

Meeting Minutes  
 Construction Underground Economy Advisory Committee (CUEAC)  
 May 19, 2015  
 10:00 am – 12:00 pm  
 Tumwater, WA

Attendees: Bob Battles, Amina Alt Bella, Leann Bosshard, Patrick Connor, Kerry Cox, Don DeMulling, Allison Drake, Tammy Fellin, Stan Harris, Neil Hartman, Joe Kendo, Megan Lum, Mark Martinez, Ni McMullin, Martin Norman, Doric Olson, Alan Paja, Reasa Pearson, Dean Simpson, Jolene Skinner, Elizabeth Smith, Gary Smith, Josh Swanson, Annette Taylor, Allen Thurston, Michele Willms,

Agenda Item	Discussion
Opening Remarks Introductions	<p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>· Welcome</li> </ul> <p><b>Allen Thurston – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· Safety Topic: Motorcycle safety.</li> </ul>
Review CUEAC Rules of Engagement and Mission	<p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· The mission of the committee was to develop an advisory committee of interested parties. Government agencies, consumers, business, labor, etc., to talk about the underground economy in construction. What problems are currently facing us, and then identifying the root problems. What can we do to stop them? What are we doing? What’s working? What isn’t? We broke the task up into problem statements, and then went through to identify short term solutions we could engage in, and then long term solutions. What would require no legislative authority? What wouldn’t require any additional budgetary authority? What activities could we engage in that would help us effectively combat the underground economy. Then we developed a list of those activities. We aren’t meeting monthly anymore. We’re aiming for three or four times per year. The goal is to keep having regular meetings to keep you informed about what the Department is doing, and for you to be able to provide feedback on how we’re doing.</li> <li>· Any feedback, thoughts, concerns, etc. around that as the mission?</li> </ul> <p><b>Alan Paja – Pacific Northwest Regional Council of Carpenters</b></p> <ul style="list-style-type: none"> <li>· In many committees, they put the mission right on the agenda to keep us focused.</li> </ul> <p><b>Allen Thurston – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· That’s one of the reasons we brought it up, so that’s a great comment.</li> </ul>

<p>Legislative/Budget Updates</p>	<p><b>Tammy Fellin – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· The revenue forecast was moved up yesterday. They are scheduled to end the special session next Thursday, May 28<sup>th</sup>.</li> <li>· Referring to the Senate budget proposal outline provided, all of these 13 bullets were the full agency request proposal, and included in the House budget. The first seven were also included in the Senate budget. The last six were not.</li> <li>· Of particular interest to this group, the first one in the second group is the Special Investigations Unit. It was in large measure a result of the work that this group has done. That was not included in the Senate budget. Creating a dedicated account for Elevator, Factory-Assembled Structures and Construction Registration and Compliance got bottled up in Senate Ways &amp; Means. HB 1465 is still a proposal we would like to see happen, and is a component of the House budget. The Prevailing Wage Program improvements would've allowed some specific improvements to the Prevailing Wage Program, including adding staff to Verify, the wage and hour data, expanding online information so that employers can find it more easily, etc., and would've added two investigative staff.</li> <li>· There are a couple provisos related to prevailing wage that would've eliminated the Intents &amp; Affidavits fee for contracts less than \$750. What we asked for, which the bill would've done, was to not eliminate the paperwork. They would still need to submit their paperwork, but not be charged the fee.</li> <li>· The Prevailing Wage Pilot Program would cover the two-year timeframe of the budget, and we would report back on our findings.</li> <li>· Rather than fund the changes to the Prevailing Wage Program IT system, the Senate budget gives the Department \$250,000 to work with the Prevailing Wage Advisory Committee to perform a review of options to replace the current IT system.</li> </ul> <p><b>Josh Swanson – International Union of Operating Engineers Local 302</b></p> <ul style="list-style-type: none"> <li>· I heard the notices for essential services are going out the first of next week?</li> </ul> <p><b>Tammy Fellin – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· We are working with the Office of Financial Management to determine the right timing for getting notifications out to contractors. We do need to plan if we aren't going to have staff in the office on July 1<sup>st</sup>. It's just what we have to do with the budget that we do or don't have. But we don't want to make a big splash.</li> </ul> <p><b>Doric Olson – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· It's like disaster planning. Plan for the worst, and hope for the best.</li> </ul>
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**Josh Swanson – International Union of Operating Engineers Local 302**

- I heard that essential services are changing.

**Tammy Fellin – L&I**

- I haven't heard anything about that.

**Don DeMulling – Ironworkers Local 86**

- On this Special Investigations Unit, it proposed \$2.6 million. What was the projected return, and wasn't that good enough? Did you get any feedback?

**Tammy Fellin – L&I**

- What we provided was examples of where we had invested before, like a nine-month pilot for potential medical billing fraud. We had one staff person who identified \$1 million over that nine-month period. That was an example we gave them.

**Don DeMulling – Ironworkers Local 86**

- Did they just think that the return wasn't good enough?

**Tammy Fellin – L&I**

- We think it's a solid proposal that would show a return, but it hasn't been approved as of yet.

**Patrick Connor – National Federation of Independent Business**

- When we do special investigations, where is the money returned to?

**Elizabeth Smith– L&I**

- It would depend on what type of activity it was. The package was mostly for investigators to do criminal investigations where we have really egregious violators who are not following the laws. That kind of stuff. If it was industrial insurance violation that goes uncollectible, we would want to do something higher level. If we did a criminal investigation on that case, the prosecution would get a restitution order, and that money would go back into the workers' compensation system. If it was one of the other types of prosecutions, like underground economy contractors who are repeat violators, when we can't find their bank accounts, criminal activity would be the next step. In this case, the money would go back into the general fund because that's where those funds would've gone had the contractor paid into the fund in the first place. If there's a harmed consumer, the money would go back to the consumer first.

**Patrick Connor – National Federation of Independent Business**

- There's no guaranteed return on investment, so it's more of a justice endeavor. And there's no guarantee that the funds going back in will match what should've been there in the first place.

	<p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>There was also funding to allow for more investigators. Another aspect was two project people to do wage and hour investigations. And then an additional person to do the provider fraud billing. One person found between \$3-5 million in incorrect provider fraud billings. We could add someone to the mix who could help contribute to that amount.</li> </ul> <p><b>Alan Paja – Pacific Northwest Regional Council of Carpenters</b></p> <ul style="list-style-type: none"> <li>I think you raise an interesting question, Patrick, and one that the agency analysis is limited on. What we’re seeing in states where they’re going really aggressively after these folks, is they’re finding high-level, sophisticated schemes that are stealing prevailing wage funds from the economy, and they use racketeering statutes to prosecute. If someone actually comes in and competes against honest contractors, under a racketeering approach, you can seize property that was a result of that scheme, which includes assets that can be converted to cash to repay the money that was lost.</li> </ul> <p><b>Kerry Cox – National Federation of Independent Business</b></p> <ul style="list-style-type: none"> <li>Are the items on page two of the budget proposal sheet a done deal?</li> </ul> <p><b>Tammy Fellin – L&amp;I</b></p> <ul style="list-style-type: none"> <li>Those are just proposed as of right now.</li> </ul>
<p>Improving Integrity and Accountability in the Workers’ Compensation System – Report Overview</p>	<p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>We started diversifying our enforcement portfolio a while back. When inspectors go out, they’re not just checking for proper licensing. They’re checking out the workers, making sure that workers are covered, that fees are being paid to the Department, that there are no balances owed, etc. And they’ll oftentimes send in for audit referrals.</li> </ul> <p><b>Patrick Connor – National Federation of Independent Business</b></p> <ul style="list-style-type: none"> <li>Has the Department given any thought to pursuing Medicaid fraud more aggressively? We’ve had appropriations and statute enforcement go to the Attorney General to pursue Medicaid fraud. I was wondering if similar tools could be used in a workers’ compensation situation to improve collections. Workers’ compensation fraud puts those injured workers at risk.</li> </ul> <p><b>Elizabeth Smith– L&amp;I</b></p> <ul style="list-style-type: none"> <li>Staffing up for Medicaid fraud investigations is something to look at. We’re always interested in finding more of that. Worker Fraud, provider fraud and employer fraud. We always try to hit it all.</li> </ul>

**Patrick Connor – National Federation of Independent Business**

- The 83% of employers who were audited and owed debts, was that a result of targeted audits?

**Doric Olson – L&I**

- When we audit with no findings, it's a waste of money for everyone involved. We've done slightly fewer audits over the last few years, but they've been more targeted.

**Elizabeth Smith– L&I**

- Instead of focusing on smaller jobsites, we've been focusing on large jobsites where we check everyone on the jobsite. Contractors, sub-contractors, etc. One of the changes is that in the last year, we started a pilot to have our inspectors to do a certain number of public works job sites to perform this type of investigation. What can we do to improve inspections on public works job sites? Trying to get to that universe of non-compliance is something where we've been trying to see what we can do.

**Joe Kendo – Washington State Labor Council**

- Of the 1,500 tips you received, how many of those were founded?

**Doric Olson – L&I**

- On the tips and leads, of those, about 10% turn into something real. But when they do, sometimes they turn into our biggest dollar amounts.

**Alan Paja – Pacific Northwest Regional Council of Carpenters**

- Can you find out what the numbers are for unregistered contractor cases for the prior year?
- To clarify, you are looking at those scopes of work where they are paid piecemeal where they use independent contractors?

**Elizabeth Smith– L&I**

- Yes. They look at the affidavit, and then they look to see what they were paying under for risk classes. Do the risk classes match up with what scopes they were paying for prevailing wage? If they don't, then they call and ask questions.

**Alan Paja – Pacific Northwest Regional Council of Carpenters**

- How do we know that those conversations just don't give them a better idea of ways to cheat?

**Elizabeth Smith– L&I**

- We choose not to believe that our outreach is going to better show people how to cheat. There are about 90% of people who are legitimate and trying to figure out the rules.

**Alan Paja – Pacific Northwest Regional Council of Carpenters**

- That’s an area that I don’t know if we know enough about what you’re doing. One of the things we originally had on the table was contractors who deal in piece work, and that they hire independent contractors. From what we see, it looks like they’re getting away with it, but you say you’re doing something about it. Maybe that needs to be a different conversation or subcommittee.

**Gary Smith – Independent Business Association**

- We have contractors doing public works contracting that according to L&I paperwork involved four different trades. If you’re trying to cross match, what’s the employer supposed to do to avoid the problem?

**Jolene Skinner – L&I**

- We’re going to contact the prime contractor, awarding agency, the firm, etc. to determine what the issue is. Get certified payroll, documents that refer to the type of work that was being performed, and have a conversation with the firm on the work that was being performed, and how they reported their workers’ compensation.

**Elizabeth Smith– L&I**

- We look at them independently. In contract release, they check to see that the correct workers’ compensation class was paid. If they didn’t, then we talk to them about that. We give them a chance to voluntarily amend and correct it. But we check to see if we’ve had a conversation about that in the past.

**Jolene Skinner – L&I**

- It also depends on what phase of the project they’re in. What was the scope of work, where was the job located, what was the work being performed, and what that phase of the project is which needs to be reported.

**Gary Smith – Independent Business Association**

- It sounds like an extremely confusing process. If you have four risk classifications, it makes it difficult to figure out how to report.

**Elizabeth Smith– L&I**

- We try to help people figure it out.

**Gary Smith – Independent Business Association**

- Is that through the Prevailing Wage Program or Workers’ Compensation Program?

**Elizabeth Smith– L&I**

- The systems don’t match up, so it’s through both.

	<p><b>Doric Olson – L&amp;I</b></p> <ul style="list-style-type: none"> <li>That’s what the contract release unit does. They specialize in this type of information.</li> </ul> <p><b>Tammy Fellin – L&amp;I</b></p> <ul style="list-style-type: none"> <li>That’s what Jolene’s folks will do. If there was an honest effort to do the right thing, we’ll have a conversation to help try and correct the information. But if it’s happening on a reoccurring basis, that’s when we’ll look at it and determine if a citation is necessary.</li> </ul>
<p>Overview of Prevailing Wage Enhancements</p>	<p><b>Evan Sturtevant – Gates Foundation</b></p> <ul style="list-style-type: none"> <li>I think the strike and debar list is a great tool. But my understanding is that this list only applies at the state level. Could it be used down at the county level too? Or build it to do that?</li> </ul> <p><b>Reasa Pearson – L&amp;I</b></p> <ul style="list-style-type: none"> <li>Could this list also exist for various municipal county permitting agencies? I’m not hoping for a lot in terms of enforcement, but at least having a sense of who has strikes against them.</li> </ul> <p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>So basically a list that could be useful as an awareness list for local building entities?</li> </ul> <p><b>Evan Sturtevant – Gates Foundation</b></p> <ul style="list-style-type: none"> <li>Mercer Island shut down a guy based on information from L&amp;I, a suspension you issued. That was an action on part of a local authority.</li> </ul> <p><b>Reasa Pearson – L&amp;I</b></p> <ul style="list-style-type: none"> <li>We can’t make people use it, but we could look at doing something like outreach to make sure that they know it’s there.</li> </ul> <p><b>Evan Sturtevant – Gates Foundation</b></p> <ul style="list-style-type: none"> <li>There’s a permitting desk in a lot of municipalities. There are contractors who are in trouble for various things. You could do outreach on a “most wanted” list. They shift from strong tax-based communities to others. You don’t have to do it in every county in every state. Maybe just focus on the counties which house the worst of the worst.</li> </ul> <p><b>Patrick Connor – National Federation of Independent Business</b></p> <ul style="list-style-type: none"> <li>How do we visually tell if someone has one strike versus three strikes?</li> </ul> <p><b>Jolene Skinner – L&amp;I</b></p> <ul style="list-style-type: none"> <li>Each time they’re listed, it’s one strike. So if they’re listed for a strike on two different lines, it means they have two strikes.</li> </ul> <p><b>Patrick Connor – National Federation of Independent Business</b></p> <ul style="list-style-type: none"> <li>Is there any way you could get to a point where you could better link multiple strikes for the</li> </ul>

same principals?

**Doric Olson – L&I**

- That's definitely something we can look into for the future.

**Alan Paja – Pacific Northwest Regional Council of Carpenters**

- The Verify system does do some of the linking that you're asking about.

**Elizabeth Smith – L&I**

- If we got a future iteration of this, we could we make it so that you could click on these and go into Verify to view the licensure and safety history, etc. We were talking about how nice it would be to have the two systems connected.

**Doric Olson – L&I**

- The intent was to take this from a PDF to a live list, and then continue working on the system to improve how the information is delivered. We tried to work on a limited amount of funding, but we're always thinking about how we can improve.

**Patrick Connor – National Federation of Independent Business**

- Is there any thought being given on how to track for aliases?

**Reasa Pearson – L&I**

- We're definitely working to try and do that.

**Elizabeth Smith – L&I**

- We also try to track those by putting in the "doing business as".

**Patrick Connor – National Federation of Independent Business**

- It lists the RCW where the infraction occurred, but is there a way to see how the infraction was remedied?

**Dean Simpson – L&I**

- In most cases, it gets taken care of pretty quickly.

**Elizabeth Smith – L&I**

- If they have an infraction, and it's final and binding, it shows up.

**Reasa Pearson – L&I**

- The strike stays.

**Elizabeth Smith – L&I**

- Would the infraction show up in Verify if it has been paid?

**Dean Simpson – L&I**

- It stays in the system, but it shows as paid.

	<p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· I think that it shows paid, but we can find out.</li> </ul> <p><b>Joe Kendo – Washington State Labor Council</b></p> <ul style="list-style-type: none"> <li>· Is it possible to search by public works projects?</li> </ul> <p><b>Jolene Skinner – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· This system doesn't let you search by project, but the project dashboard allows you to search by the contract number.</li> </ul> <p><b>Alan Paja – Pacific Northwest Regional Council of Carpenters</b></p> <ul style="list-style-type: none"> <li>· What's the funding source for all of this?</li> </ul> <p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· The Prevailing Wage Program administration account.</li> </ul>
<p>Problem Statements &amp; Suggested Solutions – Discussion and Next Steps</p>	<p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· I propose that we review updates to the current list of action items, and then ask that you review the full list of problem statements and suggested solutions, and come to the next meeting prepared to discuss it.</li> </ul> <p>(Group Concurrence)</p> <p><b>Allen Thurston – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· Phase II is a more in-depth review of laws for training our auditors. It's been an effort since last January. We are going to, as much as possible, reduce the level of inconsistency.</li> </ul> <p><b>Alan Paja – Pacific Northwest Regional Council of Carpenters</b></p> <ul style="list-style-type: none"> <li>· Is there a timeline for completion of the process improvement for investigations?</li> </ul> <p><b>Reasa Pearson – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· December 2015.</li> </ul> <p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· We're going to be engaging with our field staff to build standard work and consistency. They're also updating their operations manual to make substantial improvements.</li> </ul>
<p>Closing Remarks – Public Comments and Questions</p>	<p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· Any thoughts, comments, feedback, concerns, ideas?</li> </ul> <p><b>Don DeMulling – Ironworkers Local 86</b></p> <ul style="list-style-type: none"> <li>· On your public awareness, I haven't really seen much in terms of commercials or radio spots.</li> </ul> <p><b>Elizabeth Smith – L&amp;I</b></p> <ul style="list-style-type: none"> <li>· We change our approach up. We're trying to do targeted advertising. So, trying to figure out</li> </ul>

where online to target, YouTube videos, etc. We don't want to spend the money on consumers who aren't looking at that activity, so we've been going for more targeted, and less general, messaging.

**Patrick Connor – National Federation of Independent Business**

- Now that the nice weather is starting to appear, are you doing after hours and weekend sweeps?

**Elizabeth Smith – L&I**

- We've already started our surprise sweeps.

**Dean Simpson – L&I**

- Each area does at least four sweeps.

**Elizabeth Smith – L&I**

- We're going to be doing 12 sweeps, which includes evening and weekend hours.

**Dean Simpson – L&I**

- Last weekend was Kitsap County.

**Elizabeth Smith – L&I**

- We also try to collaborate with the local organizations so that they can show to their membership that we're working to try and find these types of contractors. We did a stop work order on an unregistered contractor that we'd cited eight other times in the Eastern Washington area, and the person didn't want to get registered. They were painting on an apartment building, and we issued the stop work order for the building. It was the first use of that elevated step for unregistered contracting.

**Patrick Connor – National Federation of Independent Business**

- Any response from the building owner?

**Doric Olson – L&I**

- Yes. They sent the contractor away.