

Meeting Minutes
 Construction Underground Economy Advisory Committee (CUEAC)
 January 8, 2015
 10:00 am – 12:00 pm
 Tumwater, WA

Attendees: Steve Beaty, Emily Cook, Kerry Cox, Don DeMulling, Allison Drake, Tammy Fellin, Mike Foley, Jan Himebaugh, Jeff Kelley, Joe Kendo, Tom Kwieciak, Megan Lum, Mark Martinez, Kelly Mayo, Chris McClaine, Lee Newgent, Doric Olson, Alan Paja, Shari Purves-Reiter, Nicole Ross, Elizabeth Smith, Evan Sturtevant, Josh Swanson, Annette Taylor, Allen Thurston, Billy Wallace, Una Wiley

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: Staying safe and healthy in winter.
Department of Labor & Industries – Legislative/Budget Updates	<p>Tammy Fellin – L&I</p> <ul style="list-style-type: none"> • Three request bills have been approved, and one is still awaiting approval. The draft versions may be marginally different from the ones that you’ve seen. • One bill creates incentives for employers to participate in the Preferred Workers Program (PWP). It makes the current program permanent. • The current PWP isn’t currently used very much. Employers can hire a preferred worker, and would be exempt from premiums for hiring someone with work restrictions. This would allow the employer of injury to hire the injured worker. • The second bill makes it so that all fines and penalties would stay in the General Fund, plus 7 percent of the fees. • The third bill gives us the authority to spend the Stay at Work Program funds on administrative activities without legislative approval. • Our budget proposals are organized around the Department goals. • There is a proposal to increase staff for enforcement of underground economy activities. We’re asking for \$2.6 million. We would start by using existing staff, and then add staff to it as we go. The unit would work to build cases that prosecutors can take forward. • We’re requesting \$2.3 million from the medical aid fund to implement the agency’s policy bill. • For the 15 percent budget reduction exercise, the impact to the Department was \$5.2 million. There were four accounts affected: Crime Victims, Factory-Assembled Structures (FAS), Contractor Registration and Elevator. The agency has proposed taking money from the Crime Victims, Contractor Registration and FAS programs to meet the 15 percent reduction. There is a buyback

	<p>strategy to cover the Crime Victims costs, and then place these funds into a dedicated account. The governor included a partial buyback of these funds.</p> <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • The dedicated account for construction revenues is important because when there are budget issues, there are discussions about cutting inspectors. The governor’s budget restores some of the cuts, but it would still cut six of our 24 inspectors. This would help to build in some stability.
<p>Department of Revenue – Legislative/Budget Updates</p>	<p>Nicole Ross – Department of Revenue</p> <ul style="list-style-type: none"> • Regarding the 15 percent budget exercise, the Department of Revenue (DOR) is all General Fund money. \$32 million is 15 percent, which equates to 300 FTE’s. We were able to persuade the governor to buy back a majority of that, which would mean a cut of eight FTE’s. Collections and audit staff would potentially be reduced. • A couple items we requested funding for includes tax and license systems. Our computer system is very old, and this would provide funding to start a replacement. The systems are ready to break. • A request was also submitted for field offices located throughout the state. This would go towards increased security because of the money coming into our offices. • DOR had four agency requests go through. Those include e-commerce, physical recreation taxes, and public utility privilege tax. None of the underground economy items made it into our package this year. We are going to start a study related to enforcement tools that we could possibly use a legislative package next year. <p>Josh Swanson – International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> • Would this be presented as a legislative or budget package? <p>Nicole Ross – Department of Revenue</p> <ul style="list-style-type: none"> • Legislative for now. We’ll see what we can accomplish with that. • When it comes to licensing, you can open a corporation, run up a tax debt, and then the debt is on the corporation, not the people. This is a legislative fix all three agencies would like to see. <p>Josh Swanson – International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> • What about issues related to successorship? <p>Nicole Ross – Department of Revenue</p> <ul style="list-style-type: none"> • Yes. We’ll be looking at those. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • We are very interested in that issue. When it's shifting businesses to avoid a past debt or past legal problem. All of the agencies are very interested. If there’s any help or data we can lend to help with that, we’re happy to do so. <p>Nicole Ross – Department of Revenue</p> <ul style="list-style-type: none"> • We have been trying to come up with legislation for this for years, but we haven’t been successful. So we’re going to take a run at it.

<p>Employment Security Department – Referral Data</p>	<p>Una Wiley – Employment Security Department</p> <ul style="list-style-type: none"> • We don't have inspectors who can go out and catch people in the act. The majority of our audits are construction. • The types of audit we conduct shift a lot. This year we might be auditing construction, trucking and farming, and then next year we might shift to a different industry. We do find things to be very industry specific. We're trying to break the "everyone else is doing it" mentality. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • Does healthcare include home health care? <p>Una Wiley – Employment Security Department</p> <ul style="list-style-type: none"> • Yes. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • The number you've provided seems like a really low number based on studies I've been reading. <p>Una Wiley – Employment Security Department</p> <ul style="list-style-type: none"> • Sometimes we might not have ever discovered it was an issue until the fourth quarter, so we don't get to hit them as hard as we would like to. <p>Josh Swanson – International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> • Is that employer or employee? <p>Jan Himebaugh – Building Industries Association of Washington</p> <ul style="list-style-type: none"> • It can be both. <p>Josh Swanson – International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> • What's the breakdown? 60/40? <p>Una Wiley – Employment Security Department</p> <ul style="list-style-type: none"> • I would say about 20 percent from ex -employees who submit tips and leads.
<p>Underground Economy Benchmark Report Sharing – Multiagency Discussion</p>	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • This is the report which is created annually by L&I, ESD and DOR to discuss activities and results around our collective efforts to address the underground economy. It was created back in 2009, and it's a legislative report. It's in statute, and the legislature requires us to report on specific information. It addresses what we do to share information and work together to combat the underground economy. • We have a system in place where leads are electronically transferred (re: page 1 of the report). If we had someone who was having a hard time paying us, we often work with them to get them into compliances and paying their bills. <p>Nicole Ross – Department of Revenue</p> <ul style="list-style-type: none"> • One of the things DOR has failed to do in this report is share what our total delinquent debt collection dollars are. In addition to the information here about our Tax Discovery Program (35-40 agents), included with efforts the compliance division, we collected \$554 million in delinquent debt. Going after the bad actors who have been turning their businesses, that's where a lot of that comes from.

Tom Kweciak - Building Industry Association of Washington

- Is this report sent out to legislators or staff?

Doric Olson – L&I

- Yes, it has been. And it's also available on our website.

Elizabeth Smith – L&I

- All of these reports have been approved. We can send you all the links to the reports on our website.

Don DeMulling – Ironworkers Local 86

- Does ESD not audit workers comp stuff?

Doric Olson – L&I

- Yes. They do.

Elizabeth Smith – L&I

- We involuntarily register you. It doesn't prevent us from auditing them. On page 16, the point that we're making is that we have different purposes. We and ESD are worker focused, whereas DOR is revenue focused.

Jeff Kelley – International Union of Painters and Allied Trades District Council 5

- What's the percentage on collections? (re: pages 1-2)

Doric Olson – L&I

- The problem is that collections numbers change over time.

Nicole Ross – Department of Revenue

- We defer only about 10 percent of our collections, which means we collect 90 percent of what we assess.

Jeff Kelley – International Union of Painters and Allied Trades District Council 5

- I'm curious about how much of the assessed value is actually collected.

Una Wiley – Employment Security Department

- We don't have a way of tracking, but I would guess 40 percent.

Billy Wallace – Washington and Northern Idaho District Council of Laborers

- We had one strike issued? I just want to congratulate all the guys out there. One is a lonely number though (re: page 8).

Evan Sturtevant – Gates Foundation

- Is there a pattern of referrals when you discover a business is a bad actor?

Nicole Ross – Department of Revenue

- When it's a chronic situation, those businesses have issues with the IRS as well. Generally, if they're going down the tubes in one area, they're going down in all the rest.

Una Wiley – Employment Security Department

- We certify that the total payroll was reported, and we'll oftentimes find that they're reporting more

	<p>payroll to the IRS than us.</p> <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • We also report to the IRS. They’re happy to take our information and leads, but they don’t often give them to us.
<p>Contractor Compliance Activity Report</p>	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • This is also a legislatively required report. It’s a very specific report with a very narrow scope of information being requested. They are asking for an exact data set. The fraud report that’s coming out is substantially longer, and a lot of it is focused on construction compliance. (Note: Elizabeth provided an outline of the specific information contained in the report.) <p>Tom Kweciak - Building Industry Association of Washington</p> <ul style="list-style-type: none"> • The number of infractions is down from 2012 and 2013. Is that because the economy is getting better, and people are better at playing with the rules? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Infractions are a little bit down, but jobsites visits are higher. For inspectors, it’s not about having a quota. It’s about visiting the right jobsites, checking more contractors and subcontractors, etc. The success isn’t based on the number of citations issued, but rather the quality of the inspections. <p>Tom Kweciak - Building Industry Association of Washington</p> <ul style="list-style-type: none"> • Have you had the same number of inspectors throughout? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • For the most part. But the shift is more about the quality of the inspections. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • It looks like you’re waiving a higher percentage of penalties? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • In the statute, we have to issue them an infraction. Oftentimes, if they come in and get registered, we’ll waive part of the penalty because they came in and got registered. If they have a history of not being registered, we won’t waive the penalties. <p>Kerry Cox – National Federation of Independent Business (Washington Chapter)</p> <ul style="list-style-type: none"> • In terms of committing an infraction, is that all infractions, or not being registered? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • All contractor infractions under 18.27. <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • This report is really just about 18.27. Penalties can’t be waived. I can only reduce them. <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • The statute is written in such a way that it includes all citations issued in 2014, although we haven’t had as much time to collect on all of those yet.

	<p>Jan Himebaugh – Building Industries Association of Washington</p> <ul style="list-style-type: none"> • Do you have a number for the people who had penalties waived or reduced? <p>Dean Simpson – L&I</p> <ul style="list-style-type: none"> • We can get that number. We can figure out based on the number of citations which received a penalty reduction. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • The other reason we waive penalties is because if they can go back and make the consumer whole in lieu of restitution, we will. <p>Kerry Cox – National Federation of Independent Business (Washington Chapter)</p> <ul style="list-style-type: none"> • Are these data points part of what’s required in the report? <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • Yes, but you can get more information in our L&I fraud report. <p>Jeff Kelley – International Union of Painters and Allied Trades District Council 5</p> <ul style="list-style-type: none"> • When you combine collected and waived, 40 percent seems about right throughout the course of the last few years.
Progress Implementation Updates	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • The group identified things we could do to improve our efforts around combatting the underground economy, and a few of those include publications. <p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> • The “Stop Illegal Contracting” brochure is done. I’m also handing out a new document we’ve created that tells you all of the things you need to do once you’ve registered as a contractor. <p>Tom Kwieciak - Building Industry Association of Washington</p> <ul style="list-style-type: none"> • This gets mailed to contractors? <p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> • We’ll mail it out, hand it out, distribute it to chambers, etc. • This is a mock-up done by me. It has not been edited by designers, etc. I want feedback on what you think is missing, what should be added, etc. • How do we help consumers not hire the unregistered contractors? So I’m giving you a packet of information as a reminder of what’s available to you and your members. <p>Kerry Cox – National Federation of Independent Business (Washington Chapter)</p> <ul style="list-style-type: none"> • Are all of these documents linked? <p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> • Yes. They’re all on our website, they can be ordered online, etc. They aren’t copyrighted. <p>Jan Himebaugh – Building Industries Association of Washington</p> <ul style="list-style-type: none"> • Can we get just copies of the graphics from some of these?

Shari Purves-Reiter – L&I

- Yes. I can have Debby help you out.

Mike Foley – Spokane Building Trades

- I want to thank you and Doric for the research you did on the contractor we reported last time. Is there a spot on the website where we can type in the UBI number of the contractor to identify if they have an extra territorial agreement?

Elizabeth Smith – L&I

- Mike brought up a contractor he was concerned about in the Spokane area. There are reciprocal agreements between Washington and Oregon and Idaho. In those states, its private insurance. We'll ask the company to show us who their provider is, but we don't know that off hand. If they can't provide it though, then they're done.

Mike Foley – Spokane Building Trades

- They should have to provide that information to the state of Washington. Is there a website?

Doric Olson – L&I

- We'll ask them and then look for it, but no. There isn't a website where we can go and check.

Mike Foley – Spokane Building Trades

- In Montana, you have to have a workers' compensation account in that state.

Doric Olson – L&I

- You have to be registered in Washington State, but you can have insurance in another state.

Steve Beaty – L&I

- There's an Oregon State website you can use to find if they have workers' compensation.

Doric Olson – L&I

- Is there a place where someone can ask if they're doing things correctly? Getting a written answer on what they're doing to make sure it's correct.

Steve Beaty – L&I

- I'll be looking for feedback from internal and external stakeholders once we kind of figure out how this is going to work. Hopefully in the next 2-3 months you'll see something.

Una Wiley – Employment Security Department

- We sent that information through our agency as well, and they were in compliance.

Elizabeth Smith – L&I

- The more contractors who are well-intentioned, the more we can help them be compliant, the more resources we have to dedicate to those who are not well-intentioned. Let's help consumers stay out of trouble, lets figure out tools around the really bad actors, and help out the people who want to do the right thing.

Evan Sturtevant – Gates Foundation

- I would recommend motivating consumers to turn in bad actors. Having a tip line is one thing, but

really getting people to use it is important.

Shari Purves-Reiter – L&I

- This one is really designed for the industry folks. We have other information in the consumer packets to help them. Consumers are intimidated and scared to turn them in, even if they know they've gotten themselves in hot water.

Chris McClaine – Ironworkers Local 86

- With information like this, I don't understand what the difficulty would be to just require contractors to hand this out when they get hired for a job. I don't know what the obstacles would be with that.

Jan Himebaugh – Building Industries Association of Washington

- The contractors who are going to hand this out are the only ones who are compliant. The only people who will hand this to consumers are those who have nothing to hide. You don't want to be in a position to ding them for not handing out a pamphlet.

Shari Purves-Reiter – L&I

- Contractors are required to give out a disclosure under 18.27 called "Notice to Customer." It talks about their bonding, their insurance, the homeowner's rights, etc. I've heard feedback that even that is intimidating to consumers.

Allen Thurston – L&I

- We encourage contractors to fill out and use the yellow contractor cards, which are available online.

Tom Kweciak - Building Industry Association of Washington

- On the predetermination unit, do you have info on that?

Doric Olson – L&I

- We're developing that, and will be putting it together over the course of the next few months.

Tom Kweciak - Building Industry Association of Washington If there's a resource where people can call and get clarification on a situation, it's one less excuse they have.

Allen Thurston – L&I

- With the predetermination group, there has to be consistency. And that's what we're focused on creating.

Kelly Mayo – Washington Building Officials

- On the info sheet, could you maybe give information about what types of work contractors can do? Like what kind of contractors can do what kind of work?

Shari Purves-Reiter – L&I

- The "Stop Illegal Contracting" brochure is really for contractor to contractor, or from us to contractor. The consumer packet that I handed out really is geared towards consumers.

Don DeMulling – Ironworkers Local 86

- What's the feedback that comes back to the person? Are you going to get back with that person, and let them know what's happening with their complaint?

	<p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> • If you give us your contact information, we’ll circle back to you. People should make sure of their referral number. <p>Don DeMulling – Ironworkers Local 86</p> <ul style="list-style-type: none"> • How long does it take? <p>Shari Purves-Reiter – L&I</p> <ul style="list-style-type: none"> • It depends on the situation.
<p>Stakeholder Efforts to Improve Awareness of the Underground Economy</p>	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • One of things we can do, if you’re with an organization that has publications, websites, etc., we eagerly want to partner with you to get this information out to you and your constituencies. One of things you have in your packets is an article from the BIAW membership magazine. <p>Jan Himebaugh – Building Industries Association of Washington</p> <ul style="list-style-type: none"> • We’re trying to do our part as good members of this group to tell our members that although there is work that still needs to be done, L&I is doing good work. It shows how we work together, and what the agency is actually doing that’s helpful. It helps promotes reputation with our membership. I got good feedback from my members on this article. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • If you have newsletters or magazines, and you need stuff to put in it, we can work with you to help customize what you think might be interesting to your members. Those publications get out to a much wider and specialized group, and we can really focus the message, which is the underground economy and what we can do to help prevent it.
<p>Independent Contractor Regulation and Enforcement – Multi-State Comparative Analysis</p>	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • In previous meetings, we’ve talked about independent contractors and independent contractor misclassification. We’ve talked about what other states do, relative to what we do comparatively with other states. We wanted to bring some of this research to you so that you can see a snapshot of what we’ve been learning about. <p>Emily Cook – L&I</p> <ul style="list-style-type: none"> • Overview of research. <p>Jeff Kelley – International Union of Painters and Allied Trades District Council 5</p> <ul style="list-style-type: none"> • Why was Texas picked when they don’t even require workers’ compensation? <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • We checked to see if there was even anything available. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • Both New York and Florida include payroll fraud as a precursor to racketeering violations. <p>Billy Wallace – Washington and Northern Idaho District Council of Laborers</p> <ul style="list-style-type: none"> • Are you going to continue tracking this moving forward?

	<p>Emily Cook – L&I</p> <ul style="list-style-type: none"> • If tasked with it, then yes. I will. <p>Evan Sturtevant – Gates Foundation</p> <ul style="list-style-type: none"> • The \$12,000 bond in Washington is a major structure impairment. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • We have staff in contractor compliance doing research to see what other states are doing for bond costs. How often do the claims against the bond actually outstrip the bond? We’re currently doing policy analysis around that. <p>Jeff Kelley – International Union of Painters and Allied Trades District Council 5</p> <ul style="list-style-type: none"> • Connecticut has the most effective structure. I would be curious to know how much of this legislation was pushed by the private insurance industry. <p>Doric Olson – L&I</p> <ul style="list-style-type: none"> • The only state that’s in here which is not a three-way structure is Ohio. For most states, private insurance is the norm. <p>Jeff Kelley – International Union of Painters and Allied Trades District Council 5</p> <ul style="list-style-type: none"> • In Florida, the main impetus came from the private side. By requiring people to have the insurance, it increases opportunities for profit. <p>Kerry Cox – National Federation of Independent Business (Washington Chapter)</p> <ul style="list-style-type: none"> • What does Texas do? <p>Emily Cook – L&I</p> <ul style="list-style-type: none"> • Workers compensation is not required. You just don’t need to have it. <p>Kerry Cox – National Federation of Independent Business (Washington Chapter)</p> <ul style="list-style-type: none"> • If you’re a legit outfit, you’ll have some kind of private outfit to cover your works, right? <p>Emily Cook – L&I</p> <ul style="list-style-type: none"> • Yes. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • And you can be sued by the workers. <p>Jan Himebaugh – Building Industries Association of Washington</p> <ul style="list-style-type: none"> • I wouldn’t limit the research to states who do things similarly to us. It would be useful to see what the outliers are doing so that we can maybe learn from the things they’re doing. <p>Josh Swanson – International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> • We would be interested in Alaska and Wisconsin.
Closing Remarks	<p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Looking into the future, I’ve had conversations with people who say that what we discuss is great. I’ve had other conversations where people mentioned the possibility of having subcommittees. I wanted to check in to hear thoughts going forward around this committee’s work, structure, focus?

	<p>Lee Newgent – Washington Building Trades</p> <ul style="list-style-type: none"> • The data that was presented today was outstanding, and would be useful to show comparative data. <p>Mark Martinez – Washington State Building and Construction Trades Council</p> <ul style="list-style-type: none"> • Consumers in this industry don't understand a lot about what they're doing when they select contractors, or that they're liable for any potential injury that occurs on their property. <p>Evan Sturtevant – Gates Foundation</p> <ul style="list-style-type: none"> • Consumers are relied upon to make sure they're hiring registered contractors. Through surveys, or involvement, you can bring the voice of the consumer into this process. <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • The consumer is just as much a part of this as anyone else. But there aren't as many organizations which carry the concerns of the consumers. It is difficult because it's a consumer protection law (18.27) and the consumer is very important, but it's hard to get the consumer voice. <p>Evan Sturtevant – Gates Foundation</p> <ul style="list-style-type: none"> • I would recommend that you get an advisory committee for consumers. <p>Alan Paja – Pacific Northwest Regional Council of Carpenters</p> <ul style="list-style-type: none"> • I've read reports which suggest that when you have wages paid that are none hourly wages, that that's the greatest area of fraud that's occurring. A study published in 2009 examined New York, Chicago and Los Angeles, and it showed that 8 percent of the workers actually report their claims. I would like to see us drill down into areas that might be worth exploring. <p>Una Wiley – Employment Security Department</p> <ul style="list-style-type: none"> • For us, if they don't track hours, it's automatically 560 hours. <p>Jeff Kelley – International Union of Painters and Allied Trades District Council 5</p> <ul style="list-style-type: none"> • If I'm an undocumented worker, can I file for unemployment? <p>Una Wiley – Employment Security Department</p> <ul style="list-style-type: none"> • Yes they can, and they do. <p>Josh Swanson – International Union of Operating Engineers Local 302</p> <ul style="list-style-type: none"> • Agenda: Inquires related to labor brokers. Who's the employer, responsible for workers' comp, etc.? <p>Kerry Cox – National Federation of Independent Business (Washington Chapter)</p> <ul style="list-style-type: none"> • Is there a way we can go back and identify what we haven't hit on the list we originally developed? <p>Elizabeth Smith – L&I</p> <ul style="list-style-type: none"> • Yes. We'll update the spreadsheet from the original report, and discuss it at the next meeting.
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