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HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

BEFORE THE STATE OF WASHINGTON
OFFICE OF THE INSURANCE COMMISSIONER

IN THE MATTER OF:

Docket No. 15-0290

WASHINGTON TECHNOLOGY
INDUSTRY ASSOCIATION ("WTIA") –
DISAPPROVAL OF APPLICATION TO
OPERATE SELF-FUNDED MEWA
No. 15-0290

DECLARATION OF KIRAN H. GRIFFITH
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT BY WTIA

1. I am an attorney at Stoel Rives LLP ("Stoel Rives"), which represents Washington Technology Industry association ("WTIA") with regard to WTIA's application for a certificate of authority ("COA") to operate a self-funded multiple employer welfare arrangement ("self-funded MEWA"), including WTIA's appeal of the Officer of Insurance Commissioner's ("OIC") disapproval of its application. I am above the age of 18 and competent to testify to the matters set forth herein.

2. In late 2014, WTIA approached Stoel Rives about WTIA's efforts to better serve its membership by providing more affordable, comprehensive health care services under the Washington Technology Industry Association Employee Benefit Trust ("Trust"). During the course of our discussions, WTIA decided to provide self-funded health care services under the

DECLARATION OF KIRAN H. GRIFFITH
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1

1 Trust. We discussed that such an arrangement would be considered a self-funded MEWA under
2 RCW Chapter 48.125 (the "Statute"). WTIA decided to apply for a COA under the Statute.

3 3. In late March 2015, Stoel Rives reached out to the OIC on WTIA's behalf to
4 obtain more information about the process for applying under the Statute and to specifically
5 obtain a copy of the prescribed application form provided under RCW Section 48.125.050. On
6 or around March 23, 2015, I learned from the OIC that there is no prescribed form available for
7 COAs under the Statute. The OIC representative also informed me that the OIC has not granted
8 a COA to operate a self-funded MEWA in at least seven or eight years, and that the Statute
9 might have been intended only for preexisting self-funded MEWAs. Nonetheless, the OIC asked
10 for more information about WTIA and the Trust, as well as a copy of WTIA's written plan of
11 intended operation as a self-funded MEWA. I relayed this information to WTIA, and Stoel
12 Rives worked with WTIA to provide the requested information to the OIC.
13
14

15 4. Throughout the month of May, Stoel Rives maintained regular contact with the
16 OIC by telephone and email on WTIA's behalf, to obtain updates on the OIC's review and to
17 offer additional information if needed. During this time, we reiterated WTIA's request to meet
18 in person to discuss WTIA's application and the process for becoming a self-funded MEWA.
19 True and correct copies of my email correspondence with the OIC are attached hereto as Exhibits
20 1 through 2.
21

22 5. On May 21, 2015, I learned from an OIC representative that the OIC was waiting
23 for the Attorney General's opinion on what was referred to as the "seasoning requirement" under
24 RCW 48.125.030(8). The OIC representative suggested that this requirement might not be an
25 issue for WTIA, but noted that a final decision would not be made until the Attorney General
26

DECLARATION OF KIRAN H. GRIFFITH
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 2

1 provided an opinion. The OIC representative also stated that, once the OIC completed its review
2 of WTIA's application, WTIA would go through a "solicitation process." I relayed all of this
3 information to WTIA. The OIC did not reference the solicitation process again until after it had
4 denied WTIA's application.

5
6 6. In June 2015, Stoel Rives contacted the OIC to reiterate WTIA's request to meet
7 in person, and a meeting with OIC representatives was scheduled for June 22nd. True and
8 correct copies of my email correspondence with the OIC are attached hereto as Exhibits 3
9 through 4.

10 7. On June 22, 2015, we met with representatives from the OIC at its offices in
11 Tumwater, Washington. Melanie Curtice and I attended from Stoel Rives. Michael Schutzler
12 and Michael Monroe attended on behalf of WTIA and the Trust. We met with Gayle Pasero,
13 Charles Brown, and AnnaLisa Gellermann. During the meeting, the OIC asked WTIA to
14 provide additional information to assist in its review. The OIC did not indicate that it considered
15 WTIA's application to be incomplete. The OIC asked for the following information: (1) why
16 WTIA believes that it complies with RCW 48.125.020(3) and RCW 48.125.030(8); (2) why the
17 Trust is uniquely set up to effectively operate a self-funded MEWA, including why association
18 health plans would likely not use the Statute as a means to avoid state insurance regulation; and
19 (3) the pricing and/or rating philosophy that WTIA intends to employ in a self-funded
20 environment. See Declaration of Michael Monroe ("Monroe Decl."), at Exs. 4 through 5.
21

22
23 8. On July 7, 2015, WTIA submitted a written discussion of why the Trust is
24 uniquely set up to operate a self-funded MEWA and the intended pricing and/or rating
25 philosophy to be used in a self-funded environment. See Monroe Decl., at Exs. 6 through 8. On
26

DECLARATION OF KIRAN H. GRIFFITH
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 3

1 WTIA's behalf, Stoel Rives submitted a legal analysis of RCW 48.125.020(3), RCW
2 48.125.030(8), and why WTIA is eligible to apply for a COA under the Statute. *See* Monroe
3 Decl., at Ex. 7. This legal analysis included a comprehensive discussion of the legislative
4 history. True and correct copies of key legislative materials considered in this analysis are
5 attached hereto as Exhibits 5 through 8.

6
7 9. On August 3, 2015, an OIC representative informed me by telephone that the
8 OIC's executive management team planned to meet on August 4th to determine their position on
9 WTIA's application. I relayed this information to WTIA.

10 10. On August 13, 2015, an OIC representative confirmed with me that the OIC's
11 executive management team had met to review WTIA's application. However, the
12 representative did not provide the OIC's response to the July 7th legal analysis or otherwise
13 confirm the OIC's position on this legal question. Instead, the OIC asked WTIA to provide the
14 following information: (1) how the Trust's Form 5500 and Form M-1 reporting obligations are
15 enforced by the United States Department of Labor; (2) whether the Trust complies with the
16 Patient Protection and Affordable Care Act ("PPACA"); and (3) identification of the agencies
17 tasked with enforcing compliance under PPACA. After I relayed this request to WTIA, WTIA
18 agreed for Stoel Rives to respond to these questions on WTIA's behalf as a courtesy to the OIC.
19 A true and correct copy of my response is attached hereto as Exhibit 9; *see also* Monroe Decl., at
20 Ex. 9.
21
22

23 11. On August 31, 2015, the OIC updated me on its review of WTIA's application.
24 True and correct copies of my email correspondence with the OIC are attached hereto as Exhibits
25 10 through 11.
26

DECLARATION OF KIRAN H. GRIFFITH
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 4

1 12. On September 9, 2015, the OIC confirmed it had completed its review of WTIA's
2 application, but stated: "While it is not yet determined if there is authority to issue a certificate
3 of authority under Chapter 48.125 RCW, we have noted areas below where additional
4 information or documentation is required prior to making that decision." The OIC asked WTIA
5 to provide more information or documentation about the Trust's financials. WTIA was also
6 instructed to submit third-party investigative reports that are completed by a vendor recognized
7 by the National Association of Insurance Commissioners ("NAIC"), as required under RCW
8 48.125.050(8). True and correct copies the OIC's September 9th correspondence, as well as
9 WTIA's September 18th response, are attached hereto as Exhibits 12 through 13.

11 13. On September 23, 2015, the OIC denied WTIA's application. *See* Monroe Decl.,
12 at Ex. 11. On WTIA's behalf, I contacted the OIC by email on October 6th to discuss its denial.
13 A true and correct copy of my correspondence is attached hereto as Exhibit 14.

15 14. Representatives of the OIC agreed to speak with me by telephone to discuss the
16 OIC's denial. During our telephone discussion, I requested the OIC to identify the specific
17 information WTIA could provide to facilitate approval of its application. The OIC
18 representatives declined to do so. During our telephone discussion, I was unable to confirm how
19 WTIA can satisfy the \$200,000 deposit requirement, although the OIC representatives seemed to
20 agree that this would be done by a tri-party depository agreement. Instead, an OIC
21 representative informed me that WTIA must submit a new application under the Statute if it
22 wished for the OIC to continue its review. The OIC representative also said that WTIA might be
23 required to apply for a solicitation permit under RCW 48.06.030 to raise additional funds for the
24 surplus. However, in a follow-up email, the OIC stated that the solicitation permit process did
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DECLARATION OF KIRAN H. GRIFFITH
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 5

1 not appear to apply to self-funded MEWAs. A true and correct copy of the OIC's
2 correspondence in this regard is attached hereto as Exhibit 15. I relayed all of this information to
3 WTIA, and Stoel Rives worked with WTIA to file a second application as instructed by the OIC.

4 15. A true and correct copy of the Prehearing Conference Order issued on December
5 17, 2015 is attached hereto as Exhibit 16.

6 I declare under penalty of perjury under the laws of the State of Washington that the
7 foregoing is true and correct to the best of my knowledge.
8

9 SIGNED at Seattle, Washington this 22nd day of January, 2016.

10 
11 _____
12 KIRAN H. GRIFFITH

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DECLARATION OF KIRAN H. GRIFFITH
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 6

1 **CERTIFICATE OF SERVICE**

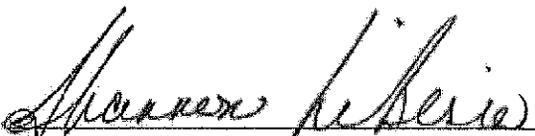
2 I, Shannon Liberio, certify under penalty of perjury under the laws of the State of
3 Washington that, on January 22, 2016, I caused the foregoing document to be served on the
4 persons listed below in the manner shown:

5 **Via U.S. Mail and Email:**

6 Judge William Pardee
7 Office of Insurance Commissioner
8 Hearings Unit
9 P.O. Box 40255
10 Olympia, WA 98504-0255
11 hearings@oic.wa.gov
12 and
13 c/o Dorothy Seabourne-Taylor, Hearings
14 Unit Paralegal
15 DorothyS@oic.wa.gov

6 **Via U.S. Mail and Email:**

7 Charles Brown, Sr. Insurance Enforcement
8 Specialist
9 Darryl Colman, Insurance Enforcement Specialist
10 Office of Insurance Commissioner
11 Legal Affairs Division
12 P.O. Box 40255
13 Olympia, WA 98504-0255
14 charlesb@oic.wa.gov
15 darrylc@oic.wa.gov

16
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Shannon Liberio, Practice Assistant
Stoel Rives LLP

DECLARATION OF KIRAN H. GRIFFITH
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 7

Griffith, Kiran H.

From: Pasero, Gayle (OIC) <GayleP@OIC.WA.GOV>
Sent: Thursday, May 07, 2015 2:41 PM
To: Griffith, Kiran H.
Subject: MEWA application for WTIA

Kiran,

I am hoping to provide further detail to you shortly regarding the MEWA application for Washington Technology Industry Association Employee Benefit Trust. I am waiting for additional information that I should have by the end of this week or the first part of next week. Once I receive I will give you a call with more details. Thanks for your patience.

Best regards,

Gayle Pasero, CPCU
Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

360.725.7210 | GayleP@oic.wa.gov
5000 Capitol Blvd., Tumwater, WA 98501
P.O. Box 40259, Olympia, WA 98504-0255
www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | [email/text alerts](#)

Griffith, Kiran H.

From: Griffith, Kiran H.
Sent: Thursday, May 07, 2015 4:36 PM
To: 'Pasero, Gayle (OIC)'
Subject: RE: MEWA application for WTIA

Gayle,

Thank you very much for the update! We look forward to hearing from you.

Best,
Kiran

Kiran H. Griffith | Attorney
STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101
Direct: (206) 386-7583 | Fax: (206) 386-7500
kiran.griffith@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com

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Griffith, Kiran H.

From: Griffith, Kiran H.
Sent: Tuesday, June 09, 2015 2:53 PM
To: 'Pasero, Gayle (OIC)'
Subject: RE: MEWA application for WTIA

Hi Gayle,

I am following up on my voicemail yesterday to check in on your review of WTIA's MEWA application. If you have any questions or concerns, or if you need additional information to assist in your review, please feel free to contact me. As you know, our client is quite anxious to hear from you, so if there is any information I could relay about the status of your review, please let me know.

On a related note, and as mentioned in my voicemail message, WTIA would like to reiterate its request to meet with you to discuss this application. We are available on the morning of Monday, June 22nd, to visit your offices in Olympia. Are you available to meet on this date at 9:30 or 10 am? WTIA had met with Chuck, AnnaLisa, and Molly last summer about the Trust and would like for them to join the meeting as well.

Please let us know if you are able to meet with us on June 22nd, or if there is another date in June that works better for your schedules. Thank you in advance for your time and assistance in this matter, and I look forward to hearing from you.

Best regards,
Kiran

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Griffith, Kiran H.

From: Pasero, Gayle (OIC) <GayleP@OIC.WA.GOV>
Sent: Wednesday, June 17, 2015 11:06 AM
To: Griffith, Kiran H.
Subject: RE: MEWA application for WTIA

Hello Kiran,

Yes, I did. We are expecting you on Monday at 9:30 a.m. Chuck Brown, Sr. Staff Attorney, will also be attending.

Best regards,

Gayle

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From: Griffith, Kiran H. [<mailto:kiran.griffith@stoel.com>]
Sent: Wednesday, June 17, 2015 10:37 AM
To: Pasero, Gayle (OIC)
Subject: RE: MEWA application for WTIA

Hi Gayle,

I just wanted to make sure you received my email below, confirming our June 22nd 9:30 a.m. meeting and the number of attendees. You mentioned wanting to reserve a conference room for this, so I wanted to confirm that you have what you need!

Best regards,
Kiran

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From: Griffith, Kiran H.
Sent: Monday, June 15, 2015 11:20 AM
To: 'Pasero, Gayle (OIC)'
Subject: RE: MEWA application for WTIA

Good morning, Gayle,

This email is to confirm our meeting scheduled for 9:30 a.m. on Monday, June 22nd. Four of us plan to attend: Michael Schutzler and Mike Monroe from WTIA, and Melanie Curtice and me from Stoel Rives.

We have also reached out to AnnaLisa to ask if she and her colleagues would be available to meet after our 9:30 a.m. meeting.

Thank you for accommodating our request for a meeting, and we look forward to hearing from you.

Best regards,
Kiran

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Please let us know if you are able to meet with us on June 22nd, or if there is another date in June that works better for your schedules. Thank you in advance for your time and assistance in this matter, and I look forward to hearing from you.

Best regards,
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ACWUOL

SENATE BILL 6112

State of Washington 58th Legislature 2004 Regular Session

By Senators Prentice, Benton, Winsley, Keiser and Kohl-Welles

Read first time 01/12/2004. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to self-funded multiple employer welfare
2 arrangements; adding a new section to chapter 48.43 RCW; adding a new
3 section to chapter 48.31 RCW; adding a new section to chapter 48.99
4 RCW; adding a new chapter to Title 48 RCW; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** This chapter may be cited as the "self-
7 funded multiple employer welfare arrangement regulation act."

8 NEW SECTION. **Sec. 2.** The purposes of this chapter are to:

9 (1) Provide for the authorization and registration of self-funded
10 multiple employer welfare arrangements;

11 (2) Regulate self-funded multiple employer welfare arrangements in
12 order to ensure the financial integrity of the arrangements;

13 (3) Provide reporting requirements for self-funded multiple
14 employer welfare arrangements; and

15 (4) Provide for sanctions against self-funded multiple employer
16 welfare arrangements organized, operated, providing benefits, or
17 maintained in this state that do not comply with this chapter.

1 NEW SECTION. **Sec. 3.** The definitions in this section apply

2 throughout this chapter unless the context clearly requires otherwise.

3 (1)(a) "Bona fide association" means an association of employers
4 that has been in existence for a period of not less than five years
5 prior to sponsoring a self-funded multiple employer welfare
6 arrangement, during which time the association has engaged in
7 substantial activities relating to the common interests of member
8 employers, such as conducting employee training programs, rendering
9 safety and regulatory compliance services, conducting accident
10 investigations, monitoring and testing workplace environmental
11 conditions, conducting wage surveys, negotiating collective bargaining
12 agreements, developing employee handbooks, improving employee
13 relations, or engaging in lobbying activities, and that continues to
14 engage in substantial activities in addition to sponsoring an
15 arrangement.

16 (b) Notwithstanding (a) of this subsection, an association that was
17 formed and began sponsoring an arrangement prior to October 1, 2004, is
18 not subject to the requirement that the association be in existence for
19 five years prior to sponsoring an arrangement.

20 (2) "Employer" means any person, firm, corporation, partnership,
21 business trust, legal representative, or other business entity which
22 engages in any business, industry, profession, or activity in this
23 state and employs one or more other persons or who contracts with one
24 or more persons, the essence of which is the personal labor of that
25 person or persons.

26 (3) "Health care service" means that service offered or provided by
27 health care facilities and health care providers relating to the
28 prevention, cure, or treatment of illness, injury, or disease.

29 (4) "Incurred claims" means the value of all amounts paid or
30 payable under a multiple employer welfare arrangement determined by
31 contract to be a liability with an incurred claims date during the
32 valuation period. It includes all payments during the valuation period
33 plus a reasonable estimate of unpaid claims liabilities.

34 (5) "Multiple employer welfare arrangement" means a multiple
35 employer welfare arrangement as defined by 29 U.S.C. Sec. 1002, but
36 does not include an arrangement, plan, program, or interlocal agreement
37 of or between any political subdivisions of this state.

38 (6) "Qualified actuary" means an individual who:

1 (a) Is a member in good standing of the American academy of
2 actuaries; and

3 (b) Is qualified to sign statements of actuarial opinion for health
4 annual statements in accordance with the American academy of actuaries
5 qualification standards for actuaries signing the statements.

6 (7) "Self-funded multiple employer welfare arrangement" or
7 "arrangement" means a multiple employer welfare arrangement that does
8 not provide for payment of benefits under the arrangement solely
9 through a policy or policies of insurance issued by one or more
10 insurance companies licensed under this title.

11 (8) "Surplus" means the excess of the assets of a self-funded
12 multiple employer welfare arrangement over the liabilities of the
13 arrangement. The assets and liabilities should be determined in
14 accordance with the accounting practices and procedures manuals as
15 adopted by the national association of insurance commissioners, unless
16 otherwise provided by law.

17 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (3) of
18 this section, a person may not establish, operate, provide benefits, or
19 maintain a self-funded multiple employer welfare arrangement in this
20 state unless the arrangement first obtains a certificate of authority
21 from the commissioner.

22 (2) An arrangement is considered to be established, operated,
23 providing benefits, or maintained in this state if one or more of the
24 employer members participating in the arrangement is either domiciled
25 in or maintains its principal place of business in this state.

26 (3) An arrangement established, operated, providing benefits, or
27 maintained in this state prior to January 1, 2004, has until April 1,
28 2005, to file a substantially complete application for a certificate of
29 authority. An arrangement that files a substantially complete
30 application for a certificate of authority by that date is allowed to
31 continue to operate without a certificate of authority until the
32 commissioner approves or denies the arrangement's application for a
33 certificate of authority.

34 NEW SECTION. **Sec. 5.** The commissioner may not issue a certificate
35 of authority to a self-funded multiple employer welfare arrangement

1 unless the arrangement establishes to the reasonable satisfaction of
2 the commissioner that the following requirements have been satisfied by
3 the arrangement:

4 (1) The employers participating in the arrangement are either
5 engaged in the same trade, profession, or industry or the employers
6 participating in the arrangement are members of a bona fide
7 association;

8 (2) The employers participating in the arrangement exercise control
9 over the arrangement, as follows:

10 (a) Subject to (b) of this subsection, control exists if the board
11 of directors of the bona fide association or the employers
12 participating in the arrangement have the right to elect at least
13 seventy-five percent of the individuals designated in the arrangement's
14 organizational documents as having control over the operations of the
15 arrangement and the individuals designated in the arrangement's
16 organizational documents in fact exercise control over the operation of
17 the arrangement; and

18 (b) The use of a third-party administrator to process claims and to
19 assist in the administration of the arrangement is not evidence of the
20 lack of exercise of control over the operation of the arrangement;

21 (3) In this state, the arrangement provides only health care
22 services;

23 (4) The arrangement provides health care services to not less than
24 two employers and not less than seventy-five employees;

25 (5) The arrangement may not solicit participation in the
26 arrangement from the general public. However, the arrangement may
27 employ licensed insurance agents who receive a commission, unlicensed
28 individuals who do not receive a commission, and may contract with a
29 licensed insurance producer who may be paid a commission or other
30 remuneration, for the purpose of enrolling and renewing the enrollments
31 of employers in the arrangement;

32 (6) The arrangement has been in existence and operated actively for
33 a continuous period of not less than five years; and

34 (7) The arrangement is not organized or maintained solely as a
35 conduit for the collection of premiums and the forwarding of premiums
36 to an insurance company.

1 NEW SECTION. **Sec. 6.** (1) In addition to the requirements under
2 section 5 of this act, self-funded multiple employer welfare
3 arrangements formed after October 1, 2004, are subject to the following
4 requirements:

5 (a) Arrangements must maintain a calendar year for operations and
6 reporting purposes;

7 (b) Arrangements must satisfy one of the following requirements:

8 (i)(A) The arrangement must deposit two hundred thousand dollars
9 with the commissioner to be used for the payment of claims in the event
10 that the arrangement becomes insolvent; and

11 (B) The arrangement must submit to the commissioner a written plan
12 of operation that, in the reasonable discretion of the commissioner,
13 ensures the financial integrity of the arrangement; or

14 (ii) The arrangement demonstrates to the reasonable satisfaction of
15 the commissioner the ability of the arrangement to remain financially
16 solvent, for which purpose the commissioner may consider:

17 (A) The pro forma financial statements of the arrangement;

18 (B) The types and levels of excess of loss insurance coverage,
19 including the attachment points of the coverage and whether the points
20 are reflected as annual or monthly levels;

21 (C) Whether a deposit is required for each employee covered under
22 the arrangement equal to at least one month's cost of providing
23 benefits under the arrangement;

24 (D) The experience of the individuals who will be involved in the
25 management of the arrangement, including employees, independent
26 contractors, and consultants; and

27 (E) Other factors as reasonably determined by the commissioner to
28 be relevant to a determination of whether the arrangement is able to
29 operate in a financially solvent manner.

30 (2) The commissioner may require that the articles, bylaws,
31 agreements, trusts, or other documents or instruments describing the
32 rights and obligations of the employers, employees, and beneficiaries
33 of the arrangement provide that employers participating in the
34 arrangement are subject to pro rata assessment for all liabilities of
35 the arrangement.

36 (3) Self-funded multiple employer welfare arrangements with fewer
37 than one thousand covered persons or arrangements in their first year
38 of operation are required to have aggregate stop loss coverage, with an

1 attachment point of one hundred twenty-five percent of expected claims.
2 If the arrangement is allowed to assess the participating employers to
3 cover actual or projected claims in excess of plan assets, then the
4 attachment point shall be increased by the amount of the allowable
5 assessments. If the required attachment point exceeds one hundred
6 seventy-five percent of expected claims, aggregate stop loss coverage
7 shall be waived, unless the arrangement is in its first year of
8 operation. If the arrangement is in its first year of operation,
9 aggregate stop loss coverage shall not be waived. Arrangements with
10 one thousand covered persons or more, except arrangements in their
11 first year, are not required to have aggregate stop loss coverage.

12 (4) An arrangement must submit its base contribution rates for
13 participation under the arrangement for its initial year of operations
14 for review and approval by the commissioner.

15 (5) The arrangement must demonstrate continued compliance with
16 respect to the conditions set forth in this section as a condition of
17 receiving and maintaining a certificate of authority. The commissioner
18 may waive continued compliance with respect to the conditions in this
19 section at any time after the commissioner has granted a certificate of
20 authority to an arrangement.

21 NEW SECTION. **Sec. 7.** A self-funded multiple employer welfare
22 arrangement must apply for a certificate of authority on a form
23 prescribed by the commissioner and must submit the application,
24 together with the following documents, to the commissioner:

25 (1) A copy of all articles, bylaws, agreements, trusts, or other
26 documents or instruments describing the rights and obligations of the
27 employers, employees, and beneficiaries of the arrangement;

28 (2) A copy of the summary plan description or summary plan
29 descriptions of the arrangement, including those filed or required to
30 be filed with the United States department of labor, together with any
31 amendments to the description;

32 (3) Evidence of coverage of or letters of intent to participate
33 executed by at least two employers providing allowable benefits to at
34 least seventy-five employees;

35 (4) A copy of the arrangement's most recent year's financial
36 statements or, if the arrangement has been in existence for less than
37 one year, pro forma financial statements that must include, at a

1 minimum, a balance sheet, an income statement, a statement of changes
2 in financial position, and an actuarial opinion signed by a qualified
3 actuary stating that the unpaid claim liability of the arrangement
4 satisfies the standards under this title;

5 (5) Proof that the arrangement maintains or will maintain fidelity
6 bonds required by the United States department of labor under the
7 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001,
8 et seq.;

9 (6) A copy of any excess of loss insurance coverage policies
10 maintained or proposed to be maintained by the arrangement;

11 (7) Biographical reports on forms prescribed by the national
12 association of insurance commissioners evidencing the general
13 trustworthiness and competence of each individual who is serving or who
14 will serve as an officer, director, trustee, employee, or fiduciary of
15 the arrangement;

16 (8) Fingerprint cards and current fees payable to the Washington
17 state patrol to check the criminal history of any person who exercises
18 control over the financial dealings and operations of the self-funded
19 multiple employer welfare arrangement, including collection of employer
20 contributions, investment of assets, payment of claims, rate setting,
21 and claims adjudication; and

22 (9) A statement executed by a representative of the arrangement
23 certifying, to the best knowledge and belief of the representative,
24 that:

25 (a) The arrangement is in compliance with section 5 of this act;

26 (b) The arrangement is in compliance with the requirements of the
27 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001,
28 et seq., or a statement of any requirements with which the arrangement
29 is not in compliance and a statement of proposed corrective actions;
30 and

31 (c) The arrangement is in compliance with sections 8 and 9 of this
32 act.

33 NEW SECTION. **Sec. 8.** Self-funded multiple employer welfare
34 arrangements must establish upon inception and must maintain
35 continuously a surplus equal to at least ten percent of the next twelve
36 months projected incurred claims or two million dollars, whichever is
37 greater. The commissioner may proceed against self-funded multiple

1 employer welfare arrangements that fail to maintain the level of
2 surplus required by this section in any manner that the commissioner is
3 authorized to proceed against a health care service contractor that
4 failed to maintain minimum net worth.

5 NEW SECTION. **Sec. 9.** A self-funded multiple employer welfare
6 arrangement must establish and maintain contribution rates for
7 participation under the arrangement that satisfy either of the
8 following requirements:

9 (1) Contribution rates must equal or exceed the sum of projected
10 incurred claims for the year, plus all projected costs of operation of
11 the arrangement for the year, plus an amount equal to any deficiency in
12 the surplus of the arrangement for the prior year, minus an amount
13 equal to the surplus of the arrangement in excess of the minimum
14 required level of surplus; or

15 (2) Contribution rates must equal or exceed a funding level
16 established by a report prepared by a qualified actuary.

17 NEW SECTION. **Sec. 10.** (1) The commissioner shall grant or deny an
18 application for a certificate of authority within one hundred eighty
19 days of the date that a completed application, together with the items
20 designated in section 7 of this act, is submitted to the commissioner.

21 (2) The commissioner shall grant the application of an arrangement
22 that satisfies the applicable requirements of sections 5 through 9 of
23 this act.

24 (3) The commissioner shall deny the application of an arrangement
25 that does not satisfy the applicable requirements of sections 5 through
26 9 of this act. Denial of an application for a certificate of authority
27 is subject to appeal under chapter 34.05 RCW.

28 (4) A certificate of authority granted to an arrangement is
29 effective unless revoked by the commissioner under section 12 of this
30 act.

31 NEW SECTION. **Sec. 11.** (1) A self-funded multiple employer welfare
32 arrangement must comply with the reporting requirements of this
33 section.

34 (2) Every arrangement holding a certificate of authority from the
35 commissioner must file its financial statements as required by this

1 title and by the commissioner in accordance with the accounting
2 practices and procedures manuals as adopted by the national association
3 of insurance commissioners, unless otherwise provided by law.

4 (3) Every arrangement must comply with the provisions of chapters
5 48.12 and 48.13 RCW.

6 (4) Every arrangement holding a certificate of authority shall,
7 annually, before the first day of March, file with the commissioner a
8 true statement of its financial condition, transactions, and affairs as
9 of the thirty-first day of December of the preceding year. The
10 statement forms must be those forms approved by the national
11 association of insurance commissioners for health insurance. The
12 statement must be verified by the oaths of at least two officers of the
13 arrangement. Additional information may be required by this title or
14 by the request of the commissioner.

15 (5) Every arrangement must report their annual and other statements
16 in the same manner required of other insurers by rule of the
17 commissioner.

18 (6) The arrangement must file with the commissioner a copy of the
19 arrangement's internal revenue service form 5500 together with all
20 attachments to the form, at the time required for filing the form.

21 NEW SECTION. **Sec. 12.** (1) The commissioner may impose sanctions
22 against a self-funded multiple employer welfare arrangement that fails
23 to comply with this chapter. The maximum fine may not exceed ten
24 thousand dollars for each violation.

25 (2) The commissioner may issue a notice of intent to revoke the
26 certificate of authority of a self-funded multiple employer welfare
27 arrangement that fails to comply with section 8, 9, or 11 of this act.
28 If, within sixty days of receiving notice under this subsection, the
29 arrangement fails to file with the commissioner a plan to bring the
30 arrangement into compliance with section 8, 9, or 11 of this act, the
31 commissioner may revoke the arrangement's certificate of authority. A
32 revocation of a certificate of authority is subject to appeal under
33 chapter 34.05 RCW.

34 (3) An arrangement that fails to maintain the level of surplus
35 required by section 8 of this act is subject to the sanctions
36 authorized in RCW 48.44.160 through 48.44.166.

1 NEW SECTION. **Sec. 19.** Sections 1 through 15 of this act
2 constitute a new chapter in Title 48 RCW.

--- END ---

HOUSE BILL 2526

State of Washington 58th Legislature 2004 Regular Session

By Representatives Schual-Berke, Benson, Simpson, G., McMorris,
Moeller, Priest and Chase

Read first time 01/15/2004. Referred to Committee on Financial
Institutions & Insurance.

1 AN ACT Relating to self-funded multiple employer welfare
2 arrangements; adding a new section to chapter 48.43 RCW; adding a new
3 section to chapter 48.31 RCW; adding a new section to chapter 48.99
4 RCW; adding a new chapter to Title 48 RCW; and prescribing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** This chapter may be cited as the "self-
7 funded multiple employer welfare arrangement regulation act."

8 NEW SECTION. **Sec. 2.** The purposes of this chapter are to:

9 (1) Provide for the authorization and registration of self-funded
10 multiple employer welfare arrangements;

11 (2) Regulate self-funded multiple employer welfare arrangements in
12 order to ensure the financial integrity of the arrangements;

13 (3) Provide reporting requirements for self-funded multiple
14 employer welfare arrangements; and

15 (4) Provide for sanctions against self-funded multiple employer
16 welfare arrangements organized, operated, providing benefits, or
17 maintained in this state that do not comply with this chapter.

1 NEW SECTION. **Sec. 3.** The definitions in this section apply
2 throughout this chapter unless the context clearly requires otherwise.

3 (1)(a) "Bona fide association" means an association of employers
4 that has been in existence for a period of not less than five years
5 prior to sponsoring a self-funded multiple employer welfare
6 arrangement, during which time the association has engaged in
7 substantial activities relating to the common interests of member
8 employers, such as conducting employee training programs, rendering
9 safety and regulatory compliance services, conducting accident
10 investigations, monitoring and testing workplace environmental
11 conditions, conducting wage surveys, negotiating collective bargaining
12 agreements, developing employee handbooks, improving employee
13 relations, or engaging in lobbying activities, and that continues to
14 engage in substantial activities in addition to sponsoring an
15 arrangement.

16 (b) Notwithstanding (a) of this subsection, an association that was
17 formed and began sponsoring an arrangement prior to October 1, 2004, is
18 not subject to the requirement that the association be in existence for
19 five years prior to sponsoring an arrangement.

20 (2) "Employer" means any person, firm, corporation, partnership,
21 business trust, legal representative, or other business entity which
22 engages in any business, industry, profession, or activity in this
23 state and employs one or more other persons or who contracts with one
24 or more persons, the essence of which is the personal labor of that
25 person or persons.

26 (3) "Health care service" means that service offered or provided by
27 health care facilities and health care providers relating to the
28 prevention, cure, or treatment of illness, injury, or disease.

29 (4) "Incurred claims" means the value of all amounts paid or
30 payable under a multiple employer welfare arrangement determined by
31 contract to be a liability with an incurred claims date during the
32 valuation period. It includes all payments during the valuation period
33 plus a reasonable estimate of unpaid claims liabilities.

34 (5) "Multiple employer welfare arrangement" means a multiple
35 employer welfare arrangement as defined by 29 U.S.C. Sec. 1002, but
36 does not include an arrangement, plan, program, or interlocal agreement
37 of or between any political subdivisions of this state.

38 (6) "Qualified actuary" means an individual who:

1 (a) Is a member in good standing of the American academy of
2 actuaries; and

3 (b) Is qualified to sign statements of actuarial opinion for health
4 annual statements in accordance with the American academy of actuaries
5 qualification standards for actuaries signing the statements.

6 (7) "Self-funded multiple employer welfare arrangement" or
7 "arrangement" means a multiple employer welfare arrangement that does
8 not provide for payment of benefits under the arrangement solely
9 through a policy or policies of insurance issued by one or more
10 insurance companies licensed under this title.

11 (8) "Surplus" means the excess of the assets of a self-funded
12 multiple employer welfare arrangement over the liabilities of the
13 arrangement. The assets and liabilities should be determined in
14 accordance with the accounting practices and procedures manuals as
15 adopted by the national association of insurance commissioners, unless
16 otherwise provided by law.

17 NEW SECTION. **Sec. 4.** (1) Except as provided in subsection (3) of
18 this section, a person may not establish, operate, provide benefits, or
19 maintain a self-funded multiple employer welfare arrangement in this
20 state unless the arrangement first obtains a certificate of authority
21 from the commissioner.

22 (2) An arrangement is considered to be established, operated,
23 providing benefits, or maintained in this state if one or more of the
24 employer members participating in the arrangement is either domiciled
25 in or maintains its principal place of business in this state.

26 (3) An arrangement established, operated, providing benefits, or
27 maintained in this state prior to January 1, 2004, has until April 1,
28 2005, to file a substantially complete application for a certificate of
29 authority. An arrangement that files a substantially complete
30 application for a certificate of authority by that date is allowed to
31 continue to operate without a certificate of authority until the
32 commissioner approves or denies the arrangement's application for a
33 certificate of authority.

34 NEW SECTION. **Sec. 5.** The commissioner may not issue a certificate
35 of authority to a self-funded multiple employer welfare arrangement

1 unless the arrangement establishes to the reasonable satisfaction of
2 the commissioner that the following requirements have been satisfied by
3 the arrangement:

4 (1) The employers participating in the arrangement are either
5 engaged in the same trade, profession, or industry or the employers
6 participating in the arrangement are members of a bona fide
7 association;

8 (2) The employers participating in the arrangement exercise control
9 over the arrangement, as follows:

10 (a) Subject to (b) of this subsection, control exists if the board
11 of directors of the bona fide association or the employers
12 participating in the arrangement have the right to elect at least
13 seventy-five percent of the individuals designated in the arrangement's
14 organizational documents as having control over the operations of the
15 arrangement and the individuals designated in the arrangement's
16 organizational documents in fact exercise control over the operation of
17 the arrangement; and

18 (b) The use of a third-party administrator to process claims and to
19 assist in the administration of the arrangement is not evidence of the
20 lack of exercise of control over the operation of the arrangement;

21 (3) In this state, the arrangement provides only health care
22 services;

23 (4) The arrangement provides health care services to not less than
24 two employers and not less than seventy-five employees;

25 (5) The arrangement may not solicit participation in the
26 arrangement from the general public. However, the arrangement may
27 employ licensed insurance agents who receive a commission, unlicensed
28 individuals who do not receive a commission, and may contract with a
29 licensed insurance producer who may be paid a commission or other
30 remuneration, for the purpose of enrolling and renewing the enrollments
31 of employers in the arrangement;

32 (6) The arrangement has been in existence and operated actively for
33 a continuous period of not less than five years; and

34 (7) The arrangement is not organized or maintained solely as a
35 conduit for the collection of premiums and the forwarding of premiums
36 to an insurance company.

1 NEW SECTION. **Sec. 6.** (1) In addition to the requirements under
2 section 5 of this act, self-funded multiple employer welfare
3 arrangements formed after October 1, 2004, are subject to the following
4 requirements:

5 (a) Arrangements must maintain a calendar year for operations and
6 reporting purposes;

7 (b) Arrangements must satisfy one of the following requirements:

8 (i)(A) The arrangement must deposit two hundred thousand dollars
9 with the commissioner to be used for the payment of claims in the event
10 that the arrangement becomes insolvent; and

11 (B) The arrangement must submit to the commissioner a written plan
12 of operation that, in the reasonable discretion of the commissioner,
13 ensures the financial integrity of the arrangement; or

14 (ii) The arrangement demonstrates to the reasonable satisfaction of
15 the commissioner the ability of the arrangement to remain financially
16 solvent, for which purpose the commissioner may consider:

17 (A) The pro forma financial statements of the arrangement;

18 (B) The types and levels of excess of loss insurance coverage,
19 including the attachment points of the coverage and whether the points
20 are reflected as annual or monthly levels;

21 (C) Whether a deposit is required for each employee covered under
22 the arrangement equal to at least one month's cost of providing
23 benefits under the arrangement;

24 (D) The experience of the individuals who will be involved in the
25 management of the arrangement, including employees, independent
26 contractors, and consultants; and

27 (E) Other factors as reasonably determined by the commissioner to
28 be relevant to a determination of whether the arrangement is able to
29 operate in a financially solvent manner.

30 (2) The commissioner may require that the articles, bylaws,
31 agreements, trusts, or other documents or instruments describing the
32 rights and obligations of the employers, employees, and beneficiaries
33 of the arrangement provide that employers participating in the
34 arrangement are subject to pro rata assessment for all liabilities of
35 the arrangement.

36 (3) Self-funded multiple employer welfare arrangements with fewer
37 than one thousand covered persons or arrangements in their first year
38 of operation are required to have aggregate stop loss coverage, with an

1 attachment point of one hundred twenty-five percent of expected claims.
2 If the arrangement is allowed to assess the participating employers to
3 cover actual or projected claims in excess of plan assets, then the
4 attachment point shall be increased by the amount of the allowable
5 assessments. If the required attachment point exceeds one hundred
6 seventy-five percent of expected claims, aggregate stop loss coverage
7 shall be waived, unless the arrangement is in its first year of
8 operation. If the arrangement is in its first year of operation,
9 aggregate stop loss coverage shall not be waived. Arrangements with
10 one thousand covered persons or more, except arrangements in their
11 first year, are not required to have aggregate stop loss coverage.

12 (4) An arrangement must submit its base contribution rates for
13 participation under the arrangement for its initial year of operations
14 for review and approval by the commissioner.

15 (5) The arrangement must demonstrate continued compliance with
16 respect to the conditions set forth in this section as a condition of
17 receiving and maintaining a certificate of authority. The commissioner
18 may waive continued compliance with respect to the conditions in this
19 section at any time after the commissioner has granted a certificate of
20 authority to an arrangement.

21 NEW SECTION. **Sec. 7.** A self-funded multiple employer welfare
22 arrangement must apply for a certificate of authority on a form
23 prescribed by the commissioner and must submit the application,
24 together with the following documents, to the commissioner:

25 (1) A copy of all articles, bylaws, agreements, trusts, or other
26 documents or instruments describing the rights and obligations of the
27 employers, employees, and beneficiaries of the arrangement;

28 (2) A copy of the summary plan description or summary plan
29 descriptions of the arrangement, including those filed or required to
30 be filed with the United States department of labor, together with any
31 amendments to the description;

32 (3) Evidence of coverage of or letters of intent to participate
33 executed by at least two employers providing allowable benefits to at
34 least seventy-five employees;

35 (4) A copy of the arrangement's most recent year's financial
36 statements or, if the arrangement has been in existence for less than
37 one year, pro forma financial statements that must include, at a

1 minimum, a balance sheet, an income statement, a statement of changes
2 in financial position, and an actuarial opinion signed by a qualified
3 actuary stating that the unpaid claim liability of the arrangement
4 satisfies the standards under this title;

5 (5) Proof that the arrangement maintains or will maintain fidelity
6 bonds required by the United States department of labor under the
7 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001,
8 et seq.;

9 (6) A copy of any excess of loss insurance coverage policies
10 maintained or proposed to be maintained by the arrangement;

11 (7) Biographical reports on forms prescribed by the national
12 association of insurance commissioners evidencing the general
13 trustworthiness and competence of each individual who is serving or who
14 will serve as an officer, director, trustee, employee, or fiduciary of
15 the arrangement;

16 (8) Fingerprint cards and current fees payable to the Washington
17 state patrol to check the criminal history of any person who exercises
18 control over the financial dealings and operations of the self-funded
19 multiple employer welfare arrangement, including collection of employer
20 contributions, investment of assets, payment of claims, rate setting,
21 and claims adjudication; and

22 (9) A statement executed by a representative of the arrangement
23 certifying, to the best knowledge and belief of the representative,
24 that:

25 (a) The arrangement is in compliance with section 5 of this act;

26 (b) The arrangement is in compliance with the requirements of the
27 employee retirement income security act of 1974, 29 U.S.C. Sec. 1001,
28 et seq., or a statement of any requirements with which the arrangement
29 is not in compliance and a statement of proposed corrective actions;
30 and

31 (c) The arrangement is in compliance with sections 8 and 9 of this
32 act.

33 NEW SECTION. **Sec. 8.** Self-funded multiple employer welfare
34 arrangements must establish upon inception and must maintain
35 continuously a surplus equal to at least ten percent of the next twelve
36 months projected incurred claims or two million dollars, whichever is
37 greater. The commissioner may proceed against self-funded multiple

1 employer welfare arrangements that fail to maintain the level of
2 surplus required by this section in any manner that the commissioner is
3 authorized to proceed against a health care service contractor that
4 failed to maintain minimum net worth.

5 NEW SECTION. **Sec. 9.** A self-funded multiple employer welfare
6 arrangement must establish and maintain contribution rates for
7 participation under the arrangement that satisfy either of the
8 following requirements:

9 (1) Contribution rates must equal or exceed the sum of projected
10 incurred claims for the year, plus all projected costs of operation of
11 the arrangement for the year, plus an amount equal to any deficiency in
12 the surplus of the arrangement for the prior year, minus an amount
13 equal to the surplus of the arrangement in excess of the minimum
14 required level of surplus; or

15 (2) Contribution rates must equal or exceed a funding level
16 established by a report prepared by a qualified actuary.

17 NEW SECTION. **Sec. 10.** (1) The commissioner shall grant or deny an
18 application for a certificate of authority within one hundred eighty
19 days of the date that a completed application, together with the items
20 designated in section 7 of this act, is submitted to the commissioner.

21 (2) The commissioner shall grant the application of an arrangement
22 that satisfies the applicable requirements of sections 5 through 9 of
23 this act.

24 (3) The commissioner shall deny the application of an arrangement
25 that does not satisfy the applicable requirements of sections 5 through
26 9 of this act. Denial of an application for a certificate of authority
27 is subject to appeal under chapter 34.05 RCW.

28 (4) A certificate of authority granted to an arrangement is
29 effective unless revoked by the commissioner under section 12 of this
30 act.

31 NEW SECTION. **Sec. 11.** (1) A self-funded multiple employer welfare
32 arrangement must comply with the reporting requirements of this
33 section.

34 (2) Every arrangement holding a certificate of authority from the
35 commissioner must file its financial statements as required by this

1 title and by the commissioner in accordance with the accounting
2 practices and procedures manuals as adopted by the national association
3 of insurance commissioners, unless otherwise provided by law.

4 (3) Every arrangement must comply with the provisions of chapters
5 48.12 and 48.13 RCW.

6 (4) Every arrangement holding a certificate of authority shall,
7 annually, before the first day of March, file with the commissioner a
8 true statement of its financial condition, transactions, and affairs as
9 of the thirty-first day of December of the preceding year. The
10 statement forms must be those forms approved by the national
11 association of insurance commissioners for health insurance. The
12 statement must be verified by the oaths of at least two officers of the
13 arrangement. Additional information may be required by this title or
14 by the request of the commissioner.

15 (5) Every arrangement must report their annual and other statements
16 in the same manner required of other insurers by rule of the
17 commissioner.

18 (6) The arrangement must file with the commissioner a copy of the
19 arrangement's internal revenue service form 5500 together with all
20 attachments to the form, at the time required for filing the form.

21 NEW SECTION. **Sec. 12.** (1) The commissioner may impose sanctions
22 against a self-funded multiple employer welfare arrangement that fails
23 to comply with this chapter. The maximum fine may not exceed ten
24 thousand dollars for each violation.

25 (2) The commissioner may issue a notice of intent to revoke the
26 certificate of authority of a self-funded multiple employer welfare
27 arrangement that fails to comply with section 8, 9, or 11 of this act.
28 If, within sixty days of receiving notice under this subsection, the
29 arrangement fails to file with the commissioner a plan to bring the
30 arrangement into compliance with section 8, 9, or 11 of this act, the
31 commissioner may revoke the arrangement's certificate of authority. A
32 revocation of a certificate of authority is subject to appeal under
33 chapter 34.05 RCW.

34 (3) An arrangement that fails to maintain the level of surplus
35 required by section 8 of this act is subject to the sanctions
36 authorized in RCW 48.44.160 through 48.44.166.

1 NEW SECTION. **Sec. 19.** Sections 1 through 15 of this act
2 constitute a new chapter in Title 48 RCW.

--- END ---

**Financial Institutions &
Insurance Committee**

ESSB 6112

Brief Description: Regulating self-funded multiple employer welfare arrangements.

Sponsors: Senate Committee on Financial Services, Insurance & Housing (originally sponsored by Senators Prentice, Benton, Winsley, Keiser and Kohl-Welles).

Brief Summary of Engrossed Substitute Bill

- Creates a state regulatory framework for self-funded multiple employer welfare arrangements.
- Establishes solvency, operational, and reporting requirements.
- Applies regulatory fee and premium tax provisions with certain conditions.
- Authorizes sanctions for noncompliance with statutory requirements.

Hearing Date: 2/25/04

Staff: Caroleen Dineen (786-7156).

Background:

The federal Employee Retirement Income Security Act (ERISA) establishes a regulatory structure for employee welfare benefit plans and pension benefit plans. An employee welfare benefit plan is defined in ERISA to include medical, surgical, or hospital care or benefits as well as sickness, accident, disability, and death benefits. ERISA specifies reporting and disclosure, claims procedure, bonding, and other requirements for defined employee welfare benefit plans. ERISA also prescribes fiduciary conduct standards applicable to persons responsible for benefit plan administration and management.

A multiple employer welfare arrangement (MEWA) is defined in ERISA as an employee welfare benefit plan or other arrangement established or maintained to offer or provide welfare plan benefits to employees of two or more employers or their beneficiaries. Certain exceptions are specified for plans and arrangements under this definition.

ERISA preempts all state laws relating to any employee benefit plan with certain exceptions. One exception allows the application of state insurance laws to ERISA-covered welfare plans that meet the MEWA definition.

The state Insurance Commissioner (Commissioner) is responsible for the licensing and regulation of insurers in Washington. The Commissioner's authority includes regulating insurance business in Washington, certifying various types of insurers, approving rate and form contracts, licensing agents and brokers, and responding to consumer complaints. In addition to complying with statutory and regulatory requirements, insurers doing business in the state must pay to the Commissioner an annual premium tax equal to 2 percent of all premiums collected or received during the preceding calendar year for policies on risks or property resident, situated, or to be performed in this state.

Summary of Bill:

The Self-Funded Multiple Employer Welfare Arrangement Regulation Act is enacted as a new chapter in the state insurance code. Statutory purposes for establishing a regulatory framework for self-funded MEWAs and relevant definitions are specified.

A "self-funded MEWA" is defined for purposes of state law as a MEWA that does not provide for payment of benefits solely through a policy or policies of insurance issued by one or more licensed insurers. "MEWA" is defined in state statute as in federal ERISA law, except the state definition does not include any arrangement, plan, program, or interlocal agreement of or between political subdivisions in the state or of or between any federal agencies or federal agency contractors or subcontractors at a federal government facility in the state.

The MEWA regulatory provisions apply to MEWAs providing benefits to employers who are members of a bona fide association. "Bona fide association" is defined as an association of employers in existence for at least 10 years before sponsoring a self-funded MEWA. The bona fide association must have engaged in substantial activities relating to the member employers' common interests during the 10-year period and must continue to engage in those activities in addition to sponsoring the MEWA. An association formed and sponsoring a MEWA before October 1, 1995, is not subject to the 10-year requirement in this definition.

Certificate of Authority

No person may establish, operate, provide benefits, or maintain a self-funded MEWA in Washington without obtaining a certificate of authority from the Commissioner. A MEWA is considered to be established, operated, providing benefits or maintained in Washington if: (1) one or more of its employer members is domiciled or maintains a place of business in the state; or (2) its activities fall under the scope of the insurance code. Failure to have the required certificate of authority is a violation of the state insurance code.

To obtain a certificate of authority, a MEWA must have been in existence and actively operated continuously for at least 10 years as of December 31, 2003. An exception is provided for any MEWA in existence and actively operated since December 31, 2000, that is sponsored by an association in existence more than 25 years. MEWAs operating before December 31, 2003, have until April 1, 2005, to file an application for a certificate of authority and may continue to operate until the Commissioner makes a decision regarding the application.

A MEWA must satisfy other requirements to obtain a certificate of authority. Participating employers must exercise control over the MEWA according to specified provisions. In addition, a MEWA must provide benefits to employers who are members of a bona fide association. "Bona fide association" is defined as an association of employers that has been in existence for at least 10 years before sponsoring a self-funded MEWA. The bona fide association also must have during the 10-year period engaged in substantial activities relating to member employers' common interests and continue to do so after sponsoring the MEWA. Further, a MEWA must:

- provide only health care services in this state;
- provide those health care services to no fewer than 20 employers and no fewer than 75 employees;
- provide or arrange benefits for health care services in compliance with insurance code provisions mandating particular benefits or offerings and requiring access to particular types or categories of health care providers and facilities;
- not solicit participation from the general public (but may employ or contract for employer enrollment and renewal of employer enrollments); and
- not be organized or maintained solely as a conduit for collection of premiums forwarded to an insurer.

Certain documentation must be submitted with the certificate of authority application. Required documentation includes the MEWA's governing documents, summary plan description, evidence of required employer coverage, financial statements, and excess of loss insurance coverage policies. Biographical reports for officers, directors, employees, and fiduciaries also must be submitted. In addition, a MEWA must submit fingerprint cards and fees for state and national criminal history background information for certain employees. This information may be submitted to the Federal Bureau of Investigation, and the Commissioner may share the results of any criminal history background check with any government agency or entity authorized to receive them.

In addition to these documents, a MEWA must submit with the certificate of authority application an actuarial opinion stating the MEWA's unpaid claim liability satisfies state law standards. The MEWA also must submit proof that fidelity bonds required under federal law will be maintained. Finally, the MEWA must submit a statement certifying its compliance with certain state law and federal law requirements.

The Commissioner must either grant or deny the application within 180 days of receiving a complete application and required documentation. A denial is subject to appeal according to the Administrative Procedure Act. A certificate of authority is effective unless revoked by the Commissioner.

Solvency and Operational Requirements

Self-funded MEWAs must meet certain solvency requirements. These MEWAs must either deposit \$200,000 with the Commissioner for payment of claims if insolvency occurs and submit a written plan to ensure financial integrity or demonstrate to the Commissioner their ability to remain financially solvent.

Operational requirements also are specified. MEWAs must maintain a calendar year for operations and reporting purposes. The Commissioner may require MEWAs to include

information on pro rata assessments of MEWA members in their articles, bylaws, agreements, trusts, or other documents. In addition, MEWAs with fewer than 1,000 covered persons must have aggregate stop loss coverage meeting certain requirements. MEWAs must demonstrate continued compliance to receive and maintain a certificate of authority, unless this requirement is waived by the Commissioner.

Surplus and Contribution Rates

Requirements for surplus amounts and contribution rates are specified. Self-funded MEWAs must establish and maintain a surplus equal to the greater of 10 percent of the next 12 months of projected incurred claims or \$2 million. Contribution rates for participation must equal or exceed:

- the sum of projected incurred claims for the year and all projected operational costs plus any surplus deficiency amount minus any excess surplus amount; or
- a funding level established by a qualified actuary's report.

Reporting and Notice Requirements

MEWAs must file certain reports and documents with the Commissioner. Before March 1st of each year, a MEWA must file a verified statement of its financial condition, transactions, and affairs for the preceding year. A MEWA also must file a copy of its Internal Revenue Service Form 5500. In addition, a MEWA must file its annual, financial, and other statements required of other insurers and comply with state insurance code assets and liabilities and investment provisions.

Each MEWA policy must contain a specific notice stating the policy is issued by a self-funded MEWA. The notice must state that the MEWA may not be subject to all state insurance law requirements. The notice also must specify that state insurance insolvency guaranty funds are not available for the MEWA.

Fees and Taxes

Premium tax payments are required from MEWAs if the state statutory requirements are not preempted by federal law (ERISA). The Commissioner and MEWAs must request an initial advisory opinion from the United States Department of Labor or obtain a declaratory ruling from a federal court regarding the legality of imposing state premium taxes on MEWAs. The premium tax requirement becomes effective on March 1st following the issuance of a certificate of authority if not preempted by federal law. The premium tax provisions may not be retroactively applied to any period before a MEWA receives a certificate of authority.

The premium tax requirement does not apply to participant contributions that are not taxable in the state. Participant contributions used to determine taxable amounts for purposes of the premium tax are to be determined according to the premium tax determination statute.

MEWAs are included within the definition of organizations required to pay fees to the Office of the Insurance Commissioner (OIC) regulatory account for their pro rata share of the OIC's operating costs. MEWAs are identified as "class three organizations" under these provisions. The participant contribution amount is to be determined according to the premium tax determination method for purposes of the regulatory fee.

Market Conduct Examinations

The Commissioner is authorized to conduct market examinations of MEWAs as often as deemed necessary according to statutory market conduct examination requirements. The Commissioner may accept an examination by the regulatory official in a foreign MEWA's state of domicile. In conducting these examinations, the Commissioner may rely on an independent certificated public accountant's audit reports and incorporate those reports into the examination report.

MEWAs are required to cooperate and provide information for the examination. The Commissioner may issue subpoenas, administer oaths, and examine the MEWA's officers and principals when conducting the examination. The Commissioner also may examine a MEWA affiliate's activities or operations that may affect the MEWA's financial position. MEWAs are not required to pay a specific examination fee for market conduct examinations.

Exemptions

The MEWA regulatory provisions do not apply to single employer entities, Taft-Hartley plans, or self-funded MEWAs that do not provide coverage for health care services.

Enforcement

The Commissioner may impose sanctions against a MEWA that does not comply with the statutory requirements. A maximum fine of \$10,000 per violation is authorized. In addition, the Commissioner may issue a notice of intent to revoke the MEWA's certificate of authority. The certificate of authority may be revoked if the MEWA fails to file a compliance plan within 60 days of receiving the Commissioner's notice of intent to revoke. The Commissioner may impose other sanctions for failure to maintain the required surplus.

Application of Other Statutory Requirements

MEWAs are subject to state risk-based capital requirements as well as insurer rehabilitation provisions. A self-funded MEWA is deemed an insurer for purposes of statutory merger, rehabilitation, and liquidation provisions.

Severability

A severability clause is included to specify that the judicial invalidation of any provision(s) does not affect the validity of the remaining provisions.

Appropriation: None.

Fiscal Note: Requested on February 20, 2004.

Effective Date: The bill contains an emergency clause and takes effect immediately.

HOUSE BILL REPORT

ESSB 6112

As Passed House - Amended:

March 9, 2004

Title: An act relating to self-funded multiple employer welfare arrangements.

Brief Description: Regulating self-funded multiple employer welfare arrangements.

Sponsors: By Senate Committee on Financial Services, Insurance & Housing (originally sponsored by Senators Prentice, Benton, Winsley, Keiser and Kohl-Welles).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/25/04, 2/27/04 [DPA].

Floor Activity:

Passed House - Amended: 3/9/04, 95-0.

**Brief Summary of Engrossed Substitute Bill
(As Amended by House)**

- Creates a state regulatory framework for self-funded multiple employer welfare arrangements (MEWAs).
- Establishes requirements for MEWAs to obtain a certificate of authority from the Insurance Commissioner to operate in this state.
- Establishes solvency, operational, and reporting requirements for MEWAs.
- Applies regulatory fee, premium tax, and health insurance pool assessments provisions to MEWAs under certain conditions.
- Authorizes sanctions for noncompliance with statutory requirements.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: Do pass as amended. Signed by 8 members: Representatives Schual-Berke, Chair; G. Simpson, Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cooper, Hatfield, Santos and D. Simpson.

Minority Report: Do not pass. Signed by 3 members: Representatives Cairnes, Carrell and Roach.

Staff: Caroleen Dineen (786-7156).

Background:

The federal Employee Retirement Income Security Act (ERISA) establishes a regulatory structure for employee welfare benefit plans and pension benefit plans. An employee welfare benefit plan is defined in ERISA to include medical, surgical, or hospital care or benefits as well as sickness, accident, disability, and death benefits. ERISA specifies reporting and disclosure, claims procedure, bonding, and other requirements for defined employee welfare benefit plans. ERISA also prescribes fiduciary conduct standards applicable to persons responsible for benefit plan administration and management.

A multiple employer welfare arrangement (MEWA) is defined in ERISA as an employee welfare benefit plan or other arrangement established or maintained to offer or provide welfare plan benefits to employees of two or more employers or their beneficiaries. Certain exceptions are specified for plans and arrangements under this definition.

ERISA preempts all state laws relating to any employee benefit plan with certain exceptions. One exception allows the application of state insurance laws to ERISA-covered welfare plans that meet the MEWA definition.

The state Insurance Commissioner (Commissioner) is responsible for the licensing and regulation of insurers in Washington. The Commissioner's authority includes regulating insurance business in Washington, certifying various types of insurers, approving rate and form contracts, licensing agents and brokers, and responding to consumer complaints. The Commissioner also collects from insurers doing business in this state:

- annual premium tax equal to 2 percent of all premiums collected or received during the preceding calendar year for policies on risks or property resident, situated, or to be performed in this state;
- regulatory fees representing the insurers' pro rata share of the operating costs of the Office of the Insurance Commissioner (OIC); and
- assessments for the Washington State Health Insurance Pool (WSHIP).

Summary of Amended Bill:

The Self-Funded Multiple Employer Welfare Arrangement Regulation Act is enacted as a new chapter in the state insurance code. Statutory purposes for establishing a regulatory framework for self-funded MEWAs and relevant definitions are specified.

A "self-funded MEWA" is defined for purposes of state law as a MEWA that does not provide for payment of benefits solely through a policy or policies of insurance issued by one or more licensed insurers. "MEWA" is defined in state statute as in federal ERISA law, except the state definition does not include any arrangement, plan, program, or interlocal agreement of or between political subdivisions in the state of or between any federal agencies or federal agency contractors or subcontractors at a federal government facility in the state.

The MEWA regulatory provisions apply to MEWAs providing benefits to employers who are members of a bona fide association. "Bona fide association" is defined as an association of employers in existence for at least 10 years before sponsoring a self-funded MEWA. The bona fide association must have engaged in substantial activities relating to the member employers' common interests during the 10-year period and must continue to engage in those activities in addition to sponsoring the MEWA. An association formed and sponsoring a MEWA before October 1, 1995, is not subject to the 10-year requirement in this definition.

Certificate of Authority

No person may establish, operate, provide benefits, or maintain a self-funded MEWA in Washington without obtaining a certificate of authority from the Commissioner. A MEWA is considered to be established, operated, providing benefits or maintained in Washington if: (1) one or more of its employer members is domiciled or maintains a place of business in the state; or (2) its activities fall under the scope of the insurance code. Failure to have the required certificate of authority is a violation of the state insurance code.

To obtain a certificate of authority, a MEWA must have been in existence and actively operated continuously for at least 10 years as of December 31, 2003. An exception is provided for any MEWA in existence and actively operated since December 31, 2000, that is sponsored by an association in existence more than 25 years. MEWAs operating before December 31, 2003, have until April 1, 2005, to file an application for a certificate of authority and may continue to operate until the Commissioner makes a decision regarding the application.

A MEWA must satisfy other requirements to obtain a certificate of authority. Participating employers must exercise control over the MEWA according to specified provisions. In addition, a MEWA must provide benefits to employers who are members of a bona fide association as defined in these provisions. Further, a MEWA must:

- provide only health care services in this state;
- provide those health care services to no fewer than 20 employers and no fewer than 75 employees;
- provide or arrange benefits for health care services in compliance with insurance code provisions mandating particular benefits or offerings and requiring access to particular types or categories of health care providers and facilities;
- provide or arrange benefits for health care services in compliance with statutory patient protection provisions (health care patient bill of rights);
- not solicit participation from the general public (but may employ or contract for employer enrollment and renewal of employer enrollments); and
- not be organized or maintained solely as a conduit for collection of premiums forwarded to an insurer.

Certain documentation must be submitted with the certificate of authority application. Required documentation includes the MEWA's governing documents, summary plan description, evidence of required employer coverage, financial statements, and excess of loss

of insurance coverage policies. Biographical reports for officers, directors, employees, and fiduciaries also must be submitted. In addition, a MEWA must submit fingerprint cards and fees for state and national criminal history background information for certain employees. This information may be submitted to the Federal Bureau of Investigation, and the Commissioner may share the results of any criminal history background check with any government agency or entity authorized to receive them.

In addition to these documents, a MEWA must submit with the certificate of authority application an actuarial opinion stating the MEWA's unpaid claim liability satisfies state law standards. The MEWA also must submit proof that fidelity bonds required under federal law will be maintained. Finally, the MEWA must submit a statement certifying its compliance with certain state law and federal law requirements.

The Commissioner must either grant or deny the application within 180 days of receiving a complete application and required documentation. A denial is subject to appeal according to the Administrative Procedure Act. A certificate of authority is effective unless revoked by the Commissioner.

Solvency and Operational Requirements

Self-funded MEWAs must meet certain solvency requirements. These MEWAs must either deposit \$200,000 with the Commissioner for payment of claims if insolvency occurs and submit a written plan to ensure financial integrity or demonstrate to the Commissioner their ability to remain financially solvent.

Operational requirements also are specified. MEWAs must maintain a calendar year for operations and reporting purposes. The Commissioner may require MEWAs to include information on pro rata assessments of MEWA members in their articles, bylaws, agreements, trusts, or other documents. In addition, MEWAs with fewer than 1,000 covered persons must have aggregate stop loss coverage meeting certain requirements. MEWAs must demonstrate continued compliance to receive and maintain a certificate of authority, unless this requirement is waived by the Commissioner.

Surplus and Contribution Rates

Requirements for surplus amounts and contribution rates are specified. Self-funded MEWAs must establish and maintain a surplus equal to the greater of 10 percent of the next 12 months of projected incurred claims or \$2 million. Contribution rates for participation must equal or exceed:

- the sum of projected incurred claims for the year and all projected operational costs plus any surplus deficiency amount minus any excess surplus amount; or
- a funding level established by a qualified actuary's report.

Reporting and Notice Requirements

MEWAs must file certain reports and documents with the Commissioner. Before March 1 of each year, a MEWA must file a verified statement of its financial condition, transactions, and

affairs for the preceding year. A MEWA also must file a copy of its Internal Revenue Service Form 5500. In addition, a MEWA must file its annual, financial, and other statements required of other insurers and comply with state insurance code assets and liabilities and investment provisions.

Each MEWA policy must contain a specific notice stating the policy is issued by a self-funded MEWA. The notice must state that the MEWA may not be subject to all state insurance law requirements. The notice also must specify that state insurance insolvency guaranty funds are not available for the MEWA.

Taxes, Fees and Assessments

Premium tax payments are required from MEWAs if the state statutory requirements are not preempted by federal law (ERISA). The Commissioner and MEWAs must request an advisory opinion from the United States Department of Labor (DOL) or obtain a declaratory ruling from a federal court regarding the legality of imposing state premium taxes on MEWAs. If there has not been a final DOL opinion or federal court determination that the taxes are not preempted, the premium tax requirement becomes effective on March 1, 2005, or 30 days following the issuance of a certificate of authority if that date is later. During the period between the effective date of the requirement and the final DOL opinion or federal court determination, MEWAs must maintain premium tax payments in an interest bearing escrow account. Upon a final determination that the taxes are not preempted, all funds in these accounts must be transferred to the state treasurer.

The premium tax requirement does not apply to participant contributions that are not taxable in the state. Participant contributions used to determine taxable amounts for purposes of the premium tax are to be determined according to the premium tax determination statute.

MEWAs are included within the definition of organizations required to pay fees to the OIC regulatory account for their pro rata share of the OIC's operating costs. The participant contribution amount is to be determined according to the premium tax determination method for purposes of the regulatory fee.

MEWAs also are included within the definition of "member" for purposes of the WSHIP statutes. MEWAs are subject to WSHIP assessments only if these assessments are not preempted by federal law (ERISA). Before imposing these assessments on MEWAs, the Commissioner and MEWAs must request an initial DOL advisory opinion or obtain a declaratory ruling from a federal court regarding the legality of such imposition. If there has not been a final DOL opinion or federal court determination that the taxes are not preempted by ERISA, the assessments becomes effective on March 1, 2005, or 30 days following the issuance of a certificate of authority if that date is later. During the period between this effective date and the final DOL opinion or federal court determination, MEWAs must deposit the assessments in an interest bearing escrow account. Upon a final determination that the assessments are not preempted, all funds in these accounts must be transferred to the WSHIP Board of Directors.

Market Conduct Examinations

The Commissioner is authorized to conduct market examinations of MEWAs as often as deemed necessary according to statutory market conduct examination requirements. The Commissioner may accept an examination by the regulatory official in a foreign MEWA's state of domicile. In conducting these examinations, the Commissioner may rely on an independent certificated public accountant's audit reports and incorporate those reports into the examination report.

MEWAs are required to cooperate and provide information for the examination. The Commissioner may issue subpoenas, administer oaths, and examine the MEWA's officers and principals when conducting the examination. The Commissioner also may examine a MEWA affiliate's activities or operations that may affect the MEWA's financial position. MEWAs are not required to pay a specific examination fee for market conduct examinations.

Exemptions

The MEWA regulatory provisions do not apply to single employer entities, Taft-Hartley plans, or self-funded MEWAs that do not provide coverage for health care services.

Enforcement

The Commissioner may impose sanctions against a MEWA that does not comply with the statutory requirements. A maximum fine of \$10,000 per violation is authorized. In addition, the Commissioner may issue a notice of intent to revoke the MEWA's certificate of authority. The certificate of authority may be revoked if the MEWA fails to file a compliance plan within 60 days of receiving the Commissioner's notice of intent to revoke. The Commissioner may impose other sanctions for failure to maintain the required surplus.

Application of Other Requirements

MEWAs are subject to state risk-based capital requirements as well as insurer rehabilitation provisions. A self-funded MEWA is deemed an insurer for purposes of statutory merger, rehabilitation, and liquidation provisions.

Severability

A severability clause is included to specify that the judicial invalidation of any provision(s) does not affect the validity of the remaining provisions.

Appropriation: None.

Fiscal Note: Requested on February 20, 2004.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: (In support) Failure of some thinly capitalized MEWAs in the 1980s created serious consequences for hospitals, doctors, and consumers. A regulatory framework for

MEWAs is needed. At least two MEWAs have faced enforcement action by the OIC for failing to fit within the current statutory framework.

More than 40 states have MEWA laws. This bill has the strongest financial requirements for MEWAs in the United States and provides good consumer protection. The bill also requires MEWAs to pay the premium taxes other insurers must pay. The bill's proponents worked with the OIC on this bill. The OIC supports the Senate version.

MEWAs in this state have been providing thousands of state residents with health care coverage for many years. MEWAs do not issue individual policies and therefore do not create the risk situations addressed by the high-insurance risk pool. Federal law includes grievance procedures for MEWAs.

(Concerns) The bill's proponents initially identified one MEWA to which these provisions would apply. At least three other MEWAs have been identified during the legislative process; we do not know the full scope of this bill. A one-year moratorium on enforcement by the OIC should be considered so issues related to this legislation can be fully considered. Oregon's MEWA law has a different capitalization standard.

Testimony Against: MEWAs should have to comply with the same requirements as other health carriers, including prompt payment provisions in the patient bill of rights and high-risk pool participation requirements. Constituents deserve protection from MEWA failures. The definition of "bona fide association" is confusing.

Persons Testifying: (In support) Senator Benton; Charles M. Fox, Timber Products Manufacturers Association; Craig D. Nelson, Washington Employees Association; and Bill Daley, Office of the Insurance Commissioner.

(Concerns) Ken Bertrand, Group Health Cooperative.

(Opposed) Nancee Wildermuth, Regence Blue Shield and PacifiCare.

Persons Signed In To Testify But Not Testifying: None.

Griffith, Kiran H.

From: Griffith, Kiran H.
Sent: Tuesday, August 18, 2015 5:15 PM
To: 'Pasero, Gayle (OIC)'
Cc: Gellermann, AnnaLisa (OIC); Brown, Charles (OIC); 'Mike Monroe'; Michael Schutzler; Curtice, Melanie K.
Subject: RE: Self funding - responses to additional requests

Gayle,

During our phone call on August 13, you asked the Washington Technology Industry Association Employee Benefit Trust ("Trust") to address two points:

- 1) Whether the U.S. Department of Labor actively reviews the Trust's Form 5500 and Form M-1 filings to confirm compliance with the Employee Retirement Income Security Act of 1974 ("ERISA"); and
- 2) Which entity(s) is responsible for enforcing the Trust's compliance with applicable provisions of the Patient Protection & Affordable Care Act ("ACA").

We have relayed your request to our client. WTIA is reluctant to incur additional expenses to answer these questions, because they do not seem germane to the application process. However, as you may know, the Stoel Rives lawyers working on this project are employee benefits lawyers who are well versed in these matters. As such, we decided to provide this information to you as a courtesy and in an effort to move this process forward. We respond to each question in turn below.

Compliance with ERISA

The Trust complies with its obligations under ERISA, including but not limited to the requirement to file a Form 5500 as an employee welfare benefit plan and a Form M-1 as a multiple employer welfare arrangement. The DOL enforces the provisions of ERISA, including these reporting requirements. We do not know whether the DOL reviews each 5500 and M-1 filing submitted by the Trust to specifically confirm its compliance with ERISA. However, our industry is well aware of DOL audits of employee welfare benefit plans, and compliance with the ACA is a big component of the DOL's review.

Moreover, in each Form M-1, the trustee must specifically certify under penalty of perjury that the Trust complies with Title I of ERISA, including key federal provisions and regulations incorporated by reference from the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the ACA, and other federal laws. Additionally, the trustee who submits the Form M-1 and Form 5500 on behalf of the Trust must also certify under penalty of perjury that all of the information reported is true and correct.

Many provisions under ERISA impose penalties for noncompliance, which the Trust risks incurring should it fail to comply. The reporting penalties alone are sufficient to drive compliance. The DOL can impose up to \$1,100 per day for failure to timely file a correct Form 5500 or Form M-1. Additionally, a person who knowingly reports false statements or representations on these forms or on other ERISA-required documents is subject to criminal penalties, including possibly imprisonment. Finally, participants and beneficiaries of the Trust have the right to bring an ERISA cause of action, including claims to recover benefits owed or to enforce any provision of ERISA Title I or any term of the Trust's plan documents.

Compliance with the ACA

The Trust also complies with its obligations under the ACA. The ACA introduced comprehensive health care reform that amended many provisions of many federal laws. Given its comprehensive footprint, the ACA is enforced collectively by three federal agencies according to their jurisdiction of authority: the DOL, the Department of Health & Human Services, and the Internal Revenue Service / Treasury Department. Each agency has taken an active role in implementing the ACA,

and they collectively issue regulations and additional agency guidance to enforce its provisions. Under health care reform, the DOL generally has jurisdiction over the Trust given its status as a group health plan subject to ERISA and as a MEWA. The IRS has jurisdiction over the tax-favored treatment and other tax implications with respect to the health and welfare benefits offered through the Trust. Finally, HHS has jurisdiction over the insurer that provides the insured health coverage currently offered through the Trust.

As is the case under ERISA, the Trust would risk steep penalties should it be found to have not complied with an applicable mandate under the ACA. Failure to comply could trigger an excise tax of \$100 a day per individual to whom the failure relates. Additionally, the DOL may bring a civil action to enforce the health care reform mandates incorporated by reference into ERISA. Finally, participants and beneficiaries of the Trust may bring an ERISA cause of action to enforce the Trust's compliance with these mandates.

We hope this summary is helpful to you. If the Washington Office of the Insurance Commissioner has a question about the Trust's compliance with a specific federal provision, please let us know. Otherwise, we look forward to hearing from you once you complete your review of the Trust's self-funded MEWA application.

Sincerely,
Kiran

Kiran H. Griffith | Attorney
STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101
Direct: (206) 386-7583 | Fax: (206) 386-7500
kiran.griffith@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com

Please note our new email address format. I can, however, still be reached through my old email address.

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.

From: Pasero, Gayle (OIC) [<mailto:GayleP@OIC.WA.GOV>]
Sent: Wednesday, July 08, 2015 8:01 AM
To: 'Mike Monroe'; Brown, Charles (OIC)
Cc: Gellermann, AnnaLisa (OIC); Michael Schutzler; Griffith, Kiran H.; Curtice, Melanie K.
Subject: RE: Self funding - responses to additional requests

Good morning Mike,

Thank you for the additional information. Once we have had a chance to review we will be able to provide an update.

Best regards,

Gayle

Gayle Pasero, CPCU
Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

360.725.7210 | GayleP@oic.wa.gov
1900 Capitol Blvd., Tumwater, WA 98501
P.O. Box 40259, Olympia, WA 98504-0255
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From: Mike Monroe [<mailto:mmonroe@washingtontechnology.org>]
Sent: Tuesday, July 07, 2015 4:07 PM
To: Pasero, Gayle (OIC); ChuckB@oic.wa.gov
Cc: Gellermann, AnnaLisa (OIC); Michael Schutzler; Griffith, Kiran H.; Curtice, Melanie K.
Subject: Self funding - responses to additional requests

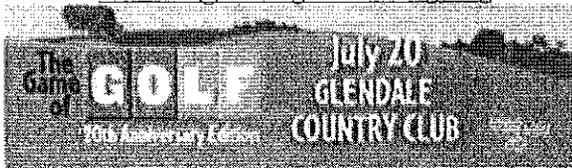
Gayle and Chuck:

Attached is our draft response to the additional requests you made at our most recent meeting on June 22nd. Stoel Rives LLP will be providing our analysis of the legal requirements to apply for a certificate of authority as a self-funded MEWA in a separate document. You should be receiving that shortly. Please let me know if you have any comments, questions or need additional insight.

Lastly, I wanted to circle back to my question around timeline for completing your review and next steps. As soon as you have clarity around this, it would be great to have an update so I can manage communications and expectations to my trustee group and the WTIA board. Thanks again for your time and collaboration. Hope all is well. Cheers

Mike Monroe
Chief Operating Officer

Washington Technology Industry Association (WTIA)
2200 Alaskan Way, Suite 390 | Seattle, WA 98121
Cell (425) - 890 - 6175
E-Mail mmonroe@washingtontechnology.org



Griffith, Kiran H.

From: Pasero, Gayle (OIC) <GayleP@OIC.WA.GOV>
Sent: Monday, August 31, 2015 11:05 AM
To: Griffith, Kiran H.
Subject: RE: Self funding - responses to additional requests

Hello Kiran,

Thank you for your voicemail. We hope to get the review of the application wrapped up by the end of this week. I will then send a follow up email with additional questions or clarifications.

Thanks again,

Gayle

Gayle Pasero, CPCU
Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

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Sent: Tuesday, August 18, 2015 5:15 PM
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- 1) Whether the U.S. Department of Labor actively reviews the Trust's Form 5500 and Form M-1 filings to confirm compliance with the Employee Retirement Income Security Act of 1974 ("ERISA"); and
- 2) Which entity(s) is responsible for enforcing the Trust's compliance with applicable provisions of the Patient Protection & Affordable Care Act ("ACA").

We have relayed your request to our client. WTIA is reluctant to incur additional expenses to answer these questions, because they do not seem germane to the application process. However, as you may know, the Stoel Rives lawyers working on this project are employee benefits lawyers who are well versed in these matters. As such, we decided to provide this information to you as a courtesy and in an effort to move this process forward. We respond to each question in turn below.

Compliance with ERISA

The Trust complies with its obligations under ERISA, including but not limited to the requirement to file a Form 5500 as an employee welfare benefit plan and a Form M-1 as a multiple employer welfare arrangement. The DOL enforces the provisions of ERISA, including these reporting requirements. We do not know whether the DOL reviews each 5500 and M-1 filing submitted by the Trust to specifically confirm its compliance with ERISA. However, our industry is well aware of DOL audits of employee welfare benefit plans, and compliance with the ACA is a big component of the DOL's review.

Moreover, in each Form M-1, the trustee must specifically certify under penalty of perjury that the Trust complies with Title I of ERISA, including key federal provisions and regulations incorporated by reference from the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the ACA, and other federal laws. Additionally, the trustee who submits the Form M-1 and Form 5500 on behalf of the Trust must also certify under penalty of perjury that all of the information reported is true and correct.

Many provisions under ERISA impose penalties for noncompliance, which the Trust risks incurring should it fail to comply. The reporting penalties alone are sufficient to drive compliance. The DOL can impose up to \$1,100 per day for failure to timely file a correct Form 5500 or Form M-1. Additionally, a person who knowingly reports false statements or representations on these forms or on other ERISA-required documents is subject to criminal penalties, including possibly imprisonment. Finally, participants and beneficiaries of the Trust have the right to bring an ERISA cause of action, including claims to recover benefits owed or to enforce any provision of ERISA Title I or any term of the Trust's plan documents.

Compliance with the ACA

The Trust also complies with its obligations under the ACA. The ACA introduced comprehensive health care reform that amended key provisions of many federal laws. Given its comprehensive footprint, the ACA is enforced collectively by three federal agencies according to their jurisdiction of authority: the DOL, the Department of Health & Human Services, and the Internal Revenue Service / Treasury Department. Each agency has taken an active role in implementing the ACA, and they collectively issue regulations and additional agency guidance to enforce its provisions. Under health care reform, the DOL generally has jurisdiction over the Trust given its status as a group health plan subject to ERISA and as a MEWA. The IRS has jurisdiction over the tax-favored treatment and other tax implications with respect to the health and welfare benefits offered through the Trust. Finally, HHS has jurisdiction over the insurer that provides the insured health coverage currently offered through the Trust.

As is the case under ERISA, the Trust would risk steep penalties should it be found to have not complied with an applicable mandate under the ACA. Failure to comply could trigger an excise tax of \$100 a day per individual to whom the failure relates. Additionally, the DOL may bring a civil action to enforce the health care reform mandates incorporated by reference into ERISA. Finally, participants and beneficiaries of the Trust may bring an ERISA cause of action to enforce the Trust's compliance with these mandates.

We hope this summary is helpful to you. If the Washington Office of the Insurance Commissioner has a question about the Trust's compliance with a specific federal provision, please let us know. Otherwise, we look forward to hearing from you once you complete your review of the Trust's self-funded MEWA application.

Sincerely,
Kiran

Kiran H. Griffith | Attorney
STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101
Direct: (206) 386-7583 | Fax: (206) 386-7500
kiran.griffith@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com

Please note our new email address format. I can, however, still be reached through my old email address.

1/11/2015, 10:00 AM

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From: Pasero, Gayle (OIC) [<mailto:GayleP@OIC.WA.GOV>]
Sent: Wednesday, July 08, 2015 8:01 AM
To: 'Mike Monroe'; Brown, Charles (OIC)
Cc: Gellermann, AnnaLisa (OIC); Michael Schutzler; Griffith, Kiran H.; Curtice, Melanie K.
Subject: RE: Self funding - responses to additional requests

Good morning Mike,

Thank you for the additional information. Once we have had a chance to review we will be able to provide an update.

Best regards,

Gayle

Gayle Pasero, CPCU
Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

360.725.7210 | GayleP@oic.wa.gov
5000 Capitol Blvd., Tumwater, WA 98501
P.O. Box 40259, Olympia, WA 98504-0255
www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | [email/text alerts](#)

From: Mike Monroe [<mailto:mmonroe@washingtontechnology.org>]
Sent: Tuesday, July 07, 2015 4:07 PM
To: Pasero, Gayle (OIC); ChuckB@oic.wa.gov
Cc: Gellermann, AnnaLisa (OIC); Michael Schutzler; Griffith, Kiran H.; Curtice, Melanie K.
Subject: Self funding - responses to additional requests

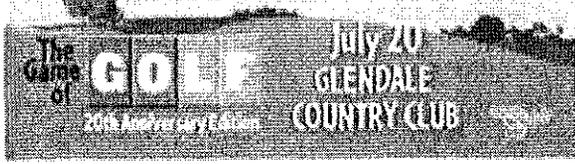
Gayle and Chuck:

Attached is our draft response to the additional requests you made at our most recent meeting on June 22nd. Stoel Rives LLP will be providing our analysis of the legal requirements to apply for a certificate of authority as a self-funded MEWA in a separate document. You should be receiving that shortly. Please let me know if you have any comments, questions or need additional insight.

Lastly, I wanted to circle back to my question around timeline for completing your review and next steps. As soon as you have clarity around this, it would be great to have an update so I can manage communications and expectations to my trustee group and the WTIA board. Thanks again for your time and collaboration. Hope all is well. Cheers

Mike Monroe
Chief Operating Officer

Washington Technology Industry Association (WTIA)
2200 Alaskan Way, Suite 390 | Seattle, WA 98121
Cell (425) - 890 - 6175
E-Mail mmonroe@washingtontechnology.org



Griffith, Kiran H.

From: Pasero, Gayle (OIC) <GayleP@OIC.WA.GOV>
Sent: Monday, August 31, 2015 2:01 PM
To: Griffith, Kiran H.
Cc: Curtice, Melanie K.
Subject: RE: Self funding - responses to additional requests

Hi Kiran,

Thank you for the additional information. I will include Melanie on any follow up correspondence. I did want to clarify that while we hope to have the review completed by the end of the week, it's possible the follow up questions will not be sent until the beginning of next week.

Best regards,

Gayle

Gayle Pasero, CPCU

Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

360.725.7210 | GayleP@oic.wa.gov

1000 Capitol Blvd., Tumwater, WA 98501

P.O. Box 40255, Olympia, WA 98504-0255

www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | [email/text alerts](#)

From: Griffith, Kiran H. [<mailto:kiran.griffith@stoel.com>]
Sent: Monday, August 31, 2015 12:15 PM
To: Pasero, Gayle (OIC)
Cc: Curtice, Melanie K.
Subject: RE: Self funding - responses to additional requests

Hi Gayle,

Thank you for your email, and we look forward to hearing from you by the end of this week. Please note that I will be out of the office beginning this Friday, Sept. 4, returning on Monday, Sept. 14. Please include Melanie Curtice (cc'ed) on any follow-up emails, so we can be sure to respond to you in a timely manner. I have also included Melanie's full contact information below, along with mine.

Sincerely,

Kiran

Melanie K. Curtice | Partner

STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101-4109

Direct: (206) 386-7651 | Mobile: (206) 714-6069 | Fax: (206) 386-7500

melanie.curtice@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com

Kiran H. Griffith | Attorney

STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101

Direct: (206) 386-7583 | Fax: (206) 386-7500

kiran.griffith@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com

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From: Pasero, Gayle (OIC) [<mailto:GayleP@OIC.WA.GOV>]

Sent: Monday, August 31, 2015 11:05 AM

To: Griffith, Kiran H.

Subject: RE: Self funding - responses to additional requests

Hello Kiran,

Thank you for your voicemail. We hope to get the review of the application wrapped up by the end of this week. I will then send a follow up email with additional questions or clarifications.

Thanks again,

Gayle

Gayle Pasero, CPCU

Company Licensing Manager

Company Supervision Division

Washington State Office of the Insurance Commissioner

360.725.7210 | GayleP@oic.wa.gov

5000 Capitol Blvd., Tumwater, WA 98501

P.O. Box 40255, Olympia, WA 98504-0255

www.insurance.wa.gov | [twitter.com/WA_OIC](#) | wainsurance.blogspot.com | [email/text alerts](#)

From: Griffith, Kiran H. [<mailto:kiran.griffith@stoel.com>]

Sent: Tuesday, August 18, 2015 5:15 PM

To: Pasero, Gayle (OIC)

Cc: Gellermann, AnnaLisa (OIC); Brown, Charles (OIC); 'Mike Monroe'; Michael Schutzler; Curtice, Melanie K.

Subject: RE: Self funding - responses to additional requests

Gayle,

During our phone call on August 13, you asked the Washington Technology Industry Association Employee Benefit Trust (you asked ("Trust")) to address two points:

- 1) Whether the U.S. Department of Labor actively reviews the Trust's Form 5500 and Form M-1 filings to confirm compliance with the Employee Retirement Income Security Act of 1974 ("ERISA"); and
- 2) Which entity(s) is responsible for enforcing the Trust's compliance with applicable provisions of the Patient Protection & Affordable Care Act ("ACA").

We have relayed your request to our client. WTIA is reluctant to incur additional expenses to answer these questions, because they do not seem germane to the application process. However, as you may know, the Stoel Rives lawyers working on this project are employee benefits lawyers who are well versed in these matters. As such, we decided to provide this information to you as a courtesy and in an effort to move this process forward. We respond to each question in turn below.

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The Trust complies with its obligations under ERISA, including but not limited to the requirement to file a Form 5500 as an employee welfare benefit plan and a Form M-1 as a multiple employer welfare arrangement. The DOL enforces the provisions of ERISA, including these reporting requirements. We do not know whether the DOL reviews each 5500 and M-1 filing submitted by the Trust to specifically confirm its compliance with ERISA. However, our industry is well aware of DOL audits of employee welfare benefit plans, and compliance with the ACA is a big component of the DOL's review.

Moreover, in each Form M-1, the trustee must specifically certify under penalty of perjury that the Trust complies with Title I of ERISA, including key federal provisions and regulations incorporated by reference from the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the ACA, and other federal laws. Additionally, the trustee who submits the Form M-1 and Form 5500 on behalf of the Trust must also certify under penalty of perjury that all of the information reported is true and correct.

any provisions under ERISA impose penalties for noncompliance, which the Trust risks incurring should it fail to comply. The reporting penalties alone are sufficient to drive compliance. The DOL can impose up to \$1,100 per day for failure to timely file a correct Form 5500 or Form M-1. Additionally, a person who knowingly reports false statements or representations on these forms or on other ERISA-required documents is subject to criminal penalties, including possibly imprisonment. Finally, participants and beneficiaries of the Trust have the right to bring an ERISA cause of action, including claims to recover benefits owed or to enforce any provision of ERISA Title I or any term of the Trust's plan documents.

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As is the case under ERISA, the Trust would risk steep penalties should it be found to have not complied with an applicable mandate under the ACA. Failure to comply could trigger an excise tax of \$100 a day per individual to whom the failure relates. Additionally, the DOL may bring a civil action to enforce the health care reform mandates incorporated by reference into ERISA. Finally, participants and beneficiaries of the Trust may bring an ERISA cause of action to enforce the Trust's compliance with these mandates.

We hope this summary is helpful to you. If the Washington Office of the Insurance Commissioner has a question about the Trust's compliance with a specific federal provision, please let us know. Otherwise, we look forward to hearing from you once you complete your review of the Trust's self-funded MEWA application.

Sincerely,
Kiran

Kiran H. Griffith | Attorney
STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101
Direct: (206) 386-7583 | Fax: (206) 386-7500
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Sent: Wednesday, July 08, 2015 8:01 AM
To: 'Mike Monroe'; Brown, Charles (OIC)
Cc: Gellermann, AnnaLisa (OIC); Michael Schutzler; Griffith, Kiran H.; Curtice, Melanie K.
Subject: RE: Self funding - responses to additional requests

Good morning Mike,

Thank you for the additional information. Once we have had a chance to review we will be able to provide an update.

Best regards,

Gayle

Gayle Pasero, CPCU
Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

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Sent: Tuesday, July 07, 2015 4:07 PM
To: Pasero, Gayle (OIC); ChuckB@oic.wa.gov
Cc: Gellermann, AnnaLisa (OIC); Michael Schutzler; Griffith, Kiran H.; Curtice, Melanie K.
Subject: Self funding - responses to additional requests

Gayle and Chuck:

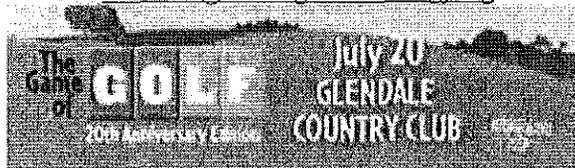
Attached is our draft response to the additional requests you made at our most recent meeting on June 22nd. Stoel Rives LLP will be providing our analysis of the legal requirements to apply for a certificate of authority as a self-funded MEWA in a separate document. You should be receiving that shortly. Please let me know if you have any comments, questions or need additional insight.

Lastly, I wanted to circle back to my question around timeline for completing your review and next steps. As soon as you have clarity around this, it would be great to have an update so I can manage communications and expectations to my trustee group and the WTIA board. Thanks again for your time and collaboration. Hope all is well. Cheers

--

Mike Monroe
Chief Operating Officer

Washington Technology Industry Association (WTIA)
2200 Alaskan Way, Suite 390 | Seattle, WA 98121
Cell (425) - 890 - 6175
E-Mail mmonroe@washingtontechnology.org



Griffith, Kiran H.

From: Pasero, Gayle (OIC) <GayleP@OIC.WA.GOV>
Sent: Wednesday, September 09, 2015 3:56 PM
To: Griffith, Kiran H.; Curtice, Melanie K.
Cc: Brown, Charles (OIC)
Subject: Proposed memo for WTIA application for admission

Dear Ms. Griffith,

We have completed our review of the Washington Technology Industry Employee Benefit Trust ("WTIA") application for admission as a self-funded multiple employer welfare arrangement ("MEWA").

While it is not yet determined if there is authority to issue a certificate of authority under Chapter 48.125 RCW, we have noted areas below where additional information or documentation is required prior to making that decision.

Financial Information

- The Milliman report dated January 29, 2015 reports that WTIA needs \$5.4 million in surplus as of September 1, 2015, increasing to \$5.8 million as of September 1, 2016. It appears the trust has reported reserves as \$2.3 million in the 2013 audited financial statement. Please advise how WTIA will meet the minimum surplus requirement under RCW 48.125.060.
- Note 10 in the audit makes an adjustment to reconcile the Form 5500 net assets available for benefits with the audit. Please advise why the adjustment was made and whether WTIA has determined how this would be reported under statutory accounting.
- Has WTIA completed an analysis of the rest of its assets to ensure it will comply with Chapters 48.12 and 48.13 RCW?
- Once the \$5.4 million in surplus is established, please advise how WTIA will invest this money in compliance with Chapter 48.13 RCW. Please also provide WTIA's current investment policy.
- Finally, please provide a pro-forma RBC report.

Third party Investigative reports

- Third party investigative reports must be completed by a recognized NAIC vendor. Talent Wise is not an NAIC recognized vendor. Therefore, third party investigative reports must be completed by one of the vendors on the attached list. http://www.naic.org/documents/industry_ucaa_third_party.pdf

Should you have additional questions, please let me know.

Best regards,

Gayle Pasero, CPCU
Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

0.725.7210 | GayleP@oic.wa.gov
300 Capitol Blvd., Tumwater, WA 98501
P.O. Box 40255, Olympia, WA 98504-0255

Griffith, Kiran H.

From: Griffith, Kiran H.
Sent: Friday, September 18, 2015 9:56 AM
To: 'Pasero, Gayle (OIC)'
Cc: Brown, Charles (OIC); 'Mike Monroe'; 'Michael Schutzler (mschutzler@washingtontechnology.org)'; Curtice, Melanie K.
Subject: RE: Proposed memo for WTIA application for admission

Dear Ms. Pasero,

On September 9, 2015, you asked the Washington Technology Industry Association ("WTIA") to provide additional information or documentation. You stated that, while the Office of the Insurance Commissioner has not yet determined whether there is authority under Chapter 48.125 RCW to issue a certificate of authority ("COA"), your listed requests were "required prior to making that decision."

RCW 48.125.080 requires the OIC to issue a decision based on the applicant's satisfaction of "the applicable requirements of RCW 48.125.030 through 48.125.070." Please note that much of the information or documentation requested below falls outside this set of statutory provisions, and thus are not statutorily required in our application. After the OIC informed us that there is no formal application form, WTIA filed an application on March 27, 2015, providing the documents required under RCW 48.125.050. WTIA has since answered multiple requests from the OIC for additional information, including the requests below, much of which falls outside the statutory elements required in our application. Therefore, with this email, WTIA is confident that the OIC has all of the information it needs to issue its decision by **September 23, 2015**. We look forward to receiving your decision, and we are hopeful that our application will be approved.

Financial Information

"The Milliman report dated January 29, 2015 reports that WTIA needs \$5.4 million in surplus as of September 1, 2015, increasing to \$5.8 million as of September 1, 2016. It appears the trust has reported reserves as \$2.3 million in the 2013 audited financial statement. Please advise how WTIA will meet the minimum surplus requirement under RCW 48.125.060."

The Washington Technology Industry Association Employee Benefits Trust currently provides fully insured health care benefits. Thus, the surplus requirement under RCW 48.125.060 does not currently apply. WTIA intends for its self-funded multiple employer welfare arrangement ("self-funded MEWA") to comply with all of the applicable financial requirements under Chapter 48.125 RCW, including the surplus required under RCW 48.125.060, the contribution rates required under 48.125.070, and the deposit required under RCW 48.125.040(1)(b)(i). With respect to the deposit requirement, we understand that this should be effectuated under a tri-party agreement with the OIC. WTIA has set aside and reserved \$200,000 for purposes of this deposit, and looks forward to entering into the depository agreement when the OIC is ready to do so. WTIA would also be happy to provide additional information in this regard once our application is approved.

"Note 10 in the audit makes an adjustment to reconcile the Form 5500 net assets available for benefits with the audit. Please advise why the adjustment was made and whether WTIA has determined how this would be reported under statutory accounting."

As stated in Note 10 of the auditor's report included the Form 5500 filed on September 30, 2014, the net assets available for benefits were adjusted as of December 31, 2012 and December 31, 2013, to reflect premiums to be paid to insurers for insured benefits provided through the Trust.

Pursuant to RCW 48.125.080, the OIC shall grant or deny the application for a COA based on an applicant's satisfaction of applicable requirements under RCW 48.125.030 through RCW 48.125.070. We are unable to identify a specific provision under these statutory sections that requires WTIA to provide information about its accounting practices. This request appears to relate to the requirements under RCW 48.125.090. WTIA intends for its self-funded MEWA to comply with RCW 48.125.090 and would be happy to provide additional information in this regard once our application is approved.

Has WTIA completed an analysis of the rest of its assets to ensure it will comply with Chapters 48.12 and 48.13 RCW?

Pursuant to RCW 48.125.080, the OIC shall grant or deny the application for a COA based on an applicant's satisfaction of applicable requirements of RCW 48.125.030 through RCW 48.125.070. We are unable to identify a specific provision under these statutory sections that requires WTIA to provide the requested information. This request relates to the requirement under RCW 48.125.090(3) that a self-funded MEWA comply with the provisions of Chapters 48.12 and 48.13 RCW. WTIA intends for its self-funded MEWA to comply with the statutory provisions of Chapters 48.12 and 48.13 RCW and would be happy to provide additional information in this regard once our application is approved.

Once the \$5.4 million in surplus is established, please advise how WTIA will invest this money in compliance with Chapter 48.13 RCW. Please also provide WTIA's current investment policy.

Pursuant to RCW 48.125.080, the OIC shall grant or deny the application for a COA based on an applicant's satisfaction of applicable requirements of RCW 48.125.030 through RCW 48.125.070. We are unable to identify a specific provision under these statutory sections that requires WTIA to provide the requested investment information. This request relates to the requirement under RCW 48.125.090(3) that a self-funded MEWA comply with the provisions of Chapters 48.12 and 48.13 RCW. WTIA intends for its self-funded MEWA to comply with the statutory provisions of Chapters 48.12 and 48.13 RCW and would be happy to provide additional information in this regard once our application is approved.

Finally, please provide a pro-forma RBC report.

Pursuant to RCW 48.125.080, the OIC shall grant or deny the application for a COA based on an applicant's satisfaction of applicable requirements of RCW 48.125.030 through RCW 48.125.070. We are unable to identify a specific provision under these statutory sections that requires WTIA to provide the requested RBC report. This request appears to relate to the requirement under RCW 48.125.130 that a self-funded MEWA comply with the risk-based capital provisions under RCW 48.43.300 through 48.43.370. WTIA intends for its self-funded MEWA to comply with RCW 48.125.130 and would be happy to provide additional information in this regard once our application is approved.

Third-party investigative reports

Third party investigative reports must be completed by a recognized NAIC vendor. Talent Wise is not an NAIC recognized vendor. Therefore, third party investigative reports must be completed by one of the vendors on the attached list. http://www.naic.org/documents/industry_ucaa_third_party.pdf

WTIA's application filed on March 27, 2015, contained a signed biographical affidavit, including a signed and notarized Disclosure and Authorization Concerning Background Reports for each trustee of the Trust. Our application also contained a completed background check from TalentWise for each trustee, although we appreciate that the OIC may prefer WTIA to engage an NAIC approved vendor to verify the results of our completed background checks. Toward that end, WTIA has contacted NAIC approved vendor AAVerify.com, which will provide its reports directly to the OIC as soon as they are completed.

Sincerely,
ran

Kiran H. Griffith | Attorney

STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101

Direct: (206) 386-7583 | Fax: (206) 386-7500

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From: Pasero, Gayle (OIC) [mailto:GayleP@OIC.WA.GOV]

Sent: Wednesday, September 09, 2015 3:56 PM

To: Griffith, Kiran H.; Curtice, Melanie K.

Cc: Brown, Charles (OIC)

Subject: Proposed memo for WTIA application for admission

Dear Ms. Griffith,

We have completed our review of the Washington Technology Industry Employee Benefit Trust ("WTIA") application for admission as a self-funded multiple employer welfare arrangement ("MEWA").

While it is not yet determined if there is authority to issue a certificate of authority under Chapter 48.125 RCW, we have noted areas below where additional information or documentation is required prior to making that decision.

Financial information

- The Milliman report dated January 29, 2015 reports that WTIA needs \$5.4 million in surplus as of September 1, 2015, increasing to \$5.8 million as of September 1, 2016. It appears the trust has reported reserves as \$2.3 million in the 2013 audited financial statement. Please advise how WTIA will meet the minimum surplus requirement under RCW 48.125.060.
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Should you have additional questions, please let me know.

Best regards,

Gayle Pasero, CPCU

Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

.60.725.7210 | GayleP@aic.wa.gov

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P.O. Box 40255, Olympia, WA 98504-0255

www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | email/text/alerts

Griffith, Kiran H.

From: Griffith, Kiran H.
Sent: Tuesday, October 06, 2015 10:52 AM
To: 'Pasero, Gayle (OIC)'
Subject: RE: WTIA

Hi Gayle,

Yes, I can do 1:30 p.m. today, and I will call your number. Thanks!

Kiran H. Griffith | Attorney
STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101
Direct: (206) 386-7583 | Fax: (206) 386-7500
kiran.griffith@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com

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From: Pasero, Gayle (OIC) [<mailto:GayleP@OIC.WA.GOV>]
Sent: Tuesday, October 06, 2015 10:49 AM
To: Griffith, Kiran H.
Subject: RE: WTIA

Hi Kiran,

Does 1:30 work for you? If so, can you call me at 360-725-7210?

Thanks,
Gayle

Gayle Pasero, CPCU
Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

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From: Griffith, Kiran H. [<mailto:kiran.griffith@stoel.com>]
Sent: Tuesday, October 06, 2015 9:37 AM
To: Pasero, Gayle (OIC)
Subject: RE: WTIA

Hi Gayle,

I am free all day today, except during the noon hour. Would Chuck be available at 11 am? If not, please choose a time in the afternoon that works for you both.

Thanks,
Kiran

Kiran H. Griffith | Attorney
STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101
Direct: (206) 386-7583 | Fax: (206) 386-7500
kiran.griffith@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com

Please note our new email address format. I can, however, still be reached through my old email address.

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.

From: Pasero, Gayle (OIC) [<mailto:GayleP@OIC.WA.GOV>]
Sent: Tuesday, October 06, 2015 9:32 AM
To: Griffith, Kiran H.
Subject: RE: WTIA

Hi Kiran,

10:00 may not work. Chuck Brown also will be on the call and it doesn't appear he is available. Do you have any available times this afternoon?

Thanks,
Gayle

Gayle Pasero, CPCU
Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

360.725.7210 | GayleP@oic.wa.gov
5000 Capital Blvd., Tumwater, WA 98501
P.O. Box 40255, Olympia, WA 98504-0255
www.insurance.wa.gov | [twitter.com/WA_OIC](#) | wainsurance.blogspot.com | [email/text alerts](#)

From: Griffith, Kiran H. [<mailto:kiran.griffith@stoel.com>]
Sent: Tuesday, October 06, 2015 8:23 AM
To: Pasero, Gayle (OIC)
Subject: RE: WTIA

Hi Gayle,

Thank you for scheduling a call. 10:00 a.m. today works for me. Should I call your number? Otherwise, you can reach me at (206) 386-7583.

Best regards,
Kiran

Kiran H. Griffith | Attorney
STOEL RIVES LLP | 600 University Street, Suite 3600 | Seattle, WA 98101
Direct: (206) 386-7583 | Fax: (206) 386-7500
kiran.griffith@stoel.com | [Bio](#) | [vCard](#) | www.stoel.com

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From: Pasero, Gayle (OIC) [<mailto:GayleP@OIC.WA.GOV>]
Sent: Monday, October 05, 2015 4:43 PM
To: Griffith, Kiran H.
Subject: WTIA

Hello Kiran,

Thank you for your voice mail. We're available tomorrow at 10:00 or 11:00. Do either of these times work for you?

Best regards,

Gayle

Gayle Pasero, CPCU
Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

360.725.7210 | GayleP@oic.wa.gov
5000 Capitol Blvd., Tumwater, WA 98501
P.O. Box 40255, Olympia, WA 98504-0255
www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | [email/text alerts](#)

Griffith, Kiran H.

From: Pasero, Gayle (OIC) <GayleP@OIC.WA.GOV>
Sent: Tuesday, October 06, 2015 2:39 PM
To: Griffith, Kiran H.
Cc: Brown, Charles (OIC)
Subject: Solicitation Permit

Hi Kiran,

I reviewed the solicitation permit statute and it doesn't appear a self-funded MEWA fits the definition under RCW 48.06.030. This is assuming their intent is to raise funds from existing members, rather than the public. A self-funded MEWA does still need to meet the surplus requirement under RCW 48.125.060.

Best regards,

Gayle

Gayle Pasero, CPCU
Company Licensing Manager
Company Supervision Division
Washington State Office of the Insurance Commissioner

360.725.7210 | GayleP@oic.wa.gov
1000 Capitol Blvd., Tumwater, WA 98501
P.O. Box 40255, Olympia, WA 98504-0255
www.insurance.wa.gov | twitter.com/WA_OIC | wainsurance.blogspot.com | [email/text alerts](#)

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

FILED

In the Matter of)
)
WASHINGTON TECHNOLOGY)
INDUSTRY ASSOCIATION,)
)
Applicant.)
_____)

Docket No. 15-0290

2015 DEC 17 A 11: 37

NOTICE OF HEARING

HEARINGS UNIT
OFFICE OF
INSURANCE COMMISSIONER

TO: Maren R. Norton
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, J.D., CPA, Chief Deputy Insurance Commissioner
Doug Hartz, Deputy Commissioner, Company Supervision Division
AnnaLisa Gellermann, Deputy Commissioner, Legal Affairs Division
Darryl Colman, Insurance Enforcement Specialist, Legal Affairs Division
Chuck Brown, Sr. Insurance Enforcement Specialist, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

This Notice is provided pursuant to RCW 48.04.010 and RCW 34.05.434.

On November 20, 2015, Washington Technology Industry Association ("WTIA"), a non-profit industry trade association serving the technology industry and business community, requested a hearing to contest the Office of the Insurance Commissioner's ("OIC's") denial of both its initial and resubmitted application under RCW Ch. 48.125 to operate a self-funded multiple employer welfare arrangement (MEWA), to provide health care services to its members' employees and dependents. WTIA argues that OIC's denial is erroneous for several reasons, including:

- Neither the statutory language nor legislative history behind RCW Ch. 48.125 supports OIC's position that RCW Ch. 48.125 provides for only grandfathered approval and regulation of then-operating self-funded MEWA (i.e., as of April 1, 2005). Rather, WTIA argues that the statute anticipated that applications to form new MBWAs would be filed post-April 1, 2005;
- WTIA's resubmitted application is not deficient or incomplete as OIC claims. Given the OIC has no prescribed application form available, WTIA argues that it filed an application that tracked all of the requirements under RCW 48.125.050; and

- The OIC's decision to reject WTIA's application to operate a MEWA deprives thousands of Washington residents of the opportunity to access more affordable and comprehensive health care services for themselves and their families.

On December 15, 2015, the undersigned held a first prehearing conference. The OIC was represented by Darryl Colman, Staff Attorney, and Chuck Brown, Senior Staff Attorney, of the OIC's Legal Affairs Division. Attorney Maren R. Norton, of Stoel Rives LLP, represented WTIA.

After considering the views of the Parties, I enter the following Order:

By January 22, 2016, the parties shall serve and file dispositive Motions. By February 5, 2016, the parties shall serve and file Responses to such Motions. By February 12, 2016, the parties shall serve and file Replies to such Responses. The parties may request oral argument after submission of the briefs. If no oral argument is requested, I expect to rule without oral argument as soon as possible after briefing is complete.

Assuming this matter is not resolved based upon the dispositive Motions, a hearing will be held at the Office of the Insurance Commissioner, 5000 Capitol Blvd., Tumwater, WA, beginning on March 3, 2016, at 9:00 a.m., Pacific Standard Time. The hearing is expected to require less than one day, but will continue until completed. The purpose of the hearing is to consider whether the OIC's denial of WTIA's application to operate a self-funded MEWA was erroneous.

By February 25, 2016, the parties shall exchange copies of witness and exhibit lists, briefs and any other documents they expect to offer into evidence at the evidentiary hearing. Any witness and exhibit lists, briefs and documents so provided shall also be provided to the Hearings Unit at the address below.

The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08 WAC. All parties may be represented and may examine witnesses, respond, and present evidence and argument on all relevant issues.

A party who fails to attend or participate in the hearing or another stage of this proceeding may be held in default in accordance with Chapter 34.05 RCW. *See*, RCW 34.05.434(2)(i).

William Pardee, Presiding Officer, has been designated by the Insurance Commissioner to hear and determine this matter. The hearing will be held under the authority granted by the Insurance Commissioner under Chapter 48.04 RCW.

Pursuant to WAC 284-02-070(1)(c), accommodation will be made for persons needing assistance due to difficulty with language or disability. Further, pursuant to WAC 10-08-040(2) and in accordance with Ch. 2.42 RCW, if a limited English speaking or hearing impaired or speech impaired party or witness needs an interpreter, a qualified interpreter will be appointed. There will be no cost to the party or witness therefore, except as may be provided by Ch. 2.42 RCW. A Request for Accommodation form, with instructions, is attached to the original of this Notice.

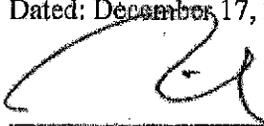
Notice of Hearing

No. 15-0290

Page 2

All case related documents and correspondence shall be directed to the Hearings Unit, Office of Insurance Commissioner, P.O. Box 40255, Olympia, Washington 98504-0255. All interested individuals and entities who have questions or concerns concerning this proceeding should direct them to the Hearings Unit paralegal, Dorothy Seabourne-Taylor, at the same address. Ms. Seabourne-Taylor's telephone number is (360) 725-7002.

Dated: December 17, 2015

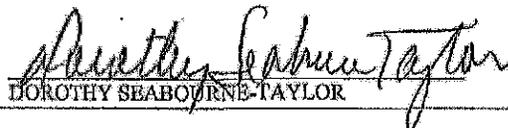


WILLIAM PARDEE
Presiding Officer

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Maren R. Norton, Mike Kroidler, James T. Odiome, J.D., CPA, Doug Hartz, AnnaLisa Gellermann, Darryl Colman, and Chuck Brown.

DATED this 17th day of December, 2015.


DOROTHY SEABOURNE-TAYLOR

OFFICE OF INSURANCE COMMISSIONER
HEARINGS UNIT
Fax: (360) 664-2782

To request an interpreter, complete and mail this form to:

Presiding Officer
Hearings Unit
Office of Insurance Commissioner
P.O. Box 40255
Olympia, WA 98504-0255

REQUEST FOR ACCOMMODATION FOR LANGUAGE OR DISABILITY

I am a party in Matter No. _____ before the Insurance Commissioner.

I request accommodation for the following disability (insert your disability):

I request an interpreter for myself or a witness who will be testifying at the evidentiary hearing.

Please check the statements that apply:

I am a non-English-speaking person and cannot readily speak or understand the English language. My primary language is _____ (insert your primary language). I need an interpreter who can translate to and from the primary language and English.

I am unable to readily understand or communicate the spoken English language because:

- I am deaf.
- I have an impairment of hearing.
- I have an impairment of speech.

[Please state below or on the reverse side any details which would assist the Commissioner or Presiding Officer in arranging for a suitable accommodation for your disability, an interpreter or in providing appropriate mechanical or electronic amplification, viewing, or communication equipment.]

Date: _____ Signed: _____

Please print or type your name: _____
Address: _____
Telephone: _____