MINUTES

SENATE COMMERCE & HUMAN RESOURCES COMMITTEE

DATE:	Thursday, February 13, 2014
TIME:	1:30 P.M.
PLACE:	Room WW54
MEMBERS PRESENT:	Chairman Tippets, Vice Chairman Patrick, Senators Cameron, Goedde, Guthrie, Martin, Lakey, Schmidt and Ward-Engelking
ABSENT/ EXCUSED:	None
NOTE:	The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENED:	**Chairman Tippets** called the meeting to order at 1:32 p.m. and he welcomed everyone.
INTRODUCTION OF PAGES:	**Chairman Tippets** introduced the new Senate Page, Lindsay Bolinder. He explained that she would be asked to tell the Committee a little about herself at the next meeting. **Chairman Tippets** said a few words about Hunter Markus, outgoing Page. He thanked Hunter for his service to the Senate and called him to the podium to explain to the Committee what he had learned. **Mr. Markus** said he had learned that Senators want to do the best for the people of the State. He also said he learned how smoothly things ran when everyone worked together. He thanked the Committee for a great experience. **Chairman Tippets** presented Hunter with a letter of recommendation from the Committee, a card and a Senate watch.
APPROVAL OF MINUTES:	Due to time constraints, the approval of the Minutes for January 30, 2014, was continued to the meeting of February 18, 2014.
S 1203	**Relating to Clarification on Definition and Implementation of Holiday Paid Leave** was presented by David Fulkerson, Interim Director, Division of Human Resources (DHR). **Mr. Fulkerson** said the proposed legislation addresses two main topics: First, paid holiday leave, which defines the amount of leave for full-time employees working flexible (non-traditional) schedules. For example, a four-day, ten-hour schedule, differentiates between agency-required and employee-requested work schedules. The second topic addresses the exception to the overtime definition for time worked on a holiday for non-benefited Fair Labor Standards Act (FLSA)-exempt employees. He said that in order to qualify for paid holiday leave, an employee must contribute to the Public Employee Retirement System of Idaho (PERSI) (Chapter 13, Title 59) or the optional retirement program (Chapter 1, Title 33). This is not new and is currently in Idaho Code § 59-1603(1) and § 67-5302(22). **Mr. Fulkerson** explained that on page 3, line 19(a) of the bill with regards to an agency-required work schedule, a full-time employee will receive eight hours of paid holiday leave. However, if the agency requires the employee to regularly work more than 8 hours on a day on which the holiday occurs, they will receive paid holiday leave for the number of hours they would have been scheduled to work on that day. He explained that on page 3, line 25(b), when a full-time employee requests a non-traditional work schedule, and regularly works more than eight hours on a day on which a holiday occurs, they will receive eight hours of holiday paid leave. To complete the normal workweek of 40 hours, the appointing authority

may require employees to work an alternate schedule during the week in which the holiday occurs or allow them to use accrued vacation or compensatory time.

Mr. Fulkerson noted that on page 3, line 33(c) regarding a part-time work schedule, part-time employees will receive paid holiday leave equal to 20 percent of their budgeted pay period hours divided by 2. This means a part-time employee will receive a minimum of four hours paid holiday leave, but it is not to exceed eight hours. This is currently addressed in the DHR rule 073.04.c and 073.04.e. If this legislation is adopted, DHR will need to update these rules.

Mr. Fulkerson went on to explain that on page 3, line 38, employees who are eligible for paid holiday leave and who work on a holiday, receive both paid holiday leave and overtime compensation pursuant to Idaho Code § 59-1607 and § 67-5328. If they work on either the designated or actual holiday, employees will receive compensatory time or paid compensation for either day; provided however, if they work both days the employee will only receive paid holiday leave and overtime compensation for one of the days.

He noted that on page 3, line 46, there was no change in meaning or application for executive employees, but the wording was different. On page 4, line 1, non-benefited non-exempt employees (see new definition on line 16) who work on a designated or actual holiday will receive paid compensation or compensatory time at the rate of one-and-one-half hours for each hour worked. An employee who is required to work both days will receive overtime compensation for one of the days.

Mr. Fulkerson said that on page 4, line 27, the overtime work definition moved time worked on holidays and put it at the end of the definition (line 36) and made an exception for non-benefited exempt employees (see exempt definition on page 2, line 28).

He said the State of Idaho is more generous than the FLSA law which requires we include overtime as time worked on holidays. The State provides compensatory time for exempt employees. Exempt employees are not eligible for paid compensation for overtime, but receive compensatory time on an hour for hour basis. Currently, if non-benefited exempt employees work on a holiday, they receive compensatory time for hours worked on a holiday and will not be paid for all the hours they worked that week. This exemption from overtime work makes it possible to pay those employees at the rate of one hour for each hour worked on a designated or actual holiday.

Senator Guthrie asked Mr. Fulkerson if there was a clear mechanism to delineate between employee-requested and agency-requested schedules or was scheduling driven by the employee. **Mr. Fulkerson** said his Division has tried to make allowances for those agencies who require an employee to work four day ten-hour weeks, due to coverage for a particular schedule. For example, the Idaho State Police has to have troopers on the road, which is a mandated work schedule versus those employees who voluntarily want to work a flex schedule. The expectation is that the agency clearly spells out the mandated schedule versus an employee-requested schedule. Traditionally, the agency has a written agreement with the employee that says an employee has to flex back when there is a holiday or the agency has the ability to change the schedule at any time given the needs of the agency.

Senator Guthrie then asked Mr. Fulkerson to explain unfunded liability and how it differs with this new legislation. He asked if there was a significant difference. **Mr. Fulkerson** said they polled agencies that have employer-mandated work schedules. Should they have to pay those two hours off for ten-hour employees,

the cost would be about $427,000. There are several other agencies who are implementing four ten-hour day schedules. "We wanted to make sure that it was clear that the money was in the budget should we have to pay that off in one year. It is expected that agencies pay holiday leave and holiday hours worked within their existing budgets."

Senator Lakey wanted to know if this was an effort at consistency and not a mandate from the federal government through the FSLA. **Mr. Fulkerson** said the State handles holidays differently than the federal government. The State says that time worked on those holidays is overtime, whereas, the federal government does not. Employees accrue vacation time and sick leave in two separate accounts. Sick leave is standard and vacation time is based on years of service. Every five years an employee's vacation accrual increases. **Senator Lakey** wanted to know if we were talking about vacation leave versus holiday pay. **Mr. Fulkerson** said there are ten official State holidays each year for which employees are eligible. **Senator Lakey** asked if Mr. Fulkerson was saying that vacation time is what employees accrue if they have to work on the holiday. **Mr. Fulkerson** gave an example of a regular employee who works a regular week, five days a week for eight hours a day. Monday is a holiday and the employee does not come to work on Monday and gets paid for eight hours at the regular rate. There are the 32 hours for the rest of the week that the employee works and that is how the employee gets the 40 hours. However, if the employee then works on the holiday and is an administrator or professional employee and gets one hour of regular pay for every hour of overtime, then the employee would get eight hours of pay for that day and eight hours of compensatory time if they worked the full eight hours on the holiday. If the employee only worked six hours on the holiday, then they would get six hours of compensatory time. The calculation would be one-and-one half times for a qualified employee.

Senator Cameron asked about the last sentence in the revised fiscal note, which says "It is expected that agencies will manage and pay holiday leave and holiday hours worked within their existing budgets." He asked if Mr. Fulkerson knew of any state agencies where that would be impossible or difficult to do? **Mr. Fulkerson** said the expectation would be that the agency would cover holiday leave and holiday hours worked in their existing budget. He did not know of any agency where this would impact their budget. All of the agencies they visited with thought they could cover these expenses within their budgets. The key would be just those agencies where, as an employer, they are mandating that an employee work a flexible schedule. Most of the agencies work eight hour, five-day-a-week schedules.

Senator Cameron referred to lines 46 through 49 relating to executive employees and asked Mr. Fulkerson to explain the differences between a regular full-time employee and an executive employee. He asked why there would be some differences. **Mr. Fulkerson** explained that several years ago there was a cap instituted on comp time of 240 hours. Executive employees were exempt, which included bureau chiefs and above (who supervise more than two employees). They may work 60 hours a week, but are paid for 40. There is no overtime and no comp time. Traditionally, they don't fill out a timecard.

Senator Cameron referred to lines 44 and 45 saying that it indicates an employee who is required to work both days shall only receive holiday paid leave and overtime compensation for one of those days. He queried why not overtime for both days. **Mr. Fulkerson** gave an example when Christmas falls on a Sunday and the official holiday is on Monday. If the employee is required to work on Sunday and Monday, one day is considered a traditional work day and the other day is considered overtime. **Senator Cameron** said he was still confused and asked if that was because the official holiday is on a Monday and Sunday is treated as a regular work day. **Mr. Fulkerson** said, "yes". **Senator Cameron** stated that if an

employee had to work both Sunday and Monday and Monday was a technical holiday, the employee would be paid for both days, and only one would count as a holiday. **Mr. Fulkerson** said, "yes."

Senator Goedde said the $427,000 looked like an annual cost and asked if the cost was a potential one-time cost. **Mr. Fulkerson** said should we have an employee who normally didn't get paid for overtime (employer-mandated schedule), but now gets 10 hours of work time and the state agency had to pay that (assuming everyone worked the same amount of time each year), that would be an annual cost in addition to what they are paying now. It will depend on whether they have to pay that amount. **Senator Goedde** said it is prospective, not retrospective, and **Mr. Fulkerson** replied, "yes."

Senator Guthrie wanted to clarify whether the $427,000 represented the cost of the flex schedule "or will DHR schedule $427,000 less in work time." **Mr. Fulkerson** said the distinction is if they had to pay for those hours, that would be an additional cost. It would be up to each agency tocover the costs. **Senator Guthrie** said the only way not to pay out the money was to have an employee take comp time. **Mr. Fulkerson** said, "yes", that was correct, rather than vacation time for those hours.

Chairman Tippets commented there could be a situation where employees have been working a four ten-hour week schedule for a period of time. **Chairman Tippets** asked Mr. Fulkerson if he was confident that will be clear in all cases whether the schedule was employer-mandated or requested by the employee.**Mr. Fulkerson** said he hesitated to say it is clear in all cases. Should the bill pass, we would have to make sure that all agencies did due diligence, to give correct guidance on good Human Resources practices for setting up these agreements on employer-mandated schedules. **Mr. Fulkerson** said when you hire an employee and you are mandating four ten-hour days, that is pretty clear. When an employee has requested a work schedule and the agency has an agreement with the employee, that allows the agency to flex employees back to a five eight-hour schedule as needed.

Vice Chairman Patrick said he still had concerns about the potential $427,000 and that it should balance out better as we are not requiring people to work more. For a salaried worker overtime should not make any difference. **Mr. Fulkerson** said traditionally, as a state, we pay all employees hourly. Some employees are salaried, but most are hourly. If we have some agencies that are not flexing employees, then we should see some savings due to this change. We may see a little cost savings, and he said he hopes this was a little more clear and would help agencies better manage their comp time issues.

TESTIMONY

Dan Goicoechea, Chief Deputy for the State Controller's Office (SCO), said that in 1997 when they were audited, his office was told to work with the Legislative Service Office (LSO), Department of Finance Management (DFM), and the various agencies to come up with a plan for holiday paid leave. "We support this legislation." The SCO is put in a position of enforcing the legislation. The SCO does not have a policy plan. They are there to execute what the Legislature puts forth and what rules come out of the DHR and DFM. On behalf of Controller Woolf, he said, "we need clarity because there is an irregularity across agencies." Agencies need direction by the Legislature to clearly understand whether an employee self-initiated a work schedule or if the schedule was offered by an agency and how holiday paid leave should be implemented.

Senator Guthrie asked if in the past an employee worked ten hours normally and was only paid for eight hours on a holiday, if they were allowed to make up the two hours. **Mr. Goicoechea** said "yes" after the agency did a pre-pay and defined their payroll and policy. The difficulty at the SCO when processing a payroll transmission, is they do not know the specific policy of an agency. The goal is to show a complete 40 hours a week for full-time employees. Payroll officers need to make sure all are compensated for 80 hours within the pay period.

MOTION **Senator Cameron** moved that **S 1203** be sent to the floor with a **do pass** recommendation with the amended fiscal note. **Senator Ward-Engleking** seconded the motion. The motion carried by **voice vote**. Chairman Tippets will carry the bill on the floor of the Senate.

The amended fiscal note: There will be a one-time cost in the fiscal year (FY) 2015 DHR budget of approximately $12,000 for programming changes to the State's payroll system. In addition it is estimated that the State may see an annual total funds cost increase of $427,000. This estimated cost increase is based on information gathered from agencies that currently have employer-mandated flexible schedules; but are only providing a maximum of eight hours of holiday leave per holiday rather than holiday leave based on the employer-mandated flexible schedule. It is expected that agencies will manage and pay holiday leave and holiday hours worked within their existing budgets.

S 1252 **Relating to Worker's Compensation** was presented by Senator Davis. He explained the unusual approach to writing this bill. **Senator Davis** said Idaho Code Title 72 (Worker's Compensation and Related Laws - Industrial Commission) deals with the Industrial Commission (Commission) and Worker's Compensation. He said an employer can self-insure. The Commission has been wrestling with the language requirements to be self-insured. He was grateful for the Commission's willingness to work with his constituents. The Commission was rewriting the language that appears in Section 1 of the bill. Independent of their efforts, **Senator Davis** said he was involved in rewriting Section 1 of the bill. Senator Davis and the Commission collaborated and decided that if his bill passed and the Commission's bill passed, it would have been impossible for the Code Commission to shuffle this section together. They decided to put both sections in the same bill. Section 1 of the bill is for the Industrial Commission and Section 2 of the bill is for the Idaho National Laboratory. **Senator Davis** said the Commission went over Section 1 of the bill and they support this section. **Senator Davis** said he went over Section 2 of the bill and explained why he believed it was important to have that part of Idaho law by saying we need to give better language in dealing with companies and government subdivisions that are self-insured. He offered to carry the bill on the floor of the Senate.

Jane McClaran, Financial Officer, Industrial Commission, spoke about Section 1. She said the Commission proposed amendments to Idaho Code § 72-301 and was limited to Section 1. She said Section 2 is a new section proposed by Senator Davis. The Commission does not support or oppose that portion of the bill.

Ms. McClaran said the changes reflected in lines 23 through 26 of page 1 are clean-up only and have no impact on self-insured employers. What's restated here is current practice. The proposed language on lines 27 through 32 of page 1 is applicable to self-insured employers and mirrors the language on lines 8 through 12 of page 2, which is applicable to insurers. This change is intended to address an issue that has developed over time as financial investment markets have dramatically expanded, to include all sorts of investment options (derivatives, Treasury Inflation-Protected Securities (TIPS), Separate Trading of Registered Interest and Principal of Securities (STRIPS), etc). Neither the Commission nor the State Treasurer's Office tracks investment ratings or monitors changes in the

market value of these securities. The Commission developed a more restrictive list of acceptable security instruments (backed by the full faith and credit of the U.S. Government) and sought to eliminate acceptance of those higher risk securities. They have no resources dedicated to monitoring, or expertise to evaluate, other types of securities on an ongoing basis.

Ms. McClaran explained the second objective is to address the recent increase in insolvent insurers. She referred to Subsection 3 beginning on line 17 on page 2 which is new language; lines 17 through 23 provide a mechanism to convert securities of an insolvent insurer to cash. Lines 24 through 34 describe how funds are credited and accounted for, and lines 35 through 38 create an insolvent insurer fund. Currently, the security deposit continues to be held in a custodial account for an insurance company that no longer exists. The proposed cure is to convert the security deposit to cash, transfer funds to a newly created insolvent insurer fund (Subsection 4), track those deposits and accrued interest specific to the insurer, and pay future claims and reasonable fees until such time as the Commission determines those funds are no longer needed.

Chairman Tippets quoted Subsection(b), line 22 on page 1, "An employer may become self-insured by obtaining the approval of the Industrial Commission, and by depositing and maintaining in a custodial account with the State Treasurer money or acceptable security instruments satisfactory to the Commission securing the payment" and said he questioned this statement. He said it was puzzling to him when we identify acceptable security instruments in two places in the bill. This raises the question, could there be acceptable security instruments according to the definition given later that are not satisfactory to the Commission or is the language redundant and could the language be removed without changing the meaning.

Ms. McClaran said the security requirements differ between self-insured employers and insurers. It is a simple computation for insurers, so it is very straightforward. For insured employers there are additional credits which are addressed in rule as far as what is adequate for a deposit.

Chairman Tippets said he thought that the instrument could meet the definition of an acceptable security instrument. **Ms. McClaran** said it is not the instrument that is acceptable or not, it is the security deposit. **Chairman Tippets** said that on page 1, "In lieu of such money or security instruments, the Commission may allow or require such employer to file or maintain with the state treasurer a surety bond" and if we are saying these instruments are not only acceptable but also satisfactory to the Commission, why do we say a surety bond may be required. **Ms. McClaran** said the surety bond is an insurance instrument that is one of the acceptable securities. So, either monies, U.S. Treasuries, or security bonds would suffice. If an employer elects not to have the monies or the U.S. Treasuries, in lieu of that they could elect to have a surety bond.

Senator Schmidt commented that since we have two bills that have been put together, are we just asking the Commission questions on Section 1 and Senator Davis a question on Section 2. **Chairman Tippets** assured him he could ask a question of either party.

Senator Cameron said he wanted clarification about a self-insured employer who could invest with an appropriate level of security with the Treasurer. However, he said, if the Commission felt there was an increased risk, they could also require a surety bond. He asked if that would be an appropriate description. **Ms. McClaran** said the Commission has not mandated the type of security that has to be held. A surety bond covers a specific period of time and if the Commission determined that additional security was needed, "we would let the employer know the amount

and allow them to provide the acceptable instrument." The employer could elect what type of instrument so long as it was not issued from an affiliate. **Senator Cameron** said the language says the Commission may "allow or require", so at what point would the Commission require the use of a surety bond. **Ms. McClaran** said if a self-insured employer elected to have a surety bond and had it in place for many years and then wanted to change the type of security, "we would allow them to cancel the surety bond, but would not release it because it was coverage for the period of time that it was in effect."

Vice Chairman Patrick said he is familiar with the insurers and he asked if there had been a loss record. "Were there some companies that provided alternatives to the insurance companies?" **Ms. McClaran** said the Commission does not pay claims. The State Insurance Fund is separate from the Commission. The purpose of the Commission in requiring the security for payments for worker's compensation in the event a self-insured or insurer becomes insolvent, the security deposit is what is left to pay claims, because Idaho does not have an uninsured employer fund. **Vice Chairman Patrick** said he wanted a history of failures, and **Ms. McClaran** said she would provide a list if that would be helpful. **Vice Chairman Patrick** wanted to know if there was a strong reason to change the law due to failures. **Ms. McClaran** replied there had not been many failures. The reason for the change was due to the dramatic financial markets and all of the derivatives that are available. This will make the security less risky.

Senator Goedde commented that we are allowing self-insurers other options of security. **Ms. McClaran** said allowable security instruments have been applicable to both self-insureds and insurers. This does not expand them. **Senator Goedde** wanted to know if there was an option for a surety bond prior to this language being introduced. **Ms. McClaran** said "yes" that most self-insured employers have surety bonds. **Senator Goedde** said his understanding was that if an employer was self-insured they had to post a surety bond, and now we are giving employers the option of expanding the options. **Ms. McClaran** said that in prior years we had amended Idaho Code § 72-301 to separate the self-insured employers from the insurers. Other options were available then.

Senator Davis said in the audience were Brian Whitlock, Director of State Government Relations for the Idaho National Lab (INL) and Peggy Hinman, Attorney. He said the Leadership In Nuclear Energy Commission (LINE) was created by Governor Otter. The LINE Commission considered Section 2 of the bill. After the LINE Commission heard the reasons or policy concerns that exist today, the LINE Commission unanimously supported the principles in Section 2. **Senator Davis** explained there was a readily available market for employers to purchase this coverage. Things have drastically changed since then. The worker's compensation market that existed for nuclear energy employers has completely evaporated. Idaho law requires that employers provide coverage for their employees. When you look at the duty under Idaho Code § 72-301, the statute says we are going to allow a self-insured employer to post a cash bond with the Treasurer. With there being no market for coverage, the only thing the INL could do, was to negotiate and make a cash deposit with Liberty Mutual in the amount of $4 million. In the event a claim is made that otherwise would have insurance coverage, there is the $4 million deposit as security. Additionally, there is no bond, surety or insurance coverage, and there is a requirement that Batelle deposit $5 million with the State Treasurer. That is $9 million of working capital from Batelle which translates to 100 jobs. Federal law requires that the federal government pay these claims, (see page 2, line 9). In the event there is a claim made that otherwise would have had insurance coverage, that claim is paid through the federal government, not with an insurance policy and not from any deposits. **Senator Davis** said he hoped that with the passage of this bill we recognize that if an employer qualifies for a cost reimbursement contract

with the feds, and he referred to page 3, line 1, "which addresses payment of costs for the employer's worker's compensation program" that satisfies requirements for self-insurance. Liberty Mutual will release the $4 million. The State will release the $5 million, so Batelle can inject $9 million in working capital to provide more jobs at the INL. Currently, self-insureds have to provide a three-year claims history. The problem is that the Department of Energy (DOE) periodically reviews who will be the primary contractor (the INL is owned by the federal government). The DOE contracts with another company to manage the assets and the programs of the INL. If the DOE makes a determination to make a change, and a new contractor comes in, the employer is unable to satisfy the three-year history requirement. The effect would be, as the law is currently written, that the INL is on an offramp to closure. We have removed the three-year average because there is a cost reimbursement contract with the federal government. That is why the LINE Commission sees this bill as valuable and so important.

Senator Goedde said that given the recent history of the federal government paying Idaho for expenses incurred, he wanted more information on how the cost reimbursement contract was set up. His concern was that there may be expenses from an insured worker and there may be years of delay in getting reimbursement from the federal government. **Ms. Hinman** said the method of collection for any claims that are incurred by the contractor are administered under the contractor's worker's comp program paid by the contractor. The contractor seeks reimbursement from the DOE for the cost that it has incurred. There is a more direct payment to injured workers without having to wait for the contractor to recover funds from the DOE. That is the way the program is set up to run. Any new contractors take over the obligation of past contractors, which would include the responsibility to cover any claims by former workers. **Senator Goedde** said he had another concern about a new contractor who assumes the claim from the prior contractor for an injured worker. **Ms. Hinman** explained that ultimately the DOE is responsible for the safety of the worker, for the management of the facilities and payment to the contractor to administer those obligations. Any previous claims, assuming the claim was legitimate and valid, that occurred, for example ten years ago, would be paid by the contractor. When the new contractors take over the operation of the facility, it includes the requirement that they pick up any past liabilities. **Senator Goedde** said that is a huge obligation for a contractor to assume, but as long as it is stated in the contract, that is not a concern of ours.

Senator Schmidt gave an example of a worker doing refrigeration work for a contractor and the contractor goes out of business and the worker gets retrained and is now doing plumbing. The worker puts in a claim for an injury he received from a previous employer and he tries to make a claim. How will that be administered? **Ms. Hinman** said that she assumed both contracts were under a cost reimbursement contract with the DOE, and **Senator Schmidt** said to assume that for clarification. **Ms. Hinman** said that if you assume the person was injured while working at the INL for a contractor who had a contract with the DOE, as this legislation is set up to address, then those claims that were rightfully incurred under worker's comp statutes would be paid by the incumbent contractor. **Senator Schmidt** asked what if the employee was working for INL and then went to Lewiston to dredge for the Corps of Engineers on a cost-reimbursement contract. Would that employer assume the claim? **Ms. Hinman** said assuming that the contractors with the Corps of Engineers takes advantage of the self-insurance provisions that are being proposed here today, then they would have coverage. The question would be how that claim would be proportioned under the workers comp statute. Prior injuries and percentages are sometimes assigned for workers who are injured, as they may have had an injury in the past that contributed to a future injury.

Senator Cameron asked if the State, as a matter of law, required the feds to

pay under the cost reimbursement contract. **Ms. Hinman** said she believe the self-insurance scheme put the responsibility upon the employer to administer the worker's comp program. As a matter of law, the State would require that adequate self-insurance be established. The State would have confidence that the claim would be paid with the existence of a contract. However, she was not sure, as a matter of law, if the State would be able to force payment and she was not sure how that would work where the employer is really the entity that is responsible for paying any claims.

Senator Cameron pointed out that on page 3, line 2 of the bill, the phrase that says "self-insurance status is to be granted as of the effective date" and wanted to know if that statement was restrictive. One could interpret that to mean an employer's self-insurance status is granted as long as the employer has met all the applicable rules, whether the Commission believes so or not. If the federal government refuses to pay based on cost reimbursement language with regards to the Commission, why would we not fall back on the requirement of a surety bond or other financial instrument. **Senator Cameron** said, in essence, what this law is saying is we don't have to set aside the $9 million because we have this cost reimbursement contract. He said Senator Davis has made a compelling argument that we are tying up $9 million that could be used because we have a cost reimbursement contract. But then we are also saying if the cost reimbursement contract does not work, we are going to fall back on the employer. If we are going to fall back on the employer, why shouldn't we have required some sort of financial instrument or protection.

Senator Davis referred to page 2, line 47, and said the employer will demonstrate to the Commission that security exists. That is the condition preceding the benefits that follow. This has been going on for decades and this is not something new that we have cooked up in order to attain self-insurance status. We have not experienced losses in Idaho. The Committee has heard from the Commission where other states have had problems, but Idaho doesn't have a default problem. The federal government says the State should set up their own program. We have a contractual duty. Each successor contractor has the same duty to assume the liability. If a company is not able to demonstrate to the federal government they have the financial muscle and the other professional skills, the company will not be awarded the contract. **Senator Davis** said we are not talking about a contractor that is submitting a bill to roof a house. An employer has the duty, under the program, to pay the claim pursuant to Idaho law. In the event of payment, the federal government makes the reimbursement. There is probably no one who has ever made a claim where there has been a problem. **Senator Davis** said the dollars are the same, whether they are through the cost reimbursement contract or have been deposited with the Treasurer’s office. **Senator Davis** said we don’t have the market today that we had in prior years. We cannot go out and get a bond. It is only cash. The Legislature has to decide if they have confidence in the long-term reimbursement program. The rules are not changing. There is no insurance market to go to. He said we can keep the $9 million on deposit, if that is the will of this Legislature, but we will lose 100 jobs. "We don't want that in our State." Claims are not getting paid out of the $9 million as they are paid pursuant to the cost reimbursement contract. "Why are we worried about the source of funds? We have $9 million set aside and for what purpose?"

Senator Cameron said he appreciated Senator Davis pointing out the demonstration language which helped with his understanding. He has a concern that the Commission would have to determine that the cost reimbursement contract was sufficient. If it is not sufficient and the feds go into sequester or decide to not pay, then it falls back on the employer. What if the employer doesn't have the money. We have not asked the Commission to look at the employer. We have asked them to look at the cost reimbursement contract. **Senator Davis** said we have been through the longest sequestration in the history of our country and no claims went unpaid. **Senator Cameron** said it sounded like a mandate that the Commission approve an employer's self-insured status. **Senator Davis** said this was negotiated language with Liberty Mutual in order to be able to claw back the $4 million that is on deposit. This was the language we were able to pull together in order to satisfy those concerns and to be able to put the money back to work.

Senator Guthrie asked if a contractor could not pay for whatever reason, and he could not get reimbursed, who advocates for the employee? **Senator Davis** said the program is a parallel program. They have to get approval for that part of the contract. We have not had the problem in the past. It is his understanding that there is no historical practice for anyone for non-payment.

Senator Schmidt asked if there were other dredging companies or hospitals in Lewiston that have cost-based contracts that would qualify under this statute. **Senator Davis** said when this bill was first written, the cost reimbursement contract was limited to the DOE. They had to pull back because there were other places that had federal contracts. He said he did not know if there are other cost reimbursement contracts elsewhere. What the statute says is we have to perform due diligence.

Chairman Tippets said the new section is an alternative means of securing cost reimbursement contracts. He said he was puzzled about the language on page 3, line 2, when Senator Cameron referred to "self-insured status is to be granted as of the effective date of the qualifying contract or other instrument or as soon thereafter as the employer meets all other applicable commission rules." He asked what the other instruments were. "Are we talking about the standard way we provide a surety bond?" **Chairman Tippets** said he thought we were talking about cost-reimbursement contracts. Why is the language referring to other instruments? **Senator Davis** said he did not know the answer, but he explained that when he ran this through the lawyers in order to satisfy them, each added language and we ended up with the language that is in the bill. He worked with colleagues at the Commission to make sure they saw the language and had input. There was a small stack of rewrites that included their guidance as well. **Chairman Tippets** said it caused him some concern that we're saying that the self-insured status was to be granted as of the effective date of the qualifying contract or other instruments, when we don't know what the other instruments are. **Ms. Hinman** said one of the other considerations that Senator Davis went through was regarding the INL requirement of a three-year site contractors reimbursement contract. This language was intended to address the self-insurance status and the contractor does not have to wait until a three-year employee past history is established. They may have someone seeking to obtain self-insurance through a cost reimbursement contract. If there are other means of establishing insurance for the government contractor, this language would allow the three-year payroll history to be waived for a DOE contractor.

Mr. Whitlock said he thought that was what was envisioned with that language of "other instruments" to make reference to these cost-reimbursement contracts. This cost-reimbursement contract would serve as the instrument, either on the date that it is enacted or when the Commission determines that, "yes," this cost-reimbursement contract is a sufficient instrument and that all costs covered for Worker's Comp are covered under that cost-reimbursement contract. **Chairman Tippets** said that what Mr. Whitlock was saying made sense, if a period is inserted after the words "qualifying contract", then it would read "self-insured status would be granted as of the effective date of the qualifying contract", which we understand to be the cost-reimbursement contract. But now we are saying "or other instruments". We are providing another option that is not specified or some other instrument that we are not identifying. A self-insured status could be granted if the employer meets all other applicable conditions and rules. **Mr. Whitlock** said "that is why we put it in the contract. We do have $4 million in cash on deposit with Liberty Mutual." The deposit is to cover the past claims, but he said he thought that other instruments cover past claims. He said he thought the other instruments could include the cash deposit as an instrument with Liberty Mutual. **Chairman Tippets** asked "since we are not identifying the other instruments, what qualifies as another instrument that would allow the Commission to grant self-insured status?" **Senator Davis** said, again, it is covered by the cost-reimbursement contract. The question of the remaining language is the effective date, not the qualifying event. There are two effective dates that could be examined by the INL. One is the date of the qualifying contract for the company. We would need to see what the Commission would require of the employer. The qualifier is the self-executing component after the employer met the qualifications. **Chairman Tippets** said it was more clear to him. "We are not talking about the requirements for granting self-insured status, but the date at which that becomes effective once the other requirements are met." **Senator Davis** said it was important to demonstrate that the $4 million was not needed in order to release the money

Senator Schmidt quoted the bottom of page 2, line 49, "self-insured worker's compensation program is covered by a cost reimbursement contract with the federal government and said "it seems like there are always sub-contractors of sub-contractors of sub-contractors." He asked if this is a sub-contractor who contracts with a bigger contractor who is actually working and getting their money from the DOE; is that covered? **Senator Davis** replied the sub-contractors do not receive that benefit. They must have a direct contractual relationship with the federal government in order to receive the benefit. Those employers otherwise still have to satisfy the standards of the worker's compensation statutes. They may be eligible separately to have their own self-insured program, but that would be Section 1 of the bill, not Section 2.

Senator Ward-Engelking said she was worried if a self-insured employer is not being reimbursed for claims, even though they have a contract with the federal government, what method is left or what security is left to pay those claims. She said she thought she heard Senator Davis say that the worker could go to court, but that puts the burden back on the worker. **Senator Davis** said one could make the same argument if an insurance company refused to make payment. That happens all of the time. There will be disputes from time-to-time. **Senator Davis** asked Senator Ward-Engelking if she believed that the federal government was at least as equal in the performance of its duties under the terms of its cost-reimbursement program as another. There has not been a default. In order to be eligible, an employer has to be able to demonstrate to the Commission that security for its self-insured worker's comp program is covered by a cost-reimbursement program. The plan is then administered and the payments are made. **Senator Ward-Engelking** said it seems as though there is a lot of red tape in dealing with the federal government and even though these claims may be at least valid as

far as the INL is concerned, it may take a very long time to get repaid for those claims. **Senator Davis** said the employee does not make the claim with the federal government, they make the claim through the program. There is a separate third party that actually administers the program. The program is not run by Batelle or the other contractors. A third party gets paid or reimbursed for those funds.

Chairman Tippets said the Committee was five minutes over their allotted time, however if there were other questions the Senators had to help them with their vote, he would certainly hear them. He asked if there were any further questions and there were none.

MOTION: **Senator Cameron** moved that **S 1252** be sent to the floor of the Senate with a **do pass** recommendation. **Senator Martin** seconded the motion. The motion carried by **voice vote**. **Senators Schmidt** and **Ward-Engelking** voted nay.

Chairman Tippets apologized to all about the misjudgment of time for this meeting. He explained the presentations were scheduled last to accommodate meetings on the House side. He said he wanted to reschedule the two presentations. He then introduced Gloria Totoricaguëna, Coordinator, Euskadi-Idaho Trade Agreement Pacific Northwest Economic Region (PNWER) Idaho Council. He asked her to introduce the people that were with her and he stated they could later talk about rescheduling another opportunity for the presentation. **Ms. Totoricaguëna** introduced Mr. Ander Caballero, delegate of the Basque government and Pablo Fano, International Commercialization of Basque Country, which provides opportunities for Idaho businesses interested in entering the European Union and Basque businesses.

Chairman Tippets next called on Jeff Sayer, Department of Commerce, who introduced the International Trade Managers: Armando Oreano, who runs the Mexico Trade Office, and Eddie Yen, who is from the Taiwan Trade Office.

ADJOURNED: There being no further business, **Chairman Tippets** adjourned the meeting at 3:08 p.m.

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Senator Tippets
Chair

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Linda Kambeitz
Secretary