

Meeting Minutes
 Construction Underground Economy Advisory Committee (CUEAC)
 January 6, 2016
 9 – 11 a.m.
 Tumwater, WA

Attendees: Debby Abe, Patrick Connor, Kerry Cox, Don DeMulling, Allison Drake, Matthew Erlich, Tammy Fellin, Cheryl Gilbert, Eric Gonzalez, Jan Himebaugh, Megan Johnson, Jeff Kelley, Joe Kendo, Jim King, Tom Kwieciak, Melissa McBride, Martin Norman, Doric Olson, Leilani Omegna, Alan Paja, Nicole Ross, Jesse Sanden, Evelyn Shapiro, Elizabeth Smith, Gary Smith, Bruce Springer, Evan Sturtevant, Josh Swanson, Annette Taylor, Jonne Ward

Agenda Item	Discussion
Opening Remarks Introductions	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Welcome <p>Allen Thurston – L&I</p> <ul style="list-style-type: none"> • Safety Topic: Be prepared for winter driving.
2016 Legislative Session Updates	<p>Cheryl Gilbert – Employment Security Department</p> <ul style="list-style-type: none"> • We received federal grant money to apply to two underground economy positions to focus on auditing underground economy businesses. • They’re finding businesses that submit their business license applications and back date them, which is what the two fraud auditors will be focusing on. <p>Nicole Ross – Department of Revenue</p> <ul style="list-style-type: none"> • We are in full swing of the legacy system replacement. They’re focusing on collections, auditing, etc. We’re in the process of implementing an additional nexus for out of state businesses. We are also looking at potential legislation which might expand that out into the retail realm. • Another effort is the criminal litigation. Sales suppression software which weeds out sales tax from the point of sale. They’re working with the criminal litigation unit on that. <p>Allen Thurston – L&I</p> <ul style="list-style-type: none"> • Is there something set up for the state of Oregon for when Washington residents go down there? <p>Nicole Ross – Department of Revenue</p> <ul style="list-style-type: none"> • We don’t have any specific efforts on consumers. Our focus is mostly businesses. There has been political backlash in the past when we try to focus on consumers. <p>Jan Himebaugh – Business Industry Association of Washington</p> <ul style="list-style-type: none"> • Has the department identified any solutions to the proposed decrease in sales tax? <p>Nicole Ross – Department of Revenue</p> <ul style="list-style-type: none"> • Our research division is working closely with the Office of the Governor to identify what would

happen if the initiative actually passed.

Tammy Fellin – L&I

- We have approval from the Office of the Governor to pursue two new bills that are mostly technical in nature.
- One of them is the agency request bill from last year, and the other is the dedicated account bill. It does not need to go back to committee, and we do intend for it to be amended. It would amend the implementation date.
- The first new bill would require L&I approval for out of state food trucks that were assembled or used out of state. It reduces our authority to require plan review of all in-state and out-of-state trucks. It also limits our authority to require an architect or professional engineer stamp for those food trucks that contain a concentrated load in excess of 500 pounds.
- The public safety hazard is increasing, and we're concerned that the trucks are not up to code. The bill applies to medical units, and also creates an advisory committee to review the list of units that would be subject to plan review. This would tell us if the department has overreached.
- The second bill updates the industry codes for the Right to Know Program. We assess a fee per employee for employers who have four or more FTEs in specific industries. That funds programs at L&I, the Department of Ecology and the Washington Emergency Management Division to notify communities and employees of the presence of hazardous chemicals in their worksites. It references the Standard Industrial Classification (SIC) system. That system hasn't been updated. The current system being used is the North American Industry Classification System (NAICS). We use NAICS, and then back code it using the SIC codes. This bill takes out the reference to the Standard Industrial Classification system.

Tom Kwieciak – Business Industry Association of Washington

- Are we at the cap of the \$2.50 fee? By losing people, you aren't having to raise the fee?

Tammy Fellin – L&I

- The fee is capped in the law, and we are at that \$2.50 law. We don't have authority to charge more, and we're not asking for that.

Jan Himebaugh – Business Industry Association of Washington

- How much staff time or how many FTEs do you not have to pay if you switch over the system?

Tammy Fellin – L&I

- It doesn't reduce staff, but it reduces work burdens.
- A majority of our budget requests were included in the governor's budget. There's a request for additional funds for our wage complaints to allow for additional staff. There's also a prevailing wage request for technology changes.

Elizabeth Smith – L&I

- When wage complaints come in, they're assigned to wage investigators. They are supposed to have

loads of 25-30 cases per load. When we went to our electronic filing system, those numbers went up. It's a workload package so that we can get the investigators that we need to get those complaints addressed.

- On the Prevailing Wage Program technology piece, it's essentially a portal for contractors who use prevailing wage. This will be a way for contractors to get information about their subcontractors, including if they're licensed, bonded, etc. It allows the industry to police itself.

Jan Himebaugh – Business Industry Association of Washington

- Does that expand to non-prevailing wage jobs as well?

Elizabeth Smith – L&I

- No, not as of right now. It's only contracts in the public works system.

Evelyn Shapiro – Pacific Northwest Regional Council of Carpenters

- Do the resources with the education on the front end help with reinforcement on the back end?

Elizabeth Smith – L&I

- We aren't asking for additional enforcement resources. It allows the industry to kind of identify issues and resolve them on the front end, which frees up our time to try and combat the bigger issues. What we're trying to do is make the requirements clear so that people know what their obligations are, and workers know what their rights.

Alan Paja – Pacific Northwest Regional Council of Carpenters

- Are there FTEs dedicated to teaching external stakeholders how to use this technology?

Elizabeth Smith – L&I

- We've had presentations, and we have staff that can go and give presentations on how to use it. If you want people to come and do outreach and training on this program, we can definitely get that squared away for you.

Alan Paja – Pacific Northwest Regional Council of Carpenters

- The question is not whether we need it, but whether or not you're taking resources away from detection and enforcement to go and do this training work.

Elizabeth Smith – L&I

- The system we have is fairly intuitive. It is something we've been doing outreach around, for both the current system and the proposed system.

Tammy Fellin – L&I

- The package requests one to two temporary FTEs to help stand up the system. We didn't request any permanent FTEs moving forward.

Alan Paja – Pacific Northwest Regional Council of Carpenters

- Is there a measurable attached to this?

Elizabeth Smith – L&I

- One of the measurable outcomes is the administrative burden for public agencies. We don't want to

	<p>reduce compliance though. One of the things we figured out is that for an average public works jobsite, it's \$465 in administrative costs. This package would reduce that administrative burden.</p> <p>Gary Smith – Independent Business Association</p> <ul style="list-style-type: none"> • So you have this public works portal. Who is it available to? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • It is public for awarding agencies. If you're interested, I can send you a presentation that shows exactly what's in that system. What it currently has for public agencies, and how we want to expand it for use by contractors. <p>Gary Smith – Independent Business Association</p> <ul style="list-style-type: none"> • It would be helpful to me to advocate for you if I could see what it does. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • We can send that out to everyone. <p>Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Assoc.</p> <ul style="list-style-type: none"> • Let's say that you get the supplemental budget package. You use the technology. When is the project actually going to take place? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • I think the package would start in June 2016, and it's a two-year project. Our hope is that we would use the extra FTEs during the project execution.
Overview of Legislative Reports	<p>Elizabeth Smith – L&I</p> <p>→ Underground Economy Benchmark Report</p> <ul style="list-style-type: none"> • This report is a joint effort between the three agencies. There's a lot of information about the partnership between the Department of Revenue (DOR), the Employment Security Department and L&I. <p>→ Contractor Compliance Activity</p> <ul style="list-style-type: none"> • Of particular interest to this group is the compliance activity table located on page two of the report. This provides information about penalties.
Overview of "On the Level"	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • On the bottom of the handout, there's information on a new service L&I is offering. It's similar to something DOR is doing. We often get questions from firms around whether or not workers' compensation is required, how to calculate hours, etc. We didn't really have a function other than getting audited or talking to an auditor for people to get really good answers on how to talk about coverage. We didn't have a mechanism to provide those answers. The Workers' Compensation Coverage Determination Program is made up of staff that get questions about workers' compensation, and then work to give determination letters to employers/potential employers about what their obligations. They don't trigger audits or audit referrals.

Doric Olson – L&I

- The biggest questions come from our independent contractors. This gives them an opportunity to get a written response in a safe space, to ask questions without fear of audit.

Alan Paja – Pacific Northwest Regional Council of Carpenters

- Have you issued these already? How long does it take?

Elizabeth Smith – L&I

- We've done a few, and it depends on the complexity of the case. It's one individual who is an experienced auditor at the agency.

Doric Olson – L&I

- It's kind of just getting kicked off right now, but I believe we are tracking the requests that are coming in, and the timeliness of response by the department.

Patrick Connor – National Federation of Independent Businesses

- We've had conversation about safe harbors based on interactions with the department. Does that mean that if someone follows the guidance given by the department, and they don't cover an employee when they should have, the letter will protect them?

Elizabeth Smith – L&I

- If they give us an accurate description of the relationship, we would look at that and determine the need for coverage. If we came back and audited them, and what they told us in the letter was true and the facts were the same, the auditor would follow the guidance given initially. We aren't going to contradict what they were originally told by the department.

Doric Olson – L&I

- If an auditor went out, and the employer, in good faith, relied on our guidance, the employer wouldn't be penalized. But it may change the way they report in the future. We will hold ourselves accountable and not charge someone for that.

Patrick Connor – National Federation of Independent Businesses

- That's great. We've been asking for that. This is helpful, and it's a good step forward.

Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Assoc.

- This is a safe harbor against L&I audits, fines, etc.

Elizabeth Smith – L&I

- This is only for workers' compensation.

Doric Olson – L&I

- This wouldn't affect any of the rights of the workers.

Tom Kweciak – Business Industry Association of Washington

- If you're a company that gets an answer back, you can also go back and adjust your practices to get yourself in compliance.

Elizabeth Smith – L&I

- If we can make the obligations clear so that they can know what their obligations are and just follow them, it will help. This way, we can focus on finding the egregious, repeat violators who are causing harm to their competition. We want to make it easy to be in compliance so that we can focus more of our attention on the big violators.

Evan Sturtevant – Gates Foundation

- I understand a suggestion was made to have a more searchable use of all contractors with registration citations on your site. You should create a PDF for on your website where you can show your bad actors and have a running list that gets updated regularly.

Elizabeth Smith – L&I

- We could try to make it more obvious on there what firms we have concerns with. Maybe have a single list of those somewhere that will be easy to search.

Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Assoc.

- I'm very impressed with the news coverage you have with reports of these things.

Gary Smith – Independent Business Associations

- With one of these firms, there were six notices of unregistered contracting. How did he stay in business?

Elizabeth Smith – L&I

- If someone has an infraction for being an unregistered contractor, it can suspend their registration. Sometimes people keep working without their registration though. We do reach a point where if someone doesn't care about our tickets and won't pay them, we discuss what the next future action is that we're going to take. We can increase the penalty amounts, but another option is prosecution. There are times that we have firms where people just don't care about the citations.

Gary Smith – Independent Business Associations

- How does it show up on their website?

Elizabeth Smith – L&I

- It lists each individual infraction.

Patrick Connor – National Federation of Independent Businesses

- If L&I does move forward with a comprehensive list, it would be helpful if that list cross-referenced previous names, business entities, etc. associated with the bad actor.

Kerry Cox – National Federation of Independent Businesses

- I, as a consumer or contractor, can't see the same things on the portion of the "Find a Contractor" portal that you can see. So that would go to Patrick's point of trying to identify their history and what to be on the look at for.

Patrick Connor – National Federation of Independent Businesses

- You could create a list of what criminal charges are pending. Identify what outstanding issues they're

	<p>addressing. Outstanding Washington Industrial Safety & Health Act violations? Check mark. Unpaid workers' compensation premiums? Check mark. That way there's a visual representation of who the bad actors is and why.</p>
<p>CUEAC Planning</p>	<p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • If there are things that the agencies already want to be doing, just tell us that you want to work on it and how we can help. I don't think it's just the agency's responsibility to come up with ways to be proactive, but that we can do it in small groups. We can work on these things to see if we can get some common themes, and then come back and present to the group. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • What I'm hearing you ask is how do we leverage the resources outside of the agency? <p>Evelyn Shapiro – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • Well I think it's also hard to operate in an advisory capacity when there isn't an in-depth work being performed by the members of this body. <p>Kerry Cox – National Federation of Independent Businesses</p> <ul style="list-style-type: none"> • I think there was some advisement that just happened this morning. I see a lot of that comment. We need to see this stuff. We need the information, and then we can respond to it. <p>Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Assoc.</p> <ul style="list-style-type: none"> • For the most part, county prosecutors aren't interested in pursuing criminal cases. We want you to get it done, and we want to help. So if it's a matter of business and labor going in together, we can do that. We just need to know what we can do to support your work. <p>Jeff Kelley – American Federation of Labor and Congress of Industrial Organizations</p> <ul style="list-style-type: none"> • How does a process work where you have a bad actor? Do you work with the Attorney General (AG) to refer a criminal complaint to them? Is the problem that L&I isn't making those referrals? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • In King County, they have an economic crimes unit. They're pretty much the only county that does that. For other counties, we have two AG's who are criminal prosecutors, but we need to build the files we send to them to build their cases. It's actually the people who go to the job sites to do the documentation. They put the file together in a way that's sufficient to show that it's such a significant offense that it's worth prosecuting. It requires a lot of evidence. One of the things we're talking about right now is the question of whether or not we're ok with fewer job site visits and fewer citations with large bad actors pursued. Or vice versa. It's a question of how we allocate our resources. <p>Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Assoc.</p> <ul style="list-style-type: none"> • Outside of King County, you're not referring to the county prosecutor? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • It's on a case by case basis, but we do much of the time try to work through our AG contacts.

Jeff Kelley – American Federation of Labor and Congress of Industrial Organizations

- In the case of South Gate Roofing, was there anything pursued on the Department of Revenue side?

Nicole Ross – Department of Revenue

- I actually have a note to myself to look into that. There are times we've revoked business registrations. We have district managers in our field offices that develop relationships with the prosecuting attorneys, and when these businesses still keep operating, more often than not, we're told that they don't have the resources. Some of the smaller counties though, such as Wenatchee and Grays Harbor, are able to take on the cases.

Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Assoc.

- When you're recovering fines, penalties, etc., are we seeing any return into the investigative or prosecution process?

Elizabeth Smith – L&I

- Sometimes. We're generally pretty successful at recovering penalties. However, when a firm gets really bad, it can be difficult to recover our costs. If it's contractor fines or workers' compensation premiums collected, it goes back into the General Fund.

Nicole Ross – Department of Revenue

- The Department of Revenue has put together a bad actor study. In this study, we've identified five items that we want to take forward. The study is still in the review process, but once it's finalized, this is something we plan to share with L&I. That's something we can bring to this group, which will hopefully be super helpful.

Kerry Cox – National Federation of Independent Businesses

- Is L&I going to look at the recommendations we made in this meeting, and then report back next meeting?

Elizabeth Smith – L&I

- The themes that I've heard includes packaging our information better or in a way so that consumers or others can more clearly see when they're working with bad actors. A PDF, programming in Verify, etc. The other one was really the question of what can we do to focus on the bad actors, and how can we identify them, focus and target on them. The idea about having a list of firms where there are serious problems, and what we can do to up the ante around the idea of enforcement. The third theme would be around continued communication around both of those things.

Jim King – Washington State Heating, Ventilation, & Air Conditioning Contractors Assoc.

- Let us know what you guys are looking at by the next meeting. We would like to know what you're planning to put in for budget requests for the next budget session before your requests have to be put in by August.

Kerry Cox – National Federation of Independent Businesses

- When discussing these things, we want to know what L&I identifies as things the industry

	<p>associations can be doing to play a role as a catalyst alongside whatever the department is doing. Give us some direction on what we can do to help you.</p> <p>Allen Thurston – L&I</p> <ul style="list-style-type: none"> • That kind of goes with what you were saying Alan, about working in small groups. You guys asking the questions, and us telling you what the answers to those questions might look like. And vice versa. <p>Don DeMulling - Ironworkers</p> <ul style="list-style-type: none"> • How many projects did Mr. Yemen do in those two years? He got popped six times in the course of two years. He probably owes money to L&I, DOR and ESD. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • We can audit them, and try to track everything down, but some of it can only come to us if the individual is forthcoming.
Closing Remarks	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Future topics for discussion? • Questions