make any revisions. It
5 appears that the members of these programs previously
6 mentioned -- that the proposed rule changes are a
7 solution in search of a problem.

8 The CR-102 states that the Department of
9 Enterprise Services took input from a wide range of
10 stakeholders and that the proposed changes came from
11 that exchange. As you've heard, we believe that is not
12 true. There was only the -- the final proposed rule
13 changes were submitted by one member of that program, as
14 you've heard, and they are in support of that change,
15 but there are actually 15 members of that Washington
16 Risk Pool Advisory Committee.

17 As you've also heard, there was no process
18 whereby a consensus was reached. There was some
19 discussion, but, to my mind, we never did as a group
20 reach consensus in support of these changes. As a
21 matter of fact, other proposals submitted by other
22 committee members were not even considered, so there was
23 no time to look at other options that were available.

24 At no time during the meetings of the
25 committee was there ever a clearly defined problem

1 statement or even a discussion as to process. Again, it
2 appears that the proposed rule changes are a solution in
3 search of a problem.

4 More specifically, WAC 200-100-03001, the
5 "Standards for solvency - Actuarially determined
6 liabilities, program funding and liquidity
7 requirements," related to specifically the increase to
8 the 80th percentile. We believe this change is
9 unwarranted because the rules currently governing
10 self-insurance pools require that the programs fund to
11 the 70th percentile.

12 We believe that the current requirement is
13 sufficient to maintain financially solvent pools. Many
14 pools have payment experience that is far below the 70th
15 percentile. Many of the pools that we administer
16 actually pay out, on average, at about the 34th
17 percentile. We are able to document that. And also, we
18 believe that the actuarial estimate anticipates that
19 most payments will be at the 52nd or 53rd percentile,
20 again well below even the 70th percentile.

21 We believe that continuing to increase the
22 required funding level only erodes the local control of
23 boards elected by their pool members. Again, there is
24 no basis for a change in these rules. Nothing has
25 occurred in the last two years that would imply that

1 there is a problem.

2 In regards to the supervisory watch also that
3 is listed in the WAC rule changes, we believe that this
4 change is unwarranted because the change in rule is, in
5 our mind, still too vague as to the definition of
6 satisfactory progress. We believe that this rule allows
7 too much discretion to the State Risk Management,
8 including the use of a cease and desist order. We
9 believe that this rule change would allow unilateral
10 power to the regulator, without providing recourse,
11 mediation, or resolution by a third party. Again,
12 nothing has occurred in the last two years that would
13 imply that there is a problem.

14 In regard to WAC 200-100-037, the standards
15 for management and operations, the financial plans, we
16 believe this change is unwarranted because, even though
17 the State Auditor's Office has said that they would be
18 able to meet the changes, our concern is that that would
19 impact some of our other members.

20 As you can see, we also represent cities,
21 counties, school districts. We believe that the
22 auditors may be able to meet the eight-month
23 requirement, but that would force other audits of our
24 other members to be placed in a secondary status behind
25 that eight-month. We are concerned that if audits are

1 not completed within the regulatory time line, then the
2 insurance programs will be considered out of compliance,
3 and that's our biggest concern.

4 It also appears that the DES believes that the
5 audits should be completed sooner so that individual
6 members have the ability to choose a different insurance
7 option. However, having financial statements completed
8 and audited sooner will remain irrelevant, as long as
9 some insurance pools are allowed to have a more than
10 three-year notice requirement. If the regulator's goal
11 is transparency for members, then reduce the notice
12 requirement to one year for all members.

13 We respectfully request that these proposed
14 rule changes not be implemented. We do not believe that
15 there's any reason to change the rules at this time.
16 Again, as we've experienced the process through the
17 WRAC, we are hopeful that that process will change. To
18 this point, we have been very disappointed in the
19 overall process and would hope that in the coming years,
20 that it can be improved to be a more inclusive process
21 that would allow input not from just one member but from
22 all the members as we try to arrive at a common goal.

23 Thank you.

24 HEARING OFFICER: Thank you.

25 So I've just gone through the list of people

1 who said earlier that they wanted to comment, and is
2 there anyone else who would like to comment?

3 And you would be?

4 MS. PRIDDY: I'm Jennifer Priddy. I was a
5 "Maybe."

6 HEARING OFFICER: I'm sorry?

7 MS. PRIDDY: I was a "Maybe" on the --

8 HEARING OFFICER: Oh, okay. Great.

9 MS. PRIDDY: I'll be very brief. My name
10 is Jennifer Priddy. I'm the assistant superintendent
11 with the Olympia School District. My name is spelled
12 P-r-i-d-d-y.

13 I'm here today representing the Schools
14 Insurance Association of Washington, which is a group of
15 40 school districts, and the school districts in our
16 pool do not support the rules proposed by the
17 Department.

18 Our first concern is regarding the increase to
19 the 80th percentile. We believe that the current
20 requirement is sufficient to maintain solvent pools.
21 Our pool's payment experience is far below the 70th
22 percentile. And while our pool has reserves in excess
23 of 85 percent, we feel that this should be a board
24 option to exceed 70 percent and not a mandate.

25 Our second concern is regarding the

1 supervisory watch. Our concern is that the change to
2 the rule is too vague as to the definition of
3 satisfactory progress, and if the rule were to be put
4 into place, we would need to see that that rule was
5 further defined with regard to satisfactory progress.

6 And our third concern is the standard
7 regarding the audit files and that the audit files must
8 be submitted within eight months. We do not believe
9 that the Auditor's Office is sufficiently staffed, and
10 to implement this requirement would possibly impact
11 other governmental agencies, including the school
12 districts. We're concerned that if the audit couldn't
13 get completed within the regulatory time line, that then
14 the insurance program would be considered out of
15 compliance, and so you're almost putting into place a
16 situation where the compliance would become a problem.

17 So, in closing, we respectfully request that
18 these rules not be adopted and that the current rules
19 are sufficient to maintain the solvency of our program
20 and represent school districts well. Thank you.

21 HEARING OFFICER: Thank you.

22 So I have a number of other names of "Maybes,"
23 and you should feel free to come up if you'd like.

24 (No response.)

25 HEARING OFFICER: Should we take a brief

1 recess?

2 MR. PROCTOR: No.

3 HEARING OFFICER: No. Okay. Off the
4 record.

5 (Off the record.)

6 HEARING OFFICER: So if there's no one
7 else who would like to testify, I want to remind you
8 that the deadline for submitting written comments is
9 October 11th, 2013.

10 I'm going to adjourn the hearing as of 9:44,
11 and I thank you all for testifying today.

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14 HEARING CONCLUDED: 9:44 a.m.

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C E R T I F I C A T E

STATE OF WASHINGTON)
)
COUNTY OF PIERCE)

I, the undersigned officer of the Court, under my commission as a Notary Public in and for the State of Washington, hereby certify that the foregoing hearing regarding DES proposed rule changes to Chapter 200-100 of the WAC, taken September 30, 2013, was taken stenographically before me and thereafter transcribed under my direction;

That I am neither attorney for, nor a relative or employee of any of the parties; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 11th day of October, 2013.



Karen M Grant
KAREN M. GRANT

NOTARY PUBLIC in and for the State of Washington, residing at Edgewood.

My commission expires 3/13/14.