

MINUTES  
**HOUSE COMMERCE & HUMAN RESOURCES COMMITTEE**

**DATE:** Monday, March 03, 2014

**TIME:** 2:00 pm or Upon Adjournment of the House

**PLACE:** Room EW05

**MEMBERS:** Chairman Hartgen, Vice Chairman Anderson(31), Representative(s) Loertscher, Anderst, Hancey, Harris, Holtzclaw, Mendive, Romrell, VanOrden, King, Woodings

**ABSENT/  
EXCUSED:** None

**GUESTS:** Peggy Hinman, U.S. Department of Energy; Tricia Crump, Ind. Ins. Agents and Brokers of America; Jane McClaran and Tom Limbaugh, Industrial Commission; Rian Van Leuven, Idaho AFL-CIO; Jeremy Evans, Vial Fotheringham

**Chairman Hartgen** called the meeting to order at 2:50 p.m.

**MOTION:** **Rep. Anderst** made a motion to approve the minutes of February 27, 2014.  
**Motion carried by voice vote.**

**S 1244:** **Senator Goedde** presented **S 1244**. He said in 1917, the Idaho Legislature created the State Insurance Fund under a set of statutes. In 1998, the Idaho Legislature made major changes in the statutes dealing with the Fund. There have been some conflicts in Code. This bill repeals most of the Code passed in 1917 dealing with the State Insurance Fund and allows it to operate as intended in the 1998 amendments.

In response to questions, **Senator Goedde** said in 1998 no one realized there was any conflict. There have been two lawsuits related to these conflicts.

**MOTION:** **Rep. VanOrden** made a motion to send **S 1244** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. VanOrden** will sponsor the bill on the floor.

**S 1242:** **Senator Goedde** presented **S 1242**, which came to him from a constituent who had previously served in the Idaho Legislature. This provides an additional strategy for the Department of Administration to use in distribution of employee benefits. A Health Reimbursement Arrangement - Voluntary Employees' Beneficiary Association (HRA-VEBA) provides an employer with an opportunity to reduce premium costs while providing the employee with an opportunity to grow funds for unreimbursed health care costs. Funds are deposited by the employer into an employee-managed trust when the employee participates in health programs such as smoking cessation or other wellness activities. The funds are tax free going in and going out. This strategy provides the employee the opportunity to build a substantial fund for health care costs upon retirement.

In response to questions, **Senator Goedde** said he does not see a reason why an employee would decline additional funding, however an employee might decline to participate in programs that would lead to the deposit of funds. The employer is responsible to deposit funds into the trust, which has an administrator. Most commonly, employees take a higher deductible on insurance plans when they utilize a HRA-VEBA. Employees can choose the level of risk associated with the invested monies in the fund. These monies can be used for unreimbursed health care costs as long as the expenses are allowed by the Internal Revenue Service. A HRA-VEBA and a Health Savings Account (HSA) are funded pre-tax. With a HSA, both the employer and employee contribute and there is a statutory limit. With a HSA, the employee's health plan must meet the definition of a "high deductible health plan". A HSA can be liquidated for a 10% penalty and a HRA-VEBA cannot,

it must be spent for health care costs. Idaho would offer this plan statewide, and each department would have the opportunity to opt out. Employee trusts would be funded through each department's budget. If Idaho provided 2% of an employee's salary into a HRA-VEBA, the existence of the account would only affect the tax consequences of that money. If employees accepted high deductible health plans, the difference between the high deductible plan and the lower deductible plan could be deposited into the HRA-VEBA. If one department opted in and another opted out, it would not necessary indicate a difference in treatment of employees. Currently employees are not all provided the same dollar amounts of health care benefits, as each employee has options and different needs.

**Chairman Hartgen** requested that a copy of a report compiled by Milliman regarding Idaho's potential use of HRA-VEBAs be added to the official record of the meeting. (See attached.)

**MOTION:** **Rep. Anderson(31)** made a motion to **HOLD S 1242** in committee.

**Rep. King** said benefits are budgeted differently from agency to agency.

**Rep. Harris** said he wonders if there is an appropriation issue. He said he does like the idea presented in this legislation.

**Rep. Anderson(31)** said his understanding is these monies would remain in a person's estate when that person dies, however the funds must continue to be used for health care costs for the surviving family member(s).

**Keith Reynolds**, Department of Administration, testified **in support of S 1242**. He said the bill is very broad, and it simply puts a tool in the toolbox to help the Department of Administration control costs. It simply allows an HRA with a VEBA option, but does not require it. The bill does not address any clear fiscal impact, but allows a program to be put together and to be presented to the Group Insurance Advisory Committee. Currently the most used plan by Idaho's state employees is a PPO with a set dollar amount appropriated for every employee at \$10.5 thousand per year. When employees select a less expensive, higher deductible plan, those employees could then use the HRA-VEBA in order to assist in payment of deductibles or related expenses. Every dollar going in would come from the employer, however if an employee voluntarily gives up money that was appropriated for his/her healthcare costs and that money went into the trust, the state would not be spending additional dollars.

**MOTION WITHDRAWN:** **Rep. Anderson(31)** withdrew his motion to **HOLD S 1242** in committee. He said the additional information provided by **Mr. Reynolds** clarified the information he needed.

In response to questions, **Mr. Reynolds** said a high deductible plan is not required with a HRA, however it is required with a HSA. The HRA, therefore, allows more choice. Details need to be weighed by the Group Insurance Advisory Committee.

**MOTION:** **Rep. Anderson(31)** made a motion to send **S 1242** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Anderson(31)** will sponsor the bill on the floor.

**S 1252aa:**

**Jane McClaran**, Industrial Commission, began the presentation of **S 1252aa**. She said in the first section of the bill, Section 1 of Idaho Code 72-301 is applicable to employers. Section 2 applies to insurers. An issue has developed over time as investment markets have expanded to include derivatives, strips, trips, etc. Changes in market values of these securities have not been fully evaluated. In Section 3, a mechanism to convert securities from an insolvent insurer to cash is outlined. An insolvent insurer fund is also established. This bill identifies the acceptable securities to be deposited and maintained in a custodial account, and creates a fund and mechanism by which to handle security deposits retained to secure any future workers' compensation (work comp) claims of a liquidated insurance carrier. It also creates a new section to address security for work comp payments for employers who have a cost-reimbursement contract with the federal government. Under this contracting mechanism, employers are reimbursed by the federal government directly for their costs, including work comp coverage. Allowing cost-reimbursement contracts to satisfy the security requirements would eliminate the need for security deposits, a three-year payroll history and excess insurance coverage, while still ensuring payment for proper work comp claims. Essentially this is a fix that would convert insolvent funds to cash, and transfer those funds to a newly created solvent fund.

In response to questions, **Ms. McClaran** said it is anticipated a security deposit would exceed future claims. Any remaining funds could be released. There is currently no process in place for insolvent insurers. Her staff currently manages over 600 sureties. Liquidation of an insurer is done in a state of domicile. The security deposit that was required is held in trust here in Idaho and is not part of the liquidation. Funds are held at the Office of the Treasurer. This bill would allow the funds to be transferred to a solvent fund which would allow future claims to be paid. Custodial fees are not currently being paid when a fund becomes insolvent. Securities are taken at par value (face value).

**Brian Whitlock**, Department of Energy (DOE), Idaho National Laboratories (INL), presented another aspect of **S 1252aa**. He said the United States Government owns the INL. Liberty Mutual Insurance provided work comp coverage for the contractors at INL, however recently Liberty Mutual announced it will cease writing these claims. The contractors sought new coverage, and one of three was unable to secure adequate coverage. That contractor was only extended coverage through 2013, with a security deposit of \$4 million. The contractor became self-insured in October of 2013. Although they meet their work comp obligations, there are three issues. First, the State of Idaho requires work comp self insurers to provide a security deposit. For the contractor in question, the required \$5 million deposit could have funded additional jobs at INL. Second, payroll over the preceding three years of at least \$4 million is required. When DOE issues a new contract, they generally require a new legal entity to stand up. Third, there is a requirement of excess coverage to be included in the plan. This could affect future contractors who might not be able to find a company willing to underwrite this coverage. If a contractor defaults or is not able to pay a work comp claim, the claim is transferred to the DOE. For that reason, these policies do not make sense for contractors working with INL. New contractors take over existing work comp claims at INL. **S 1252aa** would not change work comp requirements for INL, but simply recognizes that there is coverage existing from the federal government and the requirement of securities for Idaho creates duplicate securities.

In response to questions, **Mr. Whitlock** said INL's work comp does not cover radioactivity exposure; those exposures are covered under a different program. INL's work comp program does cover standard things like slips, trips and falls. If a contractor was not renewed and an employee had a work comp claim against the contractor, the claim would still be paid. Because the federal government owns the INL facility, INL is in a unique position. The federal government has a judgement fund to cover payments to individuals who might successfully sue them.

**Rian Van Leuven**, Idaho AFL-CIO, spoke in support of **S 1252aa**. He said approximately a year ago his committee was asked to examine security for compensation for self-insured employers. Insolvent employers have been able to claim bankruptcy and were not required to cover costs. The task of covering rising costs of medical benefits and returning injured employees to work as fast as possible is not small. Idaho Code 72-301 is being addressed in order to deal with specific concerns. He said there is no reason for good employers to pay twice.

**Ms. McClaran** reiterated **S 1252aa** provides the ability to convert securities to cash, and to pay custodial fees. These items do not exist without the changes being made in **S 1252aa**.

**MOTION:** **Rep. Woodings** made a motion to **HOLD S 1252aa** in committee to time certain, Tuesday, March 11, 2014, in order to examine concerns and acquire more information.

**Rep. King** said she would like to conduct her own research.

**Mr. Whitlock** responded to a question. The INL is currently self-insured so workers will be covered whether this change takes place or not. If this bill does not move forward, however, INL will lose approximately \$9 million in duplicate securities that could have been put back into Idaho's economy.

**Peggy Hinman**, United States Department of Energy, said the backup security is the cost reimbursement contract that each of the three INL contractors have. Any work comp claims incurred by the contractors are to be paid by the funds of the federal government. Agencies are not allowed to spend any money that Congress has not appropriated to them. Cost reimbursement contracts are good as long as money is appropriated. Should there be claims coming in that are not paid, there is recourse through the Judgement Fund, which was set up by Congress. It does not rely on appropriated monies and is administered by the United States Department of the Treasury. Every work comp claim that INL employees have incurred over the INL's fifty-year history has been paid.

**SUBSTITUTE MOTION:** **Rep. Holtzclaw** made a substitute motion to send **S 1252aa** to the floor with a **DO PASS** recommendation.

**MOTION WITHDRAWN:** **Rep. Woodings** withdrew her motion to **HOLD S 1252aa** in committee to time certain, Tuesday, March 11, 2014.

**VOTE ON MOTION:** **Chairman Hartgen** called for a vote on the motion to send **S 1252aa** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote.** **Rep. Thompson** will sponsor the bill on the floor.

**ADJOURN:** There being no further business to come before the committee, the meeting was adjourned at 4:14 p.m.

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Representative Hartgen  
Chair

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Mary Tipps  
Secretary