

Environmental Justice Assessment Report

Agency Request Legislation

Chapter 70.90 RCW,
Water Recreation Facilities



Publication Number: DOH 333-359 August 2024

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Environmental Justice Reporting Overview



An Environmental Justice Assessment (EJA) is an opportunity to assess the environmental justice impacts of an agency action. The template is designed to meet all of the requirements established under [Washington’s Environmental Justice Law](#), (also known as the HEAL Act).¹ While it was developed by the HEAL Interagency Working Group, this document has been adapted by the Washington State Department of Health (DOH) to meet agency needs for fulfilling the requirements of completing an EJA.

EJA Table 1: Environmental Justice Assessment Overview

1. Primary agency responsible for this action	Washington State Department of Health
2. Primary agency staff contact(s)	Dave DeLong
3. Secondary agency contact(s), if applicable	Alyssa Payne; Justin Law; Joe Graham; Andrew Kamali
4. Description of proposed significant agency action	Agency request legislation to amend chapter 70.90 RCW , Water Recreation Facilities.
5. Date environmental justice assessment was initiated	February 1, 2024
6. Date environmental justice assessment was completed	August 30, 2024
7. Type of significant agency action (check one)	<input type="checkbox"/> The development and adoption of significant legislative rules as defined in RCW 34.05.328 ² <input type="checkbox"/> The development and adoption of any new grant or loan program that a covered agency is explicitly authorized or required by statute to carry out <input type="checkbox"/> A capital project, grant, or loan award by a covered agency of at least \$12,000,000 or a transportation project, grant, or loan by a covered agency of at least \$15,000,000 <input checked="" type="checkbox"/> The submission of agency request legislation to the office of the governor or the office of financial management for approval

¹ Washington’s Environmental Justice Law (HEAL Act)
<https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02&full=true>

² RCW 34.05.328
<https://app.leg.wa.gov/RCW/default.aspx?cite=34.05.328#:~:text=PDF%20RCW%2034.05.328%20Significant%20legislative%20rules%2C%20other%20selected,objectives%20of%20the%20statute%20that%20the%20rule%20implements%3B>

	<input type="checkbox"/> Any other agency actions deemed significant by a covered agency consistent with RCW 70A.02.060 ³ if so, please name: _____
8. Link(s) to initial notification with Office of Financial Management and/or other postings, such as publicly available results, materials, or reports related to the assessment.	OFM Notification DOH Notification Water Recreation ARL webpage

³ RCW 70A.02.060 <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.060>

Background Information:

The Department of Health (DOH) is proposing Agency Request Legislation (ARL) to make changes to Chapter 70.90 RCW, the law for Water Recreation Facilities. Chapter 70.90.120 directs the department to consider the Center for Disease Control and Prevention's (CDC) Model Aquatic Health Code (MAHC) in rulemaking. The MAHC is a regularly updated national model code based on science and best practices. It is created through collaboration with local, state, and federal public health officials and representatives from the aquatics sector. The MAHC stays current based on advances in aquatics and public health reports of illness, injury, disability, and death. Aligning chapter 70.90 RCW with MAHC terminology will facilitate adopting portions of the MAHC. The DOH proposes additional updates and edits to Chapter 70.90 RCW to modernize insurance requirements, clean up an historically confusing exemption, clarify rule authority for aquatic facilities offered for short-term rental use, update an exemption for inflatable equipment to improve drowning prevention, and provide other edits to improve clarity and modernize old language.

Specifically, DOH proposes the following changes:

1. Align terminology in chapter 70.90 RCW with terminology in the U.S. Department of Health and Human Services Centers for Disease Control and Prevention's Model Aquatic Health Code (MAHC).⁴ In RCW 70.90.120, DOH is directed to consider the federal Center for Disease Control's Model Aquatic Health Code (MAHC), a regularly updated national model code based on science and best practices. Because the MAHC is built using current advances in aquatics and public health reports of illness, injury, disability, and death, the DOH adopts rules to maintain consistency. Proposed changes will allow DOH to more easily adopt sections of the MAHC, as directed by the legislature [RCW 70.90.120(2)].
2. Add rule making authority to include "Therapy Pools". Currently, RCW 70.90.250(2) exempts "therapeutic water facilities operated exclusively for physical therapy" (i.e., therapy pools). The MAHC has identified these pools as increased risk for illness transmission. Removing the exemption will allow DOH to adopt rules considering MAHC requirements for these pools.
3. Clarify rule making authority for the State Board of Health (Board) to adopt standards for aquatic facilities that are offered for short-term use to best protect public health with minimal impact on homeowners.
4. Modify RCW 70.90.160 to increase minimum insurance liability coverage to 1 million dollars and expand coverage to all aquatic facilities.
5. Update an exemption for inflatable water recreation equipment at temporary events, such as fairs or festivals, to improve drowning prevention and public health.
6. Remove the prohibition of water treatment of certain natural waters in RCW 70.90.120.
7. Clarify the roles and responsibilities of the Board, DOH and the Secretary of Health, and local health officers and local health jurisdictions throughout chapter 70.90 RCW.
8. Clarify timelines in RCW 70.90.160.
9. Provide additional edits that modernize old language and improve clarity.

⁴ <https://cmahc.org/the-mahc>

As four of the changes (6, 7, 8, 9) proposed are designed to modify language to improve clarity, accuracy, simplicity or alignment between state definitions and federal definitions in the MHAC, no environmental harm to any resident of Washington state is expected to result from these actions. All residents would likely receive environmental or health benefits resulting from the ARL; however, vulnerable populations (e.g., users of therapy pools, those more susceptible to drowning, those without access to medical insurance) would likely receive the greatest benefit.

Elements of the draft ARL were not included in the final ARL and therefore not analyzed in this EJA. Section 3 summarizes feedback on all elements that DOH considered throughout the ARL development process; Section 5 outlines how input from interested parties shaped the final ARL. A more comprehensive and detailed analysis of the elements of the ARL that are likely to create an environmental benefit or harm is provided in the sections that follow.

Section 1

Analyze Environmental Benefits and Harms

1. Describe likely environmental benefits for overburdened communities, vulnerable populations, and tribes associated with this Action.⁵

The analysis of potential environmental and health benefits and harms focuses on the proposed activities:

- **Align terminology in chapter 70.90 RCW with the MAHC.** This would result in environmental benefit for all residents of Washington and allow DOH to more quickly and efficiently conduct rulemaking to maintain consistency with best practices for aquatics and public health reports of illness, injury, disability, and death.
- **Allow DOH to consider rule making for therapy pools.** The MAHC identifies therapy pools as increased risk. Environmental benefits could be achieved through rulemaking to ensure public health and safety. Therapy pools are often used by people with medical conditions such as burns, septic ulcers, lesions, amputations, wounds, or arthritis and who may be more susceptible to infection and who may experience increased vulnerability to the effects of environmental harms and sensitivity factors that result in higher rates of hospitalization.
- **Clarify authority for the Board to consider minimum health and safety standards for residential aquatic facility at short-term rentals.**

These facilities are considered “water recreation facilities” under the current statute. They are subject to regulation, but regulation has proven difficult because these facilities are on residential property. Therefore, DOH is proposing the board be given authority to create minimum health and safety standards. Minimum health and safety standards will allow residents who wish to rent their facility easier compliance as they will not be required to adhere to the same health and safety standards of other aquatic facilities. According to the CDC, 87% of drowning fatalities happen in home pools or hot tubs for children younger than age five.⁶ Most take place in pools owned by family or friends. Additionally, African American & Black Children ages 5-14 drown in pools at significantly higher rates than their same-aged peers.⁷ Minimum health and safety standards will decrease health and safety risks but not to the same degree as other regulated aquatic facilities. BIPOC community members under age 30 and children are expected to receive the greatest benefit from minimum health and safety standards at these facilities. Without added regulatory oversight, compliance will remain difficult and potentially create greater risk for vulnerable population members.

- **Require insurance for all aquatic facilities.** This standardization would allow for the financial

⁵ **Environmental benefits** mean activities that: (a) Prevent or reduce existing environmental harms or associated risks that contribute significantly to cumulative environmental health impacts; (b) Prevent or mitigate impacts to overburdened communities or vulnerable populations from, or support community response to, the impacts of environmental harm; or (c) meet a community need formally identified to a covered agency by an overburdened community or vulnerable population that is consistent with the intent of chapter 70A.02 RCW.

⁶ <https://www.cdc.gov/drowning/data-research/index.html>

⁷ <https://ndpa.org/drowning-facts-and-data/>

protection of businesses and victims during injury and drowning events. The CDC reports drowning injuries can cause brain damage and other serious outcomes including long-term disability. According to the CDC, for people younger than age 30, drowning rates among Black people were 1.5x higher, and among American Indian and Alaska Native people were 2x higher, than White people.⁸ In 2021, Washington reported 2,333 hospitalizations related to unintentional drowning with a cumulative medical care cost of \$77.50 million for that year, with the average medical cost of \$39,562 for each patient.⁹

The DOH analyzed the potential environmental harm of increasing the amount of minimum liability insurance required and expanding coverage to all aquatic facilities. The DOH developed a survey and additional engagement strategies to better understand potential impacts of the ARL to existing owners, operators, and users of Water Recreation Facilities across the state. Additional information is provided in the Community and Tribal engagement sections.

- **Increase public health and safety about the use of inflatable equipment at temporary events.** Inflatable equipment that exposes people to water also exposes them to risk. Young children are often users of inflatable equipment. The CDC reports drowning is the leading cause of death in people ages 1-4. The proposed amendments would decrease the risk to members of vulnerable populations by not allowing inflatable equipment to retain water when not in use (such as overnight), which will minimize the potential for drowning.

As noted above, likely environmental benefits for vulnerable populations include decreased health and safety risks for users of aquatic facilities, vulnerable populations and Black, Indigenous and People of Color (BIPOC) communities.

Amending Chapter 70.90 RCW will facilitate alignment with the MAHC and allow DOH to undertake rulemaking for therapy pools, which is expected to improve the health and safety of all users of these facilities, including those that may be located within or serve overburdened communities and members of vulnerable populations. For example, therapy pools are often used by people with medical conditions such as burns, septic ulcers, lesions, amputations, wounds, or arthritis. These may be more susceptible to infection and may experience increased vulnerability to the effects of environmental harms and sensitivity factors that result in higher rates of hospitalization.

Specifying minimum health and safety standards for residential aquatic facilities at short-term rentals will increase public health and safety for all who use aquatic facilities, including members of overburdened communities and vulnerable populations.

Creating insurance requirements for all aquatic facilities will allow for the financial protection of owners of aquatic facilities and victims of injury or drowning events.

The use of inflatable equipment at temporary events exposes people, especially children, to risk. The proposed amendments will reduce this increased drowning risk for vulnerable population members by not allowing inflatable equipment to retain water when not in use (such as overnight).

⁸ <https://www.cdc.gov/drowning/data-research/index.html>

⁹ <https://ndpa.org/drowning-facts-and-data/>

2. Describe likely environmental harms for overburdened communities, vulnerable populations, and tribes associated with this action.¹⁰

No direct environmental harm is expected to result from undertaking the proposed action. However, not adopting the changes proposed in the ARL will not allow for the added alignment with the MAHC that is needed. In addition, because rulemaking is already underway to make other areas of state law consistent with the MAHC, additional time and energy in the future will be required to create the necessary alignment. In the meantime, Chapter 70.90 RCW will remain out of sync with best available science. If the proposed changes are not adopted, the DOH and SBOH will not be able to address language that is potentially confusing to the public and would be unable to move forward with considering how best to improve health and safety at different aquatic facilities.

3. Describe likely associated positive health impacts for overburdened communities, vulnerable populations, and tribes associated with this action.

Positive health impacts are expected through reduced health and safety risks for members of vulnerable populations who require use of therapy pools or use other aquatic facilities. Reducing these risks is expected to reduce the number of public health investigations and indirectly lessen healthcare costs, especially for residents who may live on a limited or low income or lack health insurance.

The ability to adopt standards from the MAHC is expected to improve health and safety standards for all aquatic facilities and create positive health impacts for all users of aquatic facilities, including those located within or serving members of overburdened communities and vulnerable populations.

4. Describe likely associated negative health impacts for overburdened communities, vulnerable populations, and tribes associated with this action.

Negative health impacts resulting from this ARL are few. The biggest potential negative health impact may result from exempting residential aquatic facilities at short-term rentals from regulatory oversight including permitting and inspection. Continued reliance on voluntary compliance by owners-operators of these facilities could result in additional impacts to vulnerable populations due to aquatic-related illness, injury or drowning.

¹⁰ **Environmental harm** means the individual or cumulative environmental health impacts and risks to communities caused by historic, current, or projected: (a) Exposure to pollution, conventional or toxic pollutants, environmental hazards, or other contamination in the air, water, and land; (b) Adverse environmental effects, including exposure to contamination, hazardous substances, or pollution that increase the risk of adverse environmental health outcomes or create vulnerabilities to the impacts of climate change; (c) Loss or impairment of ecosystem functions or traditional food resources or loss of access to gather cultural resources or harvest traditional foods; or (d) Health and economic impacts from climate change.

Section 2

Identify Overburdened Communities and Vulnerable Populations

1. Identify the geographic area(s) where there may be environmental and health impacts because of the agency action.

This proposed DOH action would affect all owners, operators, and users of aquatic facilities throughout the state of Washington. Location information for existing aquatic facilities (e.g., therapy pools, small private community pools) was not available to DOH at the time of this EJA. The lack of place- or location-based information hindered the agency's ability to critically examine where aquatic facilities exist across the state in relationship to overburdened communities and vulnerable populations to determine where environmental and health impacts might occur and who they could impact most. Missing geographic context also limited the ability to target community and tribal engagement about the ARL.

2. Describe overburdened communities and vulnerable populations identified within the geographic area(s) where there may be environmental and health impacts because of the agency action.^{11 12}

Due to the timeline and information constraints described above, the DOH was unable to identify specific geographic areas where there will likely be environmental and health impacts. Unfortunately, without this there is not added context to help describe the overburdened communities and vulnerable population members who may receive services from or manage a particular aquatic facility. The general benefit expected for vulnerable population members is described in Section 1.

Vulnerable population members that DOH identified who may be impacted by this ARL include:

- Therapy pool users. Therapy pools are often used by people with medical conditions such as burns, septic ulcers, lesions, amputations, wounds, or arthritis and who may be more susceptible to infection and who may experience increased vulnerability to the effects of environmental harms and sensitivity factors associated with unregulated therapy pools that result in higher rates of hospitalization.
- BIPOC individuals under the age of 30 and children who are more susceptible to water-related injury or drowning.
- Users of inflatable equipment at temporary events, who are often young children.

¹¹ **Overburdened community** means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020.

¹² **Vulnerable populations** means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to: (i) Adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and (ii) sensitivity factors, such as low birth weight and higher rates of hospitalization.

Vulnerable populations include but are not limited to:

- (i) Racial or ethnic minorities;
- (ii) Low-income populations;
- (iii) Populations disproportionately impacted by environmental harms; and
- (iv) Populations of workers experiencing environmental harms.

Section 3

Tribal Engagement and Consultation

1. Summarize tribal engagements and invitations for tribal consultation to date.

On April 18, 2024, DOH sent a Dear Tribal Leader Letter (DTLL) to tribal leaders and tribal partners to inform them of the proposal to amend chapter 70.90 RCW.

Additionally, the DOH HEAL Tribal Engagement Coordinator provided a summary of the proposed ARL during quarterly board meetings for two tribal organizations. Representatives from each Washington State Federally Recognized Tribe and select Tribal Health Partners make up the boards for these key organizations:

- [Northwest Portland Area Indian Health Board Quarterly Meeting](#). (April 25, 2024)
- [American Indian Health Commission \(AIHC\) Delegates Quarterly Meeting](#) (May 3, 2024)

The DOH requested tribal input to policy staff by May 31, 2024; however, no feedback or request to discuss this in greater detail has been received from any tribe or tribal organization to date.

2. Describe likely impacts to tribal rights and resources associated with this action.

No impacts to tribal sovereignty, rights, or resources are expected to result from this action.

There may be potential impacts on tribal owners, operators, and users of aquatic facilities on fee lands; however, as noted above, no input to date on the ARL has been received from tribal organizations or tribal members who own or operate aquatic facilities.

3. Describe any plans for ongoing and/or future tribal consultation.

All Washington State federally recognized tribes have the right to consult with DOH at any time. As part of HEAL Act implementation, any future significant rulemaking related to Aquatic Facilities would require an additional EJ Assessment and further tribal engagement and collaboration. Program staff will continue to collaborate with the DOH HEAL Tribal Engagement Coordinator regarding best practices to ensure ongoing updates, collaboration, and opportunities for meaningful input from tribal governments and tribal community members, if the ARL proceeds.

Section 4

Community Engagement Summary

1. Summarize engagement with people from overburdened communities and vulnerable populations to date.

The Water Recreation Facilities ARL is the first DOH Significant Agency Action of its type subject to the HEAL Act EJA reporting requirements that went into effect on July 1, 2023. Timelines for development of the ARL existed before the DOH published the Notice of EJA on February 1, 2024. As part of piloting EJA reporting, Program staff collaborated with HEAL Implementation team staff to develop and implement an enhanced community engagement strategy intended to connect DOH with operators and users of aquatic facilities who could be affected by the ARL.

The DOH used existing sources of information to tailor its initial outreach about the ARL and its potential impacts. The Program drew together contacts from the Water Recreation Facilities rulemaking interested parties list, local health jurisdictions, some aquatic facility owners and operators, and regulatory agencies. The summary of engagement below highlights what general engagement activities were undertaken to support the EJA and how DOH used the input and feedback it received to create the final ARL proposal. The input received as part of the EJA process is also presented below.

The community engagement approach reflects a balance between HEAL Act intent (inclusive, iterative engagement with communities and tribes) and the preexisting ARL process constraints described previously. Although more geographically focused and strategic communication with people from overburdened communities was not possible during the timeframe for this EJ Assessment, the work accomplished has created a foundation for iterative engagement to best engage tribes, members of vulnerable populations, and overburdened communities on future actions related to Water Recreation regulations.

General Engagement Summary

The Program published a DOH [webpage](#) about the Water Recreation Facilities ARL on January 25, 2024. A DOH [Notice](#) of Environmental Justice Assessment was filed with the Office of Financial Management on February 1, 2024, and was posted on [DOH's website](#) to notify the public that DOH was undertaking an EJA for this significant agency action, as required by the HEAL Act.

As part of best practices for inclusive information-sharing about statewide actions or activities, a Notice of Agency Request Legislation (a significant agency action identified under the HEAL Act) was developed, plain talked, and translated into Spanish.

On April 9, 2024, the notice was sent via email in English and Spanish to 994 email addresses of interested and potentially impacted parties. The notice included links to:

- [Chapter 70.90 RCW](#),
- The DOH [webpage](#),
- An informational pamphlet in [English](#) detailing our potential request,
- An information pamphlet in [Spanish](#) detailing our potential request,
- Contact information, and
- A form to sign up for a focus group discussion.

Recipients included employees of Local Health Jurisdictions (LHJs); therapy pool owners, operators, and users; apartments or rental housing with less than 15 living units; mobile home parks, and condominium complexes or Home Owners Associations (HOAs) with less than 15 living units; owners and operators of natural swimming areas; residential pool rental businesses; associations representing regulated entities; and 815 people who are signed up as “interested parties” to receive GovDelivery notices about water recreation. A GovDelivery bulletin analytics report shows that of these 815 people on the “interested parties” list for this topic, the notice was delivered to 788 (96.7%) of them. Forty-six of the 788 clicked on the link to access our webpage for more information, 14 clicked on the link to our informational pamphlet in English, 18 clicked on the link to chapter 70.90 RCW, and 14 clicked on the link to our focus group discussion form. No one used the link to access the DOH informational 2-pager in Spanish.

The DOH provided updates about the ARL to LHJ water recreation program leads or LHJ representatives who participated in ongoing, bimonthly DOH-LHJ coordination meetings between March and July 2024. A summary of engagement with LHJs and dates different ARL proposal topics were discussed is presented in Table 1. Coordination with LHJs occurred throughout the ARL development process.

In the table below, discussion topics in ***bold italics*** are part of the final ARL proposal. The other topics were considered but ultimately not included in the DOH proposal to the 2025 legislature. Consequently, DOH did not analyze the likely environmental or health impacts of these activities in this EJA report. Any future significant DOH rulemaking for aquatic facilities related to communities with less than 15 units or swim areas in natural waters of the state would require an EJA.

Table 1. Summary of DOH-LHJ meetings and all ARL discussion topics

Date	Attendee Count	Discussion Topic(s)
March 19, 2024	41	<ul style="list-style-type: none"> - <i>Aligning the terms used in law with those used in the MAHC</i> - <i>Removing the exemption for therapy pools</i> - Moving the exception for less than 15 living units to the rule
May 21, 2024	39	<ul style="list-style-type: none"> - <i>Insurance requirements</i> - <i>Removing the exemption for therapy pools</i> - Proposing to include swim areas in natural waters without artificial boundaries
July 16, 2024	36	<ul style="list-style-type: none"> - <i>Aligning the terms used in law with those used in the MAHC</i> - <i>Removing exemption for therapy pools</i> - <i>Clarifying roles, responsibilities, and timelines</i> - <i>Reassessing insurance requirements</i> - Expanding rulemaking authority to include swimming areas in natural waters without artificial boundaries - Clarifying requirements for communities with less than 15 living units

All input provided to DOH throughout the ARL development process is presented in greater detail below, regardless of whether a topic was included in the final ARL proposal.

Insurance required ([RCW 70.90.230](#))

The agency met with the Office of the Insurance Commissioner on February 15, 2024, to discuss industry insurance requirements. The Office of the Insurance Commissioner suggested agency staff reach out to regulated entities and insurance brokers.

DOH staff developed an online [insurance questionnaire](#) to obtain more information on current industry insurance practices. The agency met with the Office of the Insurance Commissioner on April 22, 2024, to review this insurance questionnaire. See [Appendix A](#) for a summary of insurance survey questions and responses.

The agency sent an informational email with a link to the insurance questionnaire (in English and Spanish) to 69 LHJ representatives on April 25, 2024, asking them to forward it to regulated entities. As of May 30, 2024, DOH has received 33 responses, which are summarized in Appendix A: Summary of Insurance Survey and Responses.

The DOH reached out to the following insurance brokers identified in the survey as providing services across the state:

- Payne Financial (formerly Marsh McLennan Agency); emailed on May 8, 2024; no response.
- Mount Spokane Insurance; emailed on May 8, 2024; no response.
- Wycoff Insurance; submitted webform on May 2, 2024; phone call on May 2, 2024. Summarized in Section 4, Question 2 in Appendix A.
- Alliant; submitted webform on May 8, 2024; no response.
- State Farm; submitted webform on May 8, 2024; response received on May 8, 2024. Summarized in Section 4, Question 2 in Appendix A.
- Insurance Services Group; emailed on May 8, 2024; no response.
- Elliott Insurance Group; emailed on May 8, 2024; no response.
- Association of Washington Cities – Risk Management Service; emailed on May 7, 2024; response received on May 7, 2024. Summarized in Section 4, Question 2 in Appendix A.
- Brotherhood Mutual; submitted webform on May 8, 2024; response received on May 8, 2024. Summarized in Section 4, Question 2 in Appendix A.
- Kerner Insurance; emailed on May 8, 2024; no response.
- Sandin Insurance Group; emailed on May 8, 2024; no response.
- Washington City Insurance Authority – Risk Pool; submitted webform on May 8, 2024; phone call on May 13, 2024. Summarized in Section 4, Question 2 in Appendix A.
- Nonprofit Insurance Program; emailed on May 8, 2024; no response.
- Acrisure Northwest Region; emailed on May 8, 2024; no response.

Therapy pools ([RCW 70.90.250](#))

The agency attempted to reach therapy pool owners and operators.

- DOH staff attempted to reach out to therapy pool owners and operators again on April 18, 2024, by sending the notice to department staff in Health Systems Quality Assurance to forward to their GovDelivery lists.
- The DOH attempted to reach American Physical Therapy Association of Washington on April 25, 2024, via email.
- The DOH attempted to reach the Washington State Hospital Association on May 20, 2024, by email.
- The DOH attempted to reach Washington Medical Commission on May 20, 2024, via [webform submission](#).
- The DOH met with representatives of Leading Age to discuss proposed changes to therapy pools on June 27, 2024. Leading Age is a long-term care provider to skilled nursing facilities and assisted living facilities, some of which have pools. These pools are not likely therapy pools but are currently regulated under chapter 70.90 RCW and chapter 246-260 WAC as “limited-use” water recreation facilities. No impacts to these facilities are expected as a result of the proposed ARL.

Amending Definition of Designated Swimming Areas

- *Washington Drowning Prevention Network*
Agency staff updated the Washington Drowning Prevention Network at their pre-season meeting on May 2, 2024. Agency staff discussed proposed changes to chapter 70.90 RCW and how these changes may intersect with their interests in water recreation facilities and designated swimming areas and how they could get involved.
- *Washington Harmful Algal Bloom (HAB) Readiness Workshop*
Agency staff provided an update during the Washington State Department of Health HAB Readiness Workshop on May 6, 2024. This workshop was attended by over 90 individuals across Washington comprising local health departments, lake managers, citizen scientists, and other agencies such as the Department of Ecology. DOH staff encouraged participants to review proposed changes to chapter 70.90 RCW, specifically considerations to amend the definition of a designated swimming area and provide comment.
- *Washington Parks & Recreation Association*
Agency staff met with a representative from Washington Parks and Recreation Association on May 8, 2024, to provide an update on agency request legislation, including areas that may be of particular interest to them, such as expanding designated swimming areas to include those areas posted for swimming that do not have artificial boundaries and expanding insurance requirements. DOH staff also shared the Insurance Questionnaire for the representative to forward to their network.

Moving the Exemption for Less than 15 Living Units ([RCW 70.90.120](#)) into rule/ the WAC.

DOH staff attempted to reach out to apartments or rental housing with less than 15 living units, mobile home parks, and condominium complexes or HOAs with less than 15 living units who may have pools.

- Staff from DOH attempted to reach the Washington Landlord Association on April 22, 2024, via email. The DOH attempted to reach again on April 25, 2024, through [webform submission](#).

- The DOH attempted to reach the Rental Housing Association of Washington on April 22, 2024, via email. Staff attempted to reach again on April 25, 2024, through [webform submission](#).
- DOH staff attempted to reach the Washington Association of Manufactured Home Owners on April 22, 2024, via email. The DOH attempted to reach again on April 25, 2024, through [webform submission](#).
- The DOH attempted to reach the National Manufactured Home Owners Association on April 22, 2024, via email.
- The DOH attempted to reach the Washington State Chapter of Community Associations Institute on April 22, 2024, via email. The DOH attempted to reach out again on April 25, 2024, through [webform submission](#).
- The DOH attempted to reach the Manufactured Housing Communities of Washington on April 24, 2024, through [webform submission](#).
- DOH staff spoke with a representative of Détente Management on June 5, 2024, to discuss the intent of proposed changes to chapter 70.90 RCW. The DOH discussed:
 - Aligning terminology with the CDC’s Model Aquatic Health Code,
 - Moving exceptions for communities with less than 15 living units to rule,
 - Which rule sections apply and do not apply to communities with less than 15 living units,
 - Updating the definition for designated swimming areas, and
 - Communities managed by Détente. All communities are currently regulated, permitted, and inspected.
- The DOH met with a representative of Strategies 360 on May 23, 2024, to discuss proposed changes to RCW 70.90.120. The representative expressed interest in reviewing a track-changes version of the proposed amendments. Staff explained DOH is in the process of developing proposed amendments based on input from potentially impacted parties and agreed to a draft version when one was finalized.
- DOH staff met with a representative of Détente Management and the Manufactured Housing Communities of Washington on July 22, 2024. The representative expressed a need for the exemption for less than 15-living units remain in RCW 70.90.120 but was agreeable to clarifying language in RCW as long as it was not removed from the RCW and moved to the WAC. The DOH explained DOH would consider this input as part of developing the final ARL proposal.

2. Summarize information received from people from overburdened communities and vulnerable populations.

Due to the link between the Water Recreation Facilities ARL timeline and the 2025 legislative session, DOH was required to complete the EJA process and finalize the EJA report by August 30, 2024, for submission to the Office of Financial Management. The preexisting timeline for the ARL limited the agency's ability to engage directly with members of overburdened communities or therapy pool users who identify as a vulnerable population member. Any additional significant rulemaking with a likely environmental benefit or harm will create the opportunity for DOH to build

on its initial engagement efforts and focus on how to better connect and collaborate with tribes and overburdened communities, per the intent of the HEAL Act.

Below is a summary of engagement with other entities and interested parties and the information received by the agency.

Table 2. Summary of Information Provided by Date and Area of Interest, and DOH Response

Organization	Date	Input or Interest	Response
Public Health, Seattle and King County	April 10, 2024	Definitions, permitting, bathing beaches (designated swim areas), rule exceptions (less than 15 living units), clarification of roles, and therapy pools.	Follow up conversation on April 16, 2024, via Teams. Will continue to participate as process moves forward.
Pool and Hot Tub Alliance	April 10, 2024	Interest in participating.	Met on April 17, 2024, to discuss ARL vs rulemaking process. Included in technical advisory committee for current rulemaking.
City of Maple Valley Engineering	April 15, 2024	Designated swim areas.	Added to contact list for rulemaking regarding designated swim areas.
City of Seattle, Seattle Parks and Recreation	April 22, 2024	Interest in information specific to designated swim areas and to be added to our GovDelivery list.	Added to contact list for rulemaking regarding designated swim areas. Added to GovDelivery list.
City of Shoreline Public Works	May 13, 2024	Concerns regarding expansion of designated swim area definition.	Met to discuss on May 22, 2024. Will continue to provide input throughout this process.
Détente Management	May 28, 2024	Interest in learning more about how proposed changes may affect manufactured home communities with private pools.	Met to discuss on June 5, 2024. Added to GovDelivery list.
Strategies 360	May 30, 2024	Concerns regarding proposed changes to RCW 70.90.120 on behalf of Swimply, Airbnb, TechNet, Washington Multi-Family Housing Association, Washington Business Properties Association, WA Realtors, Manufactured Housing Communities of Washington, and Association of Washington Businesses.	Provided track-changes version of proposed amendments. Higher level department response.

Leading Age	May 31, 2024	Interest in learning more about changes to therapy pool exemption.	Met to discuss on June 27, 2024.
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Table 3. Summary of Insurance Broker Responses

Insurance Broker	Response
Wycoff Insurance	Recommend increasing liability coverage to \$1 million occurrence with \$2 million aggregate.
State Farm	Recommend increasing liability coverage to at least \$1 million.
Association of Washington Cities – Risk Management Service	All members of risk pool are subject to the same liability limits as one another, which is \$15 million per occurrence limit.
Brotherhood Mutual	No recommendation.
Washington City Insurance Authority – Risk Pool	Supportive of increasing liability coverage to \$1 million.

3. Summarize how information received from people from overburdened communities and vulnerable populations informed decision-making about this action.

The proposed amendments to chapter 70.90 RCW were made based on input received from interested parties, responses to our insurance questionnaire, conversations with insurance brokers, drowning data, conversations with LHJs, and the latest science and best practices outlined in the MAHC. The agency strengthened RCW language to improve clarity that the Board has authority to regulate pools at single family dwellings if they are not reserved for the exclusive use of the resident and invited guests.

As part of its initial ARL proposal, DOH had considered moving the exemption for pools at facilities with less than 15 living units from statute to rule. Based on input provided by interested parties during engagement, DOH left the exemption for small community pools in the RCW and, instead, clarified language regarding how these aquatic facilities need to comply with existing applicable rules.

Similarly, the DOH reevaluated its idea to expand the definition of designated swim areas to include natural waters not marked with artificial boundaries. The decision not to include this in the final ARL was based on multiple considerations, such as the time and resources needed to adequately coordinate and scope the potential effects of any likely environmental and health impacts of the action with impacted government parties (e.g., State Parks, DFW, DNR, LHJs, County Public Works, Cities, etc.). In addition, sufficient time is needed to evaluate potential state-to-local benefits and implementation costs. Thus, DOH removed this element from its ARL proposal to the 2025 legislature. A future proposal may be submitted in 2027 after additional engagement and collaboration to develop an integrated strategy for drowning prevention in natural waters. This longer-term approach will also let DOH build out initial engagement on these issues to support direct connection with and feedback from overburdened communities and members of vulnerable populations.

4. Describe plans for ongoing engagement with people from overburdened communities and vulnerable populations.

As a result of the ARL, additional DOH engagement would occur during significant rulemaking. This would build on the initial community and tribal outreach and engagement efforts that have been undertaken. The DOH would develop additional strategies to connect directly and better collaborate with members of overburdened communities and vulnerable populations regarding aquatic facilities, and opportunities to ensure equitable distribution of any environmental and human health benefits that may result from future rulemaking.

Section 5

Strategies to Address Environmental Harms and Equitably Distribute Environmental Benefits

1. Which of the following strategies will the agency pursue to eliminate, reduce, or mitigate environmental harms and equitably distribute environmental benefits (check all that apply):

- Eliminating the disparate impact of environmental harms on overburdened communities and vulnerable populations.
- Reducing cumulative environmental health impacts on overburdened communities or vulnerable populations.
- Preventing the action from adding to the cumulative environmental health impacts on overburdened communities or vulnerable populations.
- Providing opportunities for equitable participation and meaningful engagement of vulnerable populations and overburdened communities in the development of the significant agency action.
- Prioritizing equitable distribution of resources and benefits to overburdened communities.
- Promoting positive workforce and job outcomes for overburdened communities.
- Meeting community needs identified by the affected overburdened community.
- Modifying substantive regulatory or policy requirements

Any other mitigation techniques, including those suggested by any one of the following:

- Environmental Justice Council
- Office of Equity
- Representatives of overburdened communities and/or vulnerable populations.

2. Briefly describe the proposed method/approach for each strategy selected in Section 5, Question 1.

Proposed amendments to chapter 70.90 RCW were developed through meaningful engagement with potentially interested and potentially impacted communities. Additionally, by amending chapter 70.90 RCW, DOH may be able to modify the regulatory requirements in rule to ensure public health and safety of users of therapy pools, pools at communities with less than 15 living units, and inflatable equipment at temporary events.

3. Describe additional strategies the program has identified to eliminate, reduce, and/or mitigate harms and equitably distribute benefits.

The proposed amendments would allow DOH to develop rules for therapy pools through a collaborative rulemaking process which would include meaningful engagement with potentially interested and potentially impacted communities, a thorough cost-benefit analysis, townhalls, and public comment periods.

- 4. If the agency determines that it does not have the ability or authority to eliminate, reduce, or mitigate environmental harms caused by a significant agency action, or does not have the ability or authority to address the equitable distribution of environmental benefits, provide a clear explanation of why it has made that determination.**

Not applicable.

- 5. Identify performance measures or indicators (recommended 3-5) that can be used to track the equitable distribution of environmental benefits and/or the elimination, reduction, or mitigation of environmental harms for overburdened communities, vulnerable populations, or tribes.**

Currently, drowning data is obtained from death certificates and is not a condition reported by the state of Washington. Therefore, information on the number of drowning deaths or injuries that occur at aquatic facilities across the state was unrefined or unavailable to DOH for the purposes of this EJA. The CDC estimates, for every fatal childhood drowning, another 7 to 8 receive emergency department care for non-fatal drowning. It would be beneficial for DOH and others to collaborate and develop an indicator for tracking future information about these indicators of health.

As previously noted, state water recreation rules are outdated and not aligned with the most recent best practices. The ARL changes will better allow DOH to use rulemaking to adopt national, up-to-date, science-based standards for previously unregulated entities, such as therapy pools. As part of this, DOH will have the opportunity to consider adopting performance indicators such as incidence of fatal drowning, injury, and illness. These metrics will allow future public health intervention based on community risk.

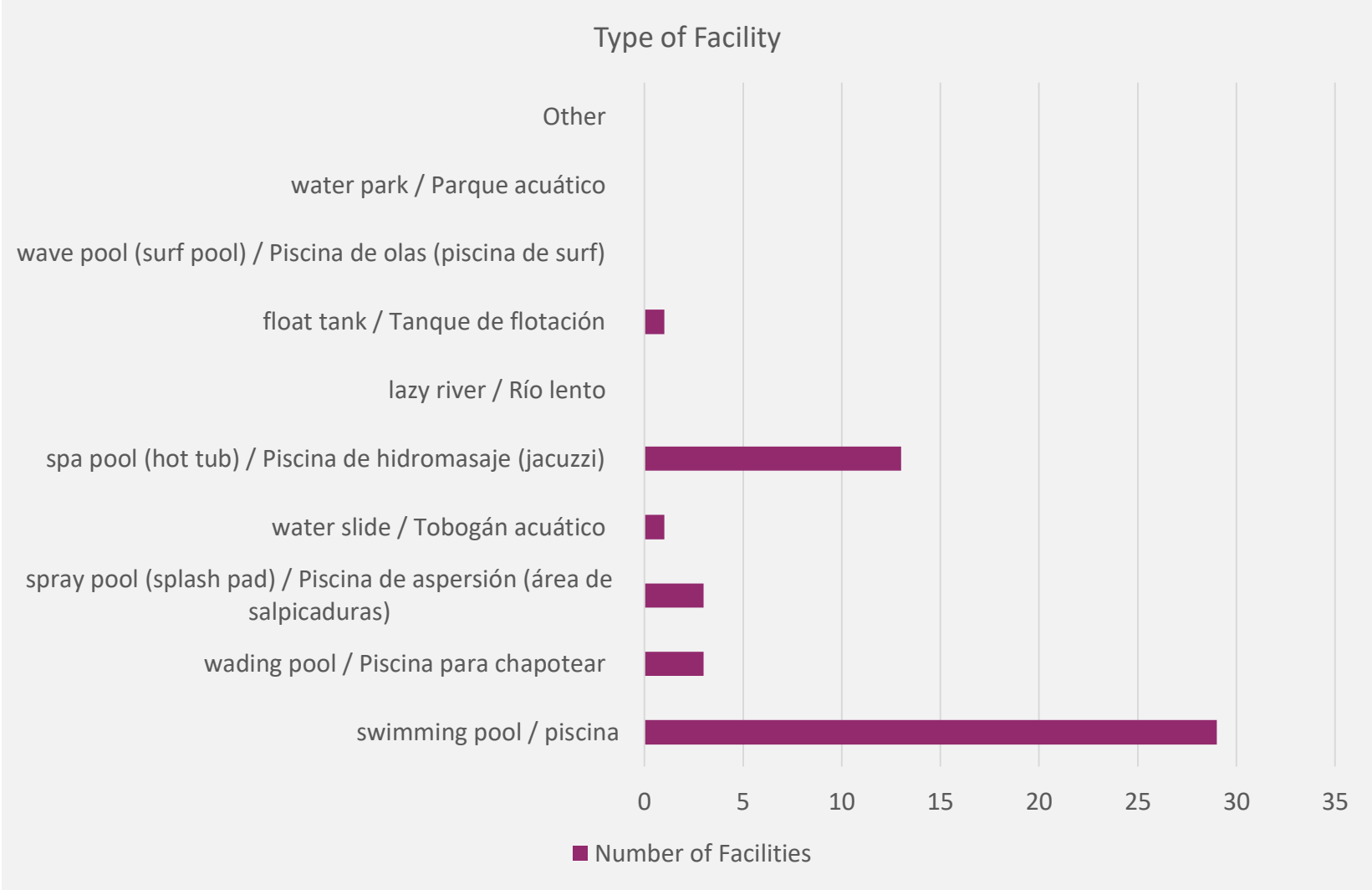
Assembling information about the location of each therapy pool would be extremely beneficial. This data would help DOH ensure additional health and safety at these facilities and understand where aquatic facilities are in relationship to members of vulnerable populations and overburdened communities that may require this key health infrastructure. Future rulemaking would require therapy pool owners and operators to report safety incidents and waterborne illness outbreaks to track and identify areas and populations that could be most affected and warrant further public health intervention. Collecting data on the number of therapy pools permitted and inspected in the future would also be useful indicators, as safety at these facilities is expected to improve and benefit members of vulnerable populations who need to use therapy pools.

Similarly, because short-term “for rent” aquatic facilities were not previously reporting illness, injuries, or drownings (and facility geographies are unknown), proposed changes will allow for the development of health and safety indicators to be tracked to further access environmental benefits and harms.

Lastly, the presence or absence of at least \$1 million of liability insurance will indicate if users of aquatic facilities could be adequately compensated in case of injury or illness, as a lack of insurance would impact members of low-income households and communities the most.

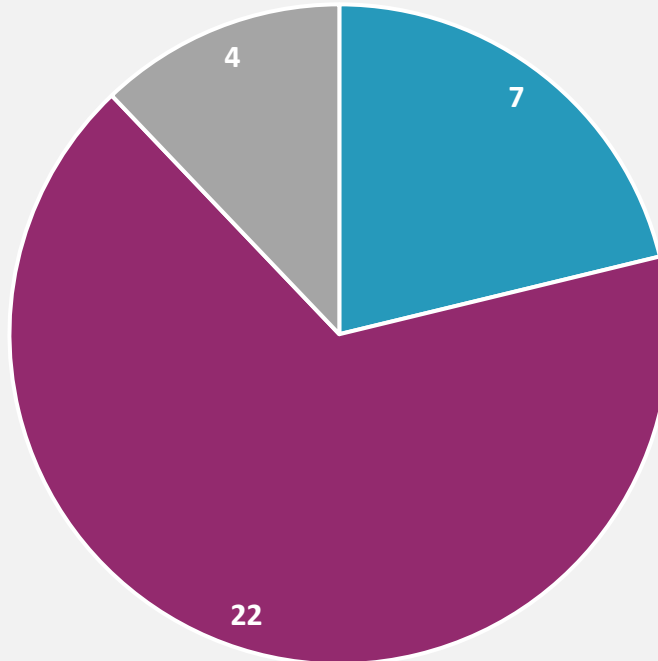
Appendix A. Summary of Insurance Survey and Responses

1. Does your facility have (check all that apply):
Sus instalaciones cuentan con (marque todas las opciones que correspondan):



2. Is your facility:
Sus instalaciones:

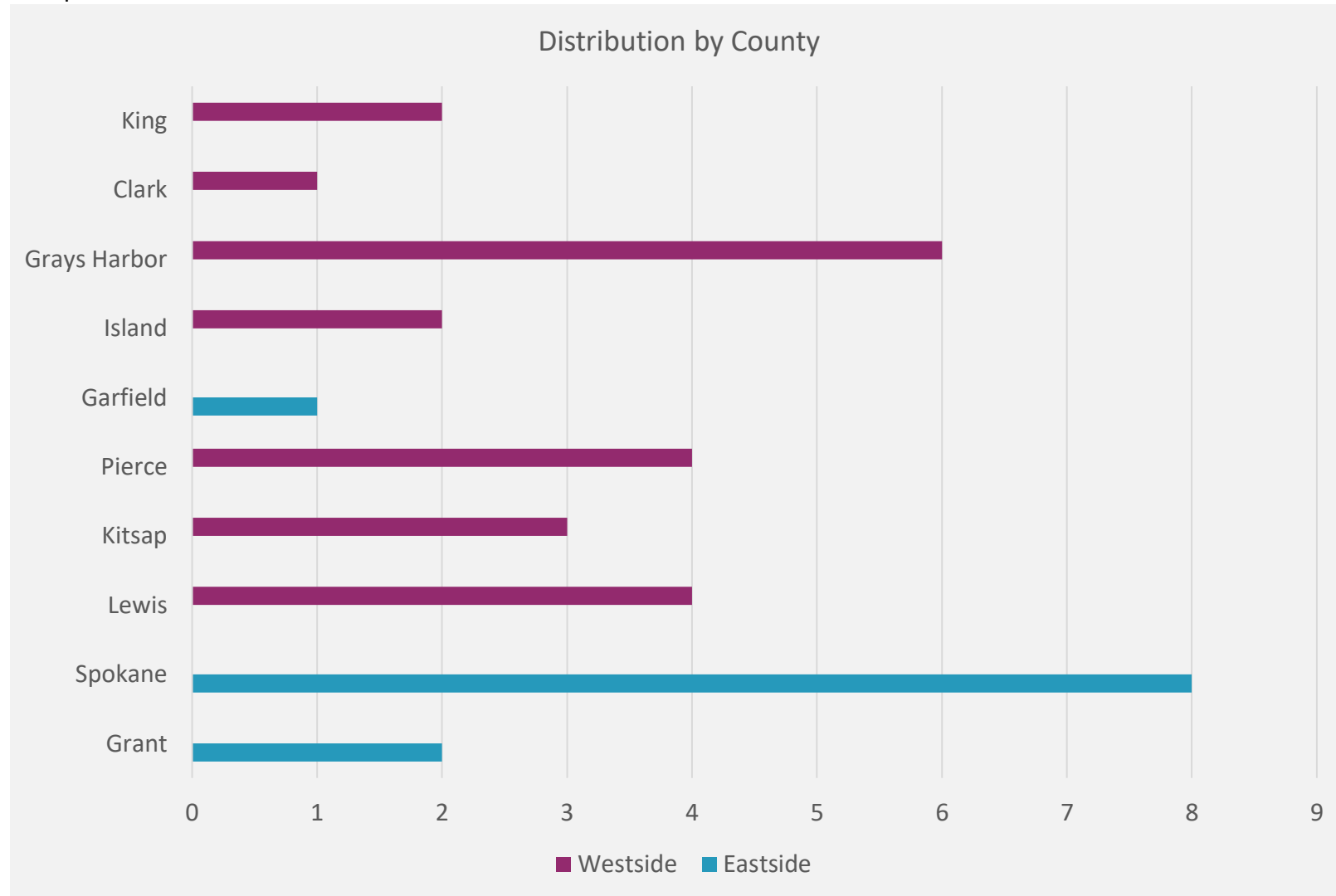
Facility by ownership



- Publicly owned (school, city/county park, or other governmental entity) / Son propiedad pública (escuela, parque municipal o del condado, u otra entidad gubernamental)
- Privately owned (hotel/motel, HOA, apartment complex, gym) / Son propiedad privada (hotel o motel, asociación de propietarios, complejo de apartamentos, gimnasio)
- Nonprofit (YMCA, etc.) / Son propiedad de una organización sin fines de lucro (YMCA, etc.)

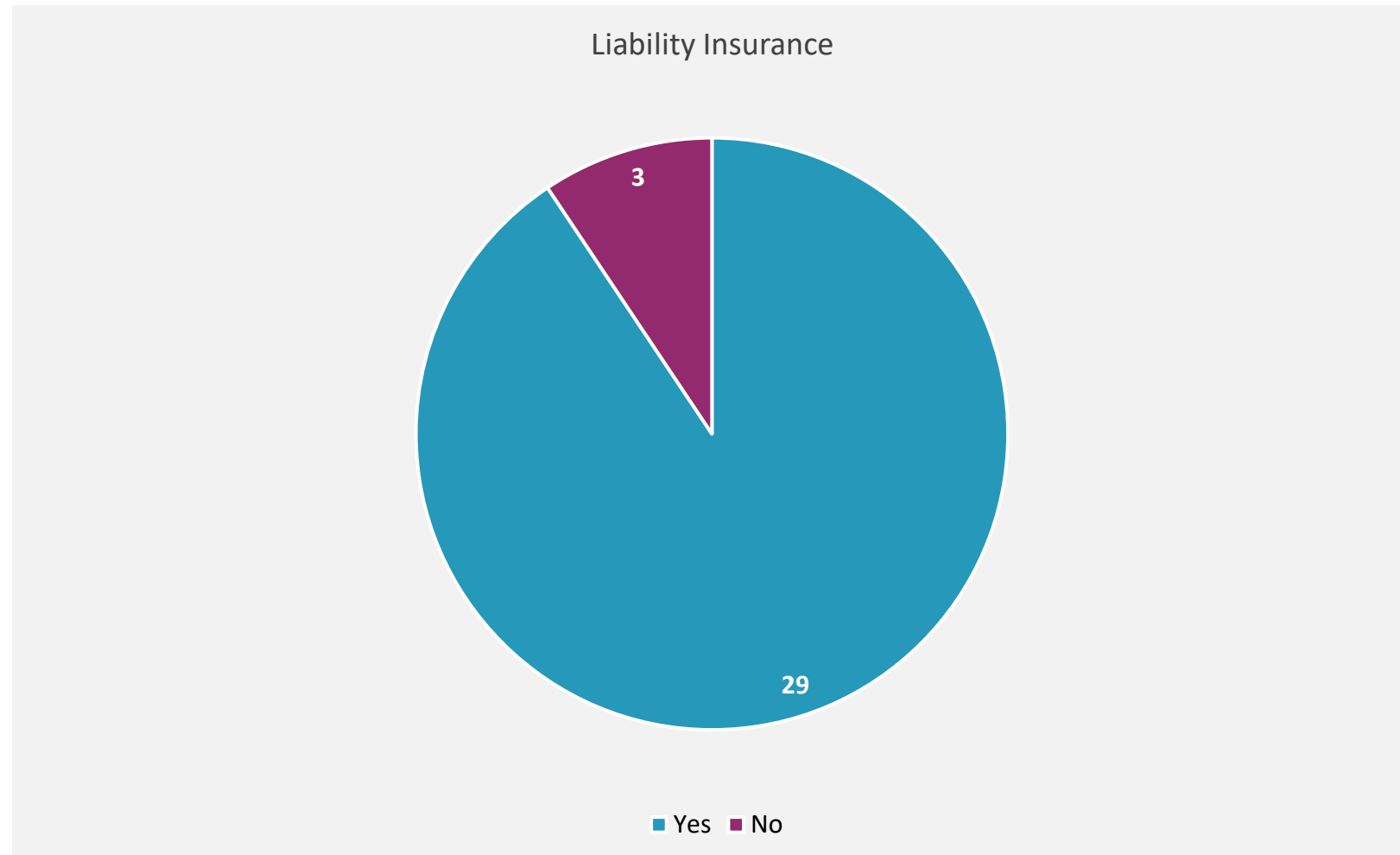
3. In which county is your facility located?

¿En qué condado se encuentran sus instalaciones?



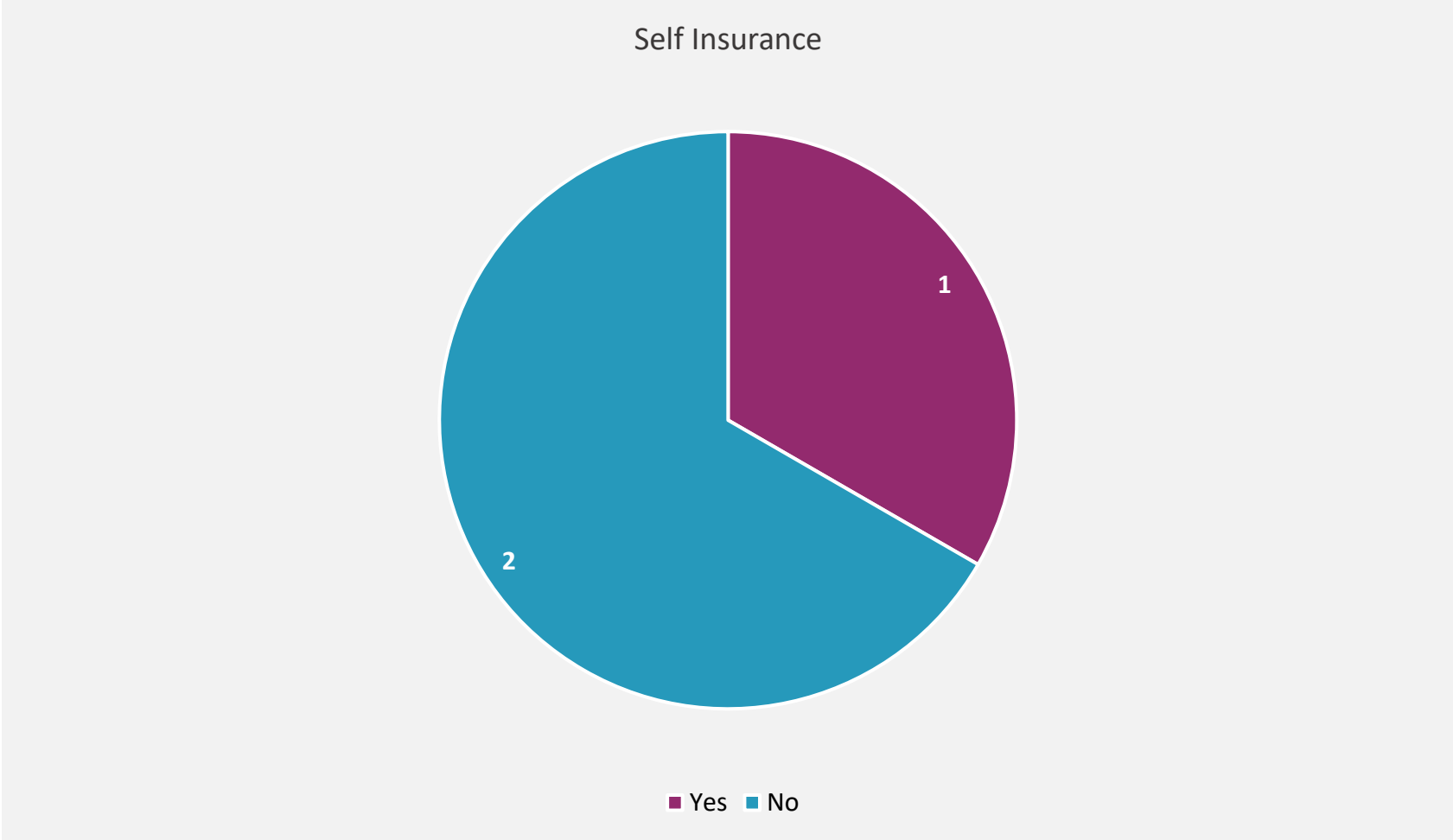
4. Do you currently have liability insurance for injuries, drowning, illness, or other damages associated with recreating in water features at your facility?

¿Actualmente cuenta con un seguro de responsabilidad civil para lesiones, ahogamientos, enfermedades u otros daños asociados con la recreación acuática de sus instalaciones?



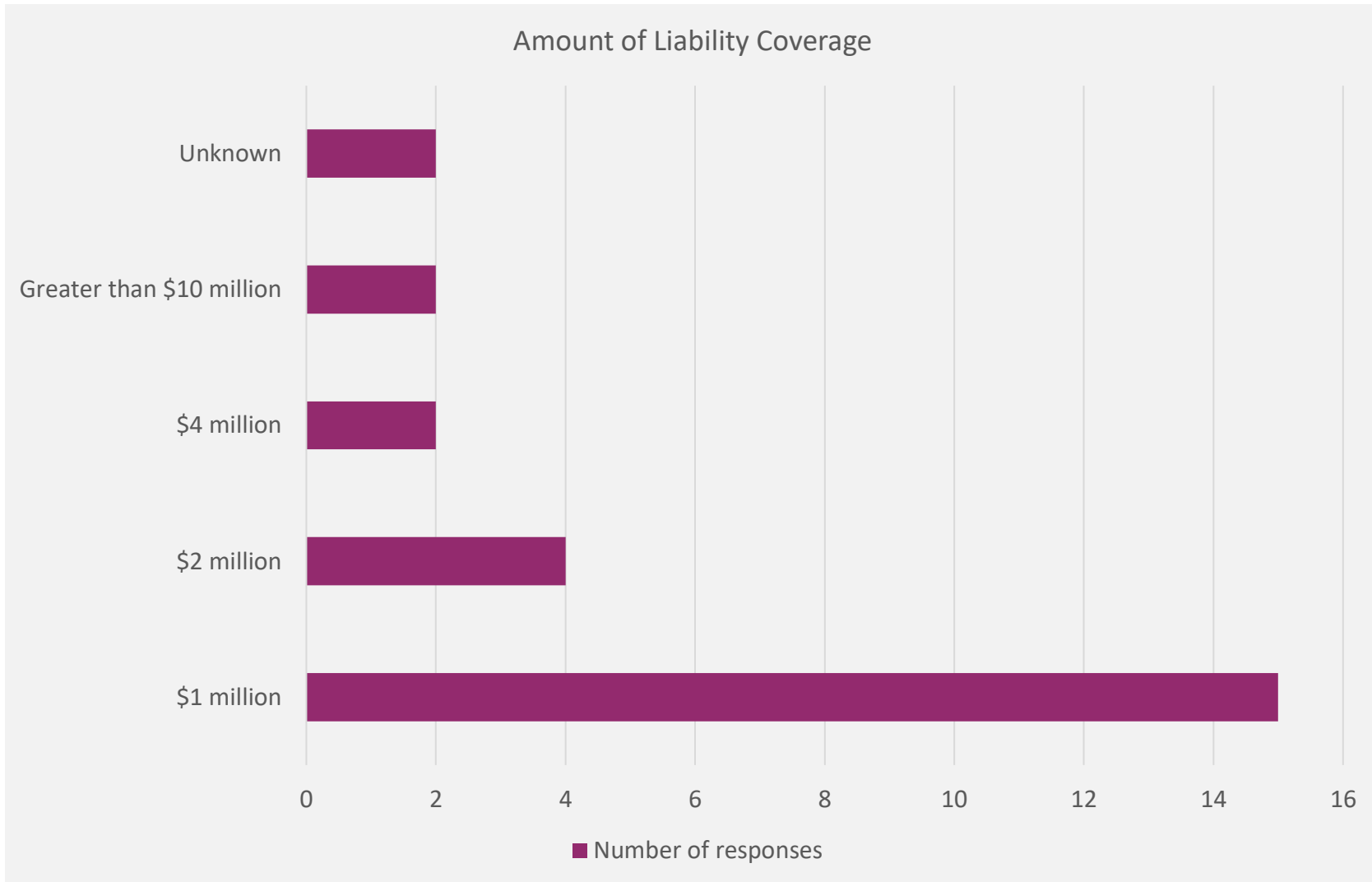
5. Are you self-insured for liability claims?

¿Está asegurado por cuenta propia ante reclamos de responsabilidad civil?



6. What amount of liability coverage do you have for injuries, drowning, illness, or other damages associated with recreating in water features at your facility?

¿Qué cantidad de cobertura de responsabilidad civil tiene para lesiones, ahogamientos, enfermedades u otros daños asociados con la recreación acuáticas de sus instalaciones?



7. Who is your insurance broker? Please provide contact information. (We would like to reach out to insurance brokers to gain input on potential agency request legislation.)

¿Quién es su 7eguro77 de seguros? Proporcione la información de contacto. (Nos gustaría comunicarnos con corredores de seguros para obtener información sobre posibles legislaciones por solicitud de agencias).

Payne Financial/Marsh McLennan Agency

Mount Spokane Insurance

Wycoff Insurance

Alliant

State Farm

Insurance Services Group

Elliott Insurance Group

Association of Washington Cities – Risk Management Service

Liberty Mutual

Brotherhood Mutual

Kerner Insurance

Sandin Insurance Group

Washington City Insurance Authority – Risk Pool

Nonprofit Insurance Program

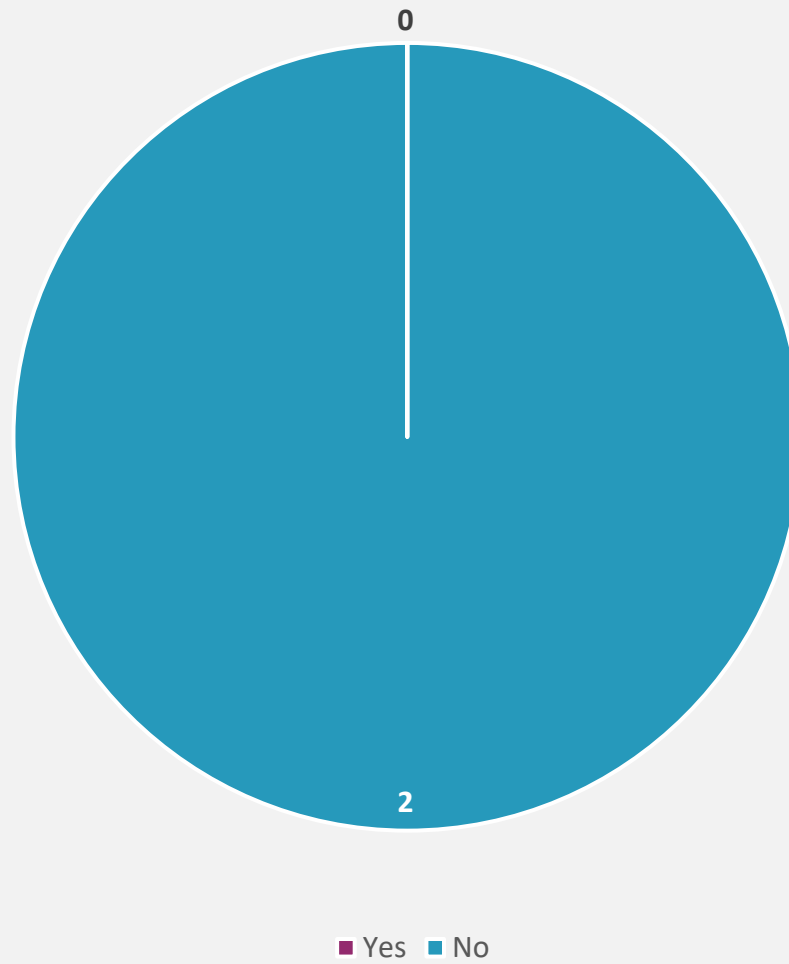
Acrisure Northwest Region

HUB International

Western National Insurance

Nicholson & Associates Insurance, LLC

8. Would you be willing to purchase liability insurance?
¿Estaría dispuesto a adquirir un seguro de responsabilidad civil?



9. What amount of liability coverage would you be willing to purchase?
¿Qué monto de cobertura de responsabilidad civil estaría dispuesto a adquirir?

0 responses.

10. Is there a reason you have chosen to opt out of liability insurance for your facility?
¿Hay alguna razón por la que haya decidido no optar por un seguro de responsabilidad civil para sus instalaciones?

“Cost.”

“Overall insurance policy identified our pool.”

11. What advantages are there to having liability insurance?

¿Cuáles son las ventajas de tener un seguro de responsabilidad civil?

“Mitigates worst case scenario.”

“It helps protect the business.”

“Protection.”

“Coverage for liability.”

“Damage for liability is covered.”

“If something happens you have someone there to help you take care of the situation.”

“Security of our company and owners.”

“Covers the business owner for any accidents that occur at the facility.”

“Required by Franchise [franchise].”

“Provides financial help for injuries, drowning, damage, etc. and also helps protect the policy holder.”

“N/A.”

“HOA required it so an appeased client is an advantage.”

“Legal protection.”

“Having coverage.”

“It is the primary coverage if there is an insurable event.”

“Obvious answer...”

“Protection.”

“Protects the pool/city from liability if we were to be sued.”

“There are many advantages for having liability insurance. Some of which are the ability to have set funds available for pay claims or use these for your defense. Liability coverage provides agreed upon amounts of coverage such as bodily injury, property damage, personal & advertising injury, and damage to rented premises (fire damage to rented premises).”

“My entire business, the livelihood of my family and all of my employees. The safety and security of the public and members who use our facilities.”

“We are subject to a lot of liability so it is essential for us to be covered.”

“Outside organization to be in charge of assessed risk.”

12. What disadvantages are there to having liability insurance?

¿Cuáles son las desventajas de tener un seguro de responsabilidad civil?

“Very expensive... especially in the last five years.”

“It is becoming very expensive.”

“Cost associated with it.”

“Premiums are costly.”

“None.”

“It costs extra money.”

“Paying for it.”

“None, other than it is expensive and there are very carriers available that cover water recreational facilities. We are covered by Lloyds of London and the premium has increased 40% in the last 2 years.”

“Cost of premium.”

“N/A.”

“Cost. No companies offered specific ‘pool’ insurance, so had to go with general liability.”

“Monetary investment.”

“Being sued.”

“The premiums are getting too high post COVID-19.”

“I am checking no below regarding the insurance requirement but the answer really is yes. A city or county is going to have coverage but we should not be burdened with having to prove it to the county or state. For a private group this requirement might make sense. Big brother does is not needed to be looking over the shoulder of cities.”

“Cost.”

“NA.”

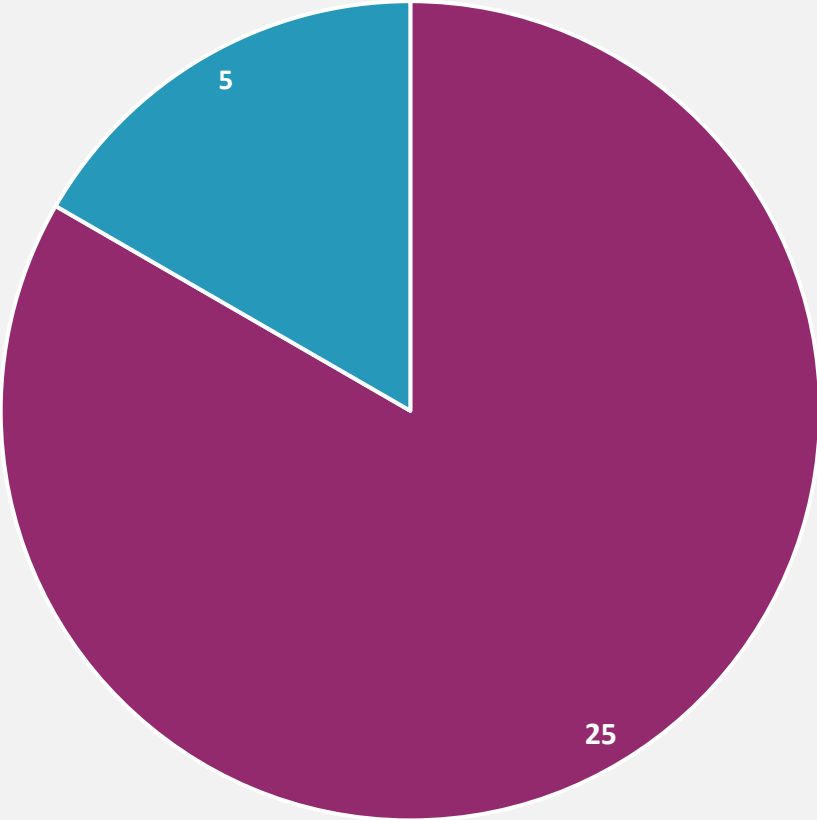
“Apart from monthly premiums expected from the policy holder, there are very few disadvantages. Liability insurance is designed to help and protect the insured.”

“There are no disadvantages to having liability insurance.”

“The costs keep going up.”

“None.”

13. In your opinion, should regulated aquatic facilities be required to have insurance?
En su opinión, ¿debería ser obligatorio que las instalaciones acuáticas reguladas tengan seguro?



■ Yes ■ No

14. In what amount of liability coverage?
¿Qué monto de cobertura de responsabilidad civil?

