

Meeting Minutes
 Construction Underground Economy Advisory Committee (CUEAC)
 September 8, 2016
 10:00 am – 12:00 pm
 Tumwater, WA

Attendees: Todd Baker, Patrick Connor, Kerry Cox, Don DeMulling, Allison Drake, Stan Harris, Jan Himebaugh, Jim King, Tom Kwieciak, Andrew Ledbetter, Melissa McBride, Ni McMullin, Doric Olson, Alan Paja, Dean Simpson, Elizabeth Smith, Terry Tilton, Una Wiley

Agenda Item	Discussion
Opening Remarks Introductions	<p>Elizabeth Smith– L&I</p> <ul style="list-style-type: none"> • Welcome <p>Allison Drake – L&I</p> <ul style="list-style-type: none"> • Safety Topic: Back to school driving.
2017 Legislative Session	<p>Tammy Fellin – L&I</p> <ul style="list-style-type: none"> • Sessions starts in January. We expect that it’s going to go long. • There are six agency proposals, and we have bill language for four. We are still working on language for proposal number three. • Proposal three is what the Electrical Program already does today. It allows electrical workers to buy a Class A permit, put the sticker on the unit, and then send in the other part of the ticket. Ten percent of those get randomly selected for audit. The Elevator Program is looking to do the same thing. • They’re trying to determine what is “minor,” and what contractors would qualify for this type of audit. Which elevator companies should qualify for those types of permits? Those are the major sticking points right now that we are working with the elevator industry to solve. <p>Patrick Connor – National Federation of Independent Business</p> <ul style="list-style-type: none"> • Is the emphasis more on the companies that would qualify, or the types of projects that would qualify? <p>Tammy Fellin – L&I</p> <ul style="list-style-type: none"> • I think it’s both. What is the percentage of inspection pass rates for companies? Who gets to qualify for these, and when they should be taken away? And then what is considered “minor.” Our goal is safety, so our emphasis is going to be on minor work and focusing our resources. <p>Patrick Connor – National Federation of Independent Business</p> <ul style="list-style-type: none"> • Once the pool of preferred elevator companies is selected, is there any way to know how the pool will be conducted?

	<p>Tammy Fellin – L&I</p> <ul style="list-style-type: none"> • We’re not talking about changing the annual inspection of the safety tests in code. This is specifically for alterations. If it’s a residential incline chair, that would be subject to this one in ten inspection. We are recognizing the safety issues in that sense. So when you say the lottery, what do you mean? <p>Patrick Connor – National Federation of Independent Business</p> <ul style="list-style-type: none"> • A particular contractor will get a book of tickets. Will the people who look at those tickets be more likely to select an elevator with higher use? <p>Tammy Fellin – L&I</p> <ul style="list-style-type: none"> • It’s completely random. We don’t target any specific individuals. It’s a random selection for audit. We don’t want to be targeting people. But, there is the potential if the firm over the course of time is not passing inspections. What we’re advocating for is the ability to withdraw their tickets and inspect all of their work. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • The electrical stuff is low voltage. In the permits that don’t require inspection. <p>Kerry Cox – National Federation of Independent Business</p> <ul style="list-style-type: none"> • B Permits are available to every electrical contractor. It’s Class B, not Class A. It applies to all of the electrical lines, whether you’re low voltage, telecommunications, or full scale voltage. <p>Tammy Fellin – L&I</p> <ul style="list-style-type: none"> • There are similar types of work that happen with elevators (like changing light bulbs), but those things require us to inspect before it can go back into service. This is exactly the type of proposal we’re looking to promote next session so that we can really focus our resources on the work that has the greatest risk of failure, impact, etc. • Dedicated Account – The last two years, we’ve had really good support to try and put these fees into a dedicated account rather than it going into the state General Fund. With the additional money that they need to come up with this session, we think it makes sense for these programs to be moved out of the General Fund. We are going to propose this again. This proposal will continue every quarter. We would transfer seven percent of those fees back into the General Fund. The state has given us the authority historically to spend about 93 percent. This would go on until 2023. Our hope is that by then, the economy will have gone through its expected downturn and be on the way back up. It’s the same programs, same account. <p>Jim King – Independent Business Association</p> <ul style="list-style-type: none"> • Penalties won’t be included? <p>Tammy Fellin – L&I</p> <ul style="list-style-type: none"> • The penalty amounts will stay in the state General Fund. We don’t want to be perceived as trying to pad our pockets.
--	---

- Division of Occupational Safety and Health (DOSH) – Coming into compliance with the Occupational Safety and Health Administration (OSHA) for penalties associated with willful violations. OSHA was exempt from the inflationary factor up until the budget packet last year, which resulted in a one-time bump to catch up of 78 percent. What we’re proposing is that we keep the dollar amounts in the statute, unless we’re required to match the OSHA standards. All we’re doing is increasing the maximum for willful and repeat, and the minimum for willful. The program has looked at how many of those penalty types were capped. It was less than one percent. The numbers that were affected by raising the minimum were less than that.

Jim King – Independent Business Association

- You would not be changing the number in statutes, but rather giving yourself authority in WAC to update the numbers to be in compliance as needed?

Tammy Fellin – L&I

- Either current amounts that exist in the statute, or we have to match OSHA in order to maintain our agreement. We don’t want to need to go back to the legislature every year and to do rulemaking to be able to match inflation.

Kerry Cox – National Federation of Independent Business

- And that bill language is in place?

Tammy Fellin – L&I

- Yes, and I would be happy to send it to you.
- Extending Timelines – Our safety and health staff, when they issue a violation, if the employers appeal the violation, they appeal it to the Board of Industrial Insurance Appeals (BIIA). We can step in and reassume jurisdiction to try and make a settlement. This bill would make it possible to have 45 days to reach a settlement, as opposed to 30 days. Our process is less formal than BIIA. We don’t bring lawyers to the reassumption process, as opposed to BIIA where attorneys come into play. My understanding is that the vast majority of safety violations that are appealed are reassumed, and end up getting settled. What we hear is mostly objections from larger businesses.
- Installer Penalties – Right now, for Factory-Assembled Structures, if there is a modification made, our only option if someone fails to affix the sticker is to write a \$1000 violation. And it’s inconsistent with our approach, which is education and then an escalation strategy. This would keep the cap at the current \$1000, but creates a minimum of \$250. And then uses an escalation strategy to cap it at \$1000, instead of that much right out of the gate.

Dean Simpson – L&I

- It’s really not for alterations. It’s for the setup piece of it. Failure to have a certified employee, certified insignia, etc. We do more education. We want to make it consistent with the rest of the programs. It becomes part of how we do business. Starting out at \$1000 seems harsh.

	<p>Terry Tilton – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • Is this just for homes, or does it also affect modular? <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • Just HUD homes. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • When you find people in violation, what is generally the circumstance? <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • We know that we have installers who are installers, but never use them. And then we have people who, for instance, do excavation and need to have them, do have them, but never use them. <p>Don DeMulling – Ironworkers Local 86</p> <ul style="list-style-type: none"> • Are there a lot of appeals on this? Is that the purpose of this bill language? <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • We don't get a lot of appeals, but it's far more expensive for me to take this to an administrative law judge who's going to wipe the infraction out because it's too high. <p>Patrick Connor – National Federation of Independent Business</p> <ul style="list-style-type: none"> • Is the sticker a federal requirement? <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • Yes. It's a federal program, and we just administer it. <p>Tammy Fellin – L&I</p> <ul style="list-style-type: none"> • Benefit Accuracy – The work group includes trial attorneys, labor council, state fund employers and state insurers, and two L&I staff. Vickie is running the work group. They sent a letter identifying the key questions that were looked at, and indicated that more time is needed. There is a work session scheduled in late November, early December. Every indication is that they're having constructive conversation about difficult topics. The legislation says without a reduction in benefits. We're hopeful they'll come up with a proposal that we can turn into agency request. <p>Terry Tilton – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • Could you report to us what you do have? <p>Tammy Fellin – L&I</p> <ul style="list-style-type: none"> • I don't have anything with me right now, but I'm happy to get the information and forward it to you. The approach for this group is coming up with ideas, and then taking them back out to their constituencies. I can forward you language that I do have.
Aligning L&I's Employer Engagement and Compliance Strategies	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • A lot of what we talk about is how to provide the right balance between educating employers and making sure they know what their obligations are regarding regulations, and how and when we start taking a more consequence-based approach. We ask ourselves those questions across all lines of business. In our Employer Premium Value Stream, we work from setting up the account through

managing and maintaining the account, detecting that there's a problem and auditing, and taking criminal actions related to employer criminal actions. We've been engaging in the last year looking at the entire value stream. Are we aligned in our strategies, and do people know what role they play in the whole stream and to know what their obligations are?

Doric Olson – L&I

- With a lot of our compliance programs, we're really looking at the escalation strategy. We've been getting a lot of push back from employers who don't feel like it's fair that they're getting hit with huge penalties. We've identified four buckets of where employers are (premium payments only), and we started looking at what DOSH does. They have a consultation program, and if you're talking with DOSH and find out that you are doing something wrong, you'll get educated and no fine. On the compliance side, you would get educated, but you would also get fined.
- We want to identify the circumstances where people get training, versus when the employer has already been educated, and that it's willful. We're creating standard work for each of these categories. They are:
 - Every time someone fills out a business application, they would fall into this bucket. And we also do outreach and education throughout the year.
 - Sending employers who have questions to the account managers to get their questions answered without getting penalized.

Patrick Connor – National Federation of Independent Business

- How does the new Tier 1 Program interact with the Department of Revenue (DOR) program ATLAS?

Doric Olson – L&I

- DOR, Employment Security Department, and L&I all share that data. We are working on that right now. Some of the technical processes changes. The short answer is that if someone signs up with a business license and have employees, or plan to have employees, all of those businesses get a phone call instead of a stack of paper. We brought in employers to get process feedback. Using employers from Tiers 1-3, we used actual input from them and our staff.

Patrick Connor – National Federation of Independent Business

- Focusing on the Tier 1 folks, who are coming new into business or new into having employees, is this stuff available online and on demand?

Doric Olson – L&I

- Partially yes today, but that's on the list. We are in the process of changing the new employer orientation classes that we give. Large and mid-size employers have different needs than smaller employers.

Elizabeth Smith – L&I

- The goal is to give our customers what they need when they need it.

	<p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • One of the biggest changes we made is we created standard work for over 100 account managers in the agency. Of all the stuff we did, from my perspective, that was the biggest change. It resulted in less paperwork, and it frees them up to have more time to call people. <p>Patrick Connor – National Federation of Independent Business</p> <ul style="list-style-type: none"> • We’ve seen what you can do in the ATLAS system, and it’s nice to know that some of the information in that system is coming over here. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • One of the things that we’re also working towards is making sure that all of the staff over here that need the information have it. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • How many account managers do you have for construction? <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • I think it’s roughly 120. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • What experience do any of your account managers have that rivals the expertise we have in the field? They don’t have the kind of experience to be able to read and really understand the scopes of work and what the words are saying. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • That’s a really good question, and I think that may merit a completely separate conversation. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • If you’re having detailed conversations with employers, but don’t really know a lot about the kind of work that they’re doing, if you’re talking at a high level, is it going to be as productive? I see the department going in a different direction over the last couple of years where you want to educate employers, but you don’t have conversations with the workforce who are involved in this kind of work. To make sure that the department has the information and understanding that they need to be able to have these conversations. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • What we have done is created a whole body of work. For employers that come to us with questions, we want to create a consultative function. Employers can send in their questions and get an answer to their questions without being penalized. It’s not general information. It’s customized to your industry. Instead of automatically sending these employers to audit, we want to focus our compliance resources on people who really need the assistance. Tier 1 is general education vs. Tier 2 is more customized guidance.
--	--

Una Wiley – Employment Security Department

- Many times, it's not intentional because their model has changed, and it's morphed into something different. I would love to see our agency do something like that.

Doric Olson – L&I

- There were a couple of real-life situations which kind of sparked this. We realized that we needed to have safety mechanisms in place.

Elizabeth Smith – L&I

- The whole concept is we want compliance. The goal is compliance. Are we doing enough at the lower end of the interaction to make sure that people know what their obligations are, so that we can focus our compliance energy on the employers that really need our intervention? We can only do a specific amount of premium enforcement through audit, and we want to focus our efforts on those firms, not on the firms that just need the information.

Tom Kwieciak – Building Industry Association of Washington

- Is it a quarterly occurrence?

Doric Olson – L&I

- It's going to depend. We're implementing on November 1st. That's when the bulk of the changes will take place. It's going to depend on where the employer is in their life cycle. It's looking at key strategic points. When a business opens up. When they change their business model.

Tom Kwieciak – Building Industry Association of Washington

- I just don't think it should take years and years to identify when this is going on, and being able to get away with improperly paying premiums.

Elizabeth Smith – L&I

- Part of this is training agency staff to know what red flags to look for.

Doric Olson – L&I

- One of the other things we're looking at is the ownership.

Don DeMulling – Ironworkers Local 86

- There has got to be a part in all of this where you do assume fraud. It can't all just be honest mistakes.

Elizabeth Smith – L&I

- When we can see a history and that the firm has experience and history for the system, and there's a disregard for it, that's where Tier 4 comes into play. That way, when we see a willful disregard, we are clearly justified in pursuit of the higher level of action. A lot of this stuff is good for the right reasons for the compliant businesses, but also when we deal with the businesses that aren't compliant.

Doric Olson – L&I

- This will make it easier to help things stick when we get to Tier 4.

Coordinated Enforcement
Pilot Project

Elizabeth Smith – L&I

- At one of our last meetings, I shared with you this concept. Who are the firms who have significant violations in safety, wage and premium laws? We developed that list, and learned more about them. Then we asked what we could do differently to identify those firms who are multi-area bad actors, and actually do something about it and give them a consequence that will stick. We started a pilot last year.
- Identify the bad actors, and have a concentrated effort towards taking action against the bad actors.
- We've reviewed 71 firms since kicking off the pilot.
- There are two tracts. If a primary issue with the firm is that they aren't paying their workers, we enlisted help from our Attorney General's (AG) Office. They have staff who would start looking at things on a companywide basis. Not that they don't have other issues, but the AG was working specifically on the wage issue. There are 11 cases currently in the process of being worked. Seven of those cases are in construction. Two of those cases are bad actors at the federal level, so we're partnering with the U.S. Department of Labor.
- Some of the wage cases are bad enough that we think it merits a criminal case. Two of them are actively being worked, and one is under review.
- There is a category where the issue is not wage related, but premium violations and other issues. There are 11 cases in that category which are being worked by the regions. Nine of those are construction.

Patrick Connor – National Federation of Independent Business

- Are they repeat safety violations?

Elizabeth Smith – L&I

- Many of these firms have repeated safety violations. It's been a pretty successful effort so far. One of the things this has shown us is both that rising this to a higher level and taking a multi-disciplinary approach to resolve them has been a long time overdue.

Tom Kwieciak – Building Industry Association of Washington

- I think these companies have been relying on someone dropping the ball at some point, so this is great because the coordinated approach will make it harder for companies to get away with it.

Alan Paja – Pacific Northwest Regional Council of Carpenters

- Of the two at the criminal level, are those construction?

Elizabeth Smith – L&I

- Three criminal wage theft. One is off and running. Two are getting underway. One that looks like it's headed in that direction. And all four of them are in construction.

Patrick Connor – National Federation of Independent Business

- We have wage theft, and those that are others. What types of criminal acts are in the "other" category that are heading towards criminal investigation?

	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Unregistered contracting and working without a workers’ compensation certificate are the two most common. There are other things we’ve done prosecutions on in the past, but I don’t remember if those are in the mix or not. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • Another common one is intentional misreporting. These people are blatantly ignoring the direction and guidance we’ve provided and continue to do the same thing.
<p>Concept Discussion: Developing more publically available information around violators and bad actors</p>	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • There were two things I saw recently that I wanted to share with you to get your thoughts and opinions on, specifically to contractors. • Oregon has a place on their website where you can see a list of all the firms that got an infraction or violation in the last month. One of the things we were kicking around was the idea of us doing a similar list. If you look up an individual firm, you can see it. But we don’t present the information aggregately. This is the infraction list. <p>Jan Himebaugh – Building Industry Association of Washington</p> <ul style="list-style-type: none"> • Do you know if this is the final list? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • It looks like these are what has been issued after appeal. They are listed as final. • Arizona has a “Most Wanted” list. It looks like firms where they have pursued criminal actions against contractors. We currently issued a press release in our “News” section. We don’t put that together in one place. We already provide this information in the press releases. One of the things I’ve been talking about is how we make a connection with our criminal prosecutions, and how to get the information out to people. • What are your thoughts? <p>Kerry Cox – National Federation of Independent Business</p> <ul style="list-style-type: none"> • I’m looking at the contractor strike list. I don’t see why doing this wouldn’t be right in line with that. <p>Patrick Connor – National Federation of Independent Business</p> <ul style="list-style-type: none"> • The longer list is a little bit easier to glaze over. But the website is a little bit harder to miss. You need to do something simple that gets people’s attention. Something that makes it easy without having to look through press releases from the last 10 years. <p>Jim King – Independent Business Association</p> <ul style="list-style-type: none"> • One possible hook is our legislators love publicity too, and our members who deal with the underground economy. Use our legislative resources to get the information out locally, like in the papers.

	<p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • I think you could call King County and find probably at least eight who have warrants on them. With the infraction list, you’re talking about linking the debarments to the contractor registration. What about wage violations? Right now, if they have an enforcement infraction, they’re on there. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Ultimately, I want to have the wage violations and public works on Verify. We have an app right now for getting public works projects on there. Wage violations, we don’t have a mechanism. But the plan is to get it there. Right now, we have things in different places, and people don’t know to look in different places. <p>Tom Kweciak – Building Industry Association of Washington</p> <ul style="list-style-type: none"> • One of thing I read with interest in the Olympian is the restaurant inspections. Is there a way you could get local newspapers to add this kind of information in the classifieds section? Or if they annually do some kind of insert that you could include? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • I wondered when I looked at this list why they segregated it out by region. We can’t control what they do with the information, but we could offer it to them. <p>Debby Abe – L&I</p> <ul style="list-style-type: none"> • I think if it was localized, we might be able to do something. I can certainly ask. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • This might be something they’re interested in because it’s local news that they don’t need to go looking for. <p>Don DeMulling – Ironworkers Local 86</p> <ul style="list-style-type: none"> • I think it would help expand it like the state patrol where you advertise DUI patrols. You don’t have the resources to check everyone out, but having a way to advertise that contractors run the risk of getting into trouble for not sending in their intents. It might help. <p>Josh Swanson – Operators Local 302</p> <ul style="list-style-type: none"> • For lowest responsible bidder requirements, where do the agencies look? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • We put the information on Verify, and the strike and debar list, so that they can perform their due diligence. If there was an Employment Standards violation, we have a wage violator look up. If there was a final order for wages that were due and went unpaid and it went to order, they’re listed. That’s all out there. In order to perform due diligence, they would need to check those things. <p>Patrick Connor – National Federation of Independent Business</p> <ul style="list-style-type: none"> • Does the agency portal combine all of the information from those portals that we discussed? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • The wage violator list is separate.
--	--

	<p>Patrick Connor – National Federation of Independent Business</p> <ul style="list-style-type: none"> • Why? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Part of it is a technical reason from when the systems were created. It’s not a part of this other list. The technical thing we would need to figure out is how to migrate it. It’s a different type of application. <p>Patrick Connor – National Federation of Independent Business</p> <ul style="list-style-type: none"> • From the small business side, that’s an ongoing frustration. How many different pages, how many different websites, do we have to go to in order to find the information we need? With due respect, it’s almost impossible for a homeowner to wade through all the information to determine if they should hire someone or not. It’s good that more things are happening like the escalation strategies, but how can we help the UBI agencies to find the information they need when trying to hire? We should be able to get easier access to it in one place. Maybe one of our goals for this group is that in 2018, in the agency request legislation, make a request to try and get all of this stuff into one place where people can gain access to all of this information. <p>Don DeMulling – Ironworkers Local 86</p> <ul style="list-style-type: none"> • Right now, I’m experiencing a boom with the underground economy and fraud. We want the guys who intend to try and not get caught. You’ve added on the intent form “if that’s possible.” If you intend to break the law, filing the intent before work commences won’t ever be possible. This is happening after the work. It costs the department a lot of money to catch this after the work is done. If we have holes like this, it’s easy to get away stuff.
Closing Remarks	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Future topics for discussion? • Questions