

Meeting Minutes
 Prevailing Wage Advisory Committee
 September 20, 2007

Attendees:

1. Prevailing Wage Advisory Committee Members: Allan Darr (Operating Engineers Local 302) , Dave Johnson (Building & Construction Trades Council), Kathleen Garrity (Associated Builders & Contractors), Randy Dubigk (WSDOT), Linda Alexander (Benton County PUD), and Bruce Chattin (Washington Aggregates & Concrete Association), Chris Elwell (Seattle-King County Building Trades)
2. L&I Staff: Dave Soma, Ramona Christensen-Russell, Gustavo Aviles, Reasa Nottingham, Sally Elliot, Laura Herman, Linda Louise
3. Other Present: Dave O’Meara, Paul Ingham, Miriam Israel Moses, Earl Smith, Bob Abbott, Mel Fitzpatrick, Jamie Maygra, Carl Hanson, Paul Blaski, Pete Crow, Judy Hartman, Kick Deal, Mark Martinez, Bill Kemble, Laurie Pinard, Alison Hellberg, Matthew Thompson, Gary Fasso, Peter Guzman, Randy Loomans, Bruce Zeller, Dan Tayler

Agenda Item	Discussion	Action	Due Date
Opening Remarks Introductions	The meeting was opened by Dave Soma at 9:10 a.m., and all present introduced themselves. David Soma went over the ground rules for the meeting. Public comments will be at the end of the meeting when asked for on the agenda.		
Review and approve minutes from last meeting	Dave Johnson made the motion and Kathleen Garrity seconded and all voted in favor of approving the minutes with the requested changed of the June 21, 2007.		
Legislative and Budget Update	Handout was given out concerning the budget and revenues collected. If the revenue came in as projected we wouldn’t have this problem. We also thought the 30% would be more than enough to take care of the additional charges for legal and administrative overhead but did not. The revenue projection was based on 2005 which turned out to be an aberration and in actuality, revenue went down in 2006 to even lower than 2003.		

Legislative and Budget Update cont...	<p>We had no legal or indirect costs in the 2005/2007 biennium. We were informed that we could not use 608/609 money for these expenses in the 2007/2009 biennium or thereafter.</p> <p>We are asking for a \$10 increase to cover all the new costs plus be able to still hire the 2 IRAs. If we had been raising the cost of the forms all along the fee would be at \$40-\$41 now.</p> <p>Dave Johnson wants to know what the \$10 will get us. He does not understand why the intents and affidavits dropped in 2006 and 2007 – we should break even or increase. This is a real concern according to what is going on out in the industry. Allan Darr said there is a lot of private work going on – more than in the history of the state – but we wouldn't see intents and affidavits for these.</p> <p>Patrick Woods stated that we needed to look and see if everyone was submitting their forms that should. See if owner/operators understand that they need to file.</p> <p>Kathleen Garrity wanted to know what the appropriate level of reserve was and what the 2 IRAs were going to do that had not been hired yet. Her suggestions were:</p> <ul style="list-style-type: none">• 1 IRA for compliance• 1 IRA for outreach• Online survey• Outreach/training <p>Patrick Woods answered Kathleen's question regarding the reserve and said that the standard practice of the Agency is a 6-month reserve.</p> <p>David Soma said that we are working on outreach and compliance with the</p>		
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<p>Legislative and Budget Update cont...</p>	<p>resources we currently have. We have an IRA and an auditor from the State Auditor's office going out to do awarding agency trainings in October and November. He has asked all the IRAs as of 2 weeks ago to take some time and visit some public works sites and start issuing NOV's for failure to file intents once verification that the 1st payment has been made.</p> <p>Kathleen Garrity asked if we were properly funded for surveys – did we have enough people to handle these? Is 2 new IRAs enough. David Soma said that we are evaluating what we need and we will look at it more once we get the Data Compiler Position filled. Kathleen said that she wants us to have enough people to do what we need.</p> <p>Dave Johnson feels that we are not having the revenue due to not working on the compliance. We need to focus on NOV's. If the legislature agreed to 3-year cycle for surveys, immediately trying to do this right now is maybe not the best thing to do. Slow down the survey cycle and increase compliance.</p> <p>Allan Darr agreed with Dave Johnson's comment. We need to know what happened with the revenue first before going to the legislature. What exactly do we need? Compliance issue is the key for labor.</p> <p>Kathleen Garrity does not want the public wages out of whack with the private sector and does not want wages that are old. Then have someone for compliance.</p> <p>Dave Johnson said that there was a commitment for 4 FTEs but only funds for 2 FTEs. Dave Soma reminded him</p>	<p>Patrick Woods will find out about the 4 FTEs and the history.</p>	
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<p>Legislative and Budget Update cont...</p>	<p>that Bea Hart was one of these FTEs.</p> <p>Dave Johnson said that the available FTEs is some of the short fall. Labor will support the fee increase based on commitment to compliance by the department in enforcing the law. If we get more compliance to the law then there will be money for outreach. He wants us to have the funds to run this department and enhance compliance but slow down the survey process. He thinks it is a huge mistake to jump into 3-year cycle. If this increase is not enough then ask for what we need.</p> <p>Kathleen Garrity said that the public agencies pay the fee increase but outreach is still important. Get the little public agencies as well as the big public agencies engaged and get them to take ownership. They need to help with compliance – train them.</p> <p>Allan Darr wanted to know the policy for “Bad Actors”. How are penalties assessed? David Soma said that the statute dictates the penalties. We take a look at each situation and look at letting the penalties go in order to get the wages. Normally fines do not go over a \$1,000. Penalties can get high.</p> <p>Dave O’Meara mentioned that CTED does not enforce the prevailing wage part of contracts or it is not in the contracts at all. We could work on enforcement with CTED. Need to get in place the subcontractors on affidavits. Need to do something similar to the initiative done several years ago on the flooring industry with the independent contractors.</p> <p>Bob Abbott said that the surveys were a goal not a mandate – that was the intent</p>		
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<p>Legislative and Budget Update cont...</p>	<p>with the 30%. They didn't agree to the 30% until more compliance was agreed to as well as the surveys but not at the level it is at currently. We are fostering the underground economy without compliance.</p> <p>Chris Elwell said that they knew about the legal fees but \$375,000 was what was budgeted. Underestimated by \$273,000. Didn't know about wage increase and then of course revenue is down.</p> <p>Miriam Israel Moses does not think the fee increase being asked for will be enough to cover us over time. We didn't budget enough to begin with like in the area of legal costs. We will have no buffer or surplus. She wants a line item account and what was presented does not cover it. Doesn't want us to go to the legislature without one. We need 3 AAGs and 2 IRAs for compliance – more work on the certified payrolls – this would be outreach in itself.</p> <p>Peter Guzman said that we needed other awarding agencies and prime contractors at the table and get them doing what they should be doing with compliance as well. Need assistance for department on who is on a jobsite. Steam-line the process because we have limited resources.</p> <p>Need to see if the computer program has a way to tie all intents and affidavits together for one project in order to see when a contractor hasn't filed. Would need a project number to tie all together since the name of the project is not always submitted as the same. Don't approve without the project number.</p> <p>David O'Meara reiterated this and that</p>		
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<p>Legislative and Budget Update cont...</p>	<p>contract number per project was needed and can be assigned. We need to go down this path.</p> <p>Earl Smith said that he had a problem with us giving up the fines and penalties. How do you know what is owed without certified payroll. Fines and penalties cannot be ignored as a source of revenue.</p> <p>Randy Loomans wanted to know why we can't get the prime contractor to be responsible to make sure all forms are filed for their subcontractors.</p> <p>Patrick Woods said it would be fine to make one entity responsible but everybody would have to agree across the table.</p> <p>Dave Johnson wanted to know when we know about the short fall and when we knew that admin costs would be turned back to us.</p> <p>There was an audit done in 2002 and then 2004 was the 1st phase of the implementation.</p>	<p>The Department needs to bring back a break down of the budget as well as a listing of how we will use the money.</p>	
<ul style="list-style-type: none"> Personnel Update 	<p>Still have a vacancy for the Data Compiler 3. Interviews will be going on next week and we hope to have the position filled by November 1st or 16th.</p>		
<ul style="list-style-type: none"> Scope of Work Update 	<p>We will be reviewing four scopes of work at the 1:00 p.m. meeting.</p>		
<ul style="list-style-type: none"> Legal Update 	<p>Gave out a handout of the current legal issues pending with the AAG's Office.</p> <p>WAC 297-127-018 will be re-written since the decision on Silver Streak was finally handed down. The 1st reiteration is at the AAG's Office now for review.</p> <p>Allan Darr asked for a synopsis of the case. Dave Soma gave the summation: Court said we were correct in that work</p>		

Legal Update cont...	<p>was covered because it was incorporation. There was a valley that needed to be built back up and so belly and end-dumps were brought in with the material to fill it up. A 1992 memo was brought in that said the work was not incorporation and since the contractor said they relied on that memo we were therefore estopped from collecting the prevailing wage in this case. We will be able to collect next time. The memo has been revoked by decision of this case now and will not be able to be used again from this point forward. We are not sure about cases before this date. Since the action was brought 5 years ago, that is the date when the memo was revoked.</p> <p>Allan Darr said that we did an adequate job with this case.</p> <p>Dave Johnson asked where this will leave us with concrete and asphalt delivery. The decision should be that they are covered but are not because of the Holroyd case. Hard to stockpile these items – asphalt covered but not concrete. Re-writing WAC 296-127-018 should bring concrete back in. Holroyd was miss-decided – the Supreme Court probably would not have decided the same but the attorney’s for Holroyd had a good argument.</p> <p>Bruce Chattin asked if were going to challenge Holroyd but the Department is not going to. We think that subsequent court orders overrule old court decisions.</p> <p>Kathleen Garrity asked why we did not appeal the decision. The case was before Dave Soma’s time but we think it was because it was determined that the Appellate Court’s reading was strong enough that it was not a good idea to</p>		
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<p>Legislative and Budget Update cont...</p>	<p>appeal. Allan Darr added that on its face, the incorporation of concrete into a jobsite is part of the job – doing business.</p> <p>Kathleen Garrity said that we needed to do the rule making on this as soon as possible. But David Soma said we want to make sure we do not go too fast on this and make a mistake. We have limited AAG time and we have to go by their priorities. We hope to have it done within three months or less.</p>		
<ul style="list-style-type: none"> • Determinations 	<p>Gave handouts with determinations since last meeting.</p>		
<ul style="list-style-type: none"> • Surveys 	<p>Gustavo Aviles gave out handouts about the upcoming surveys.</p> <p>Miriam Israel Moses said that Modular Building was never surveyed and that the current rate is very low. Need to move up and get done as quickly as possible but we will need a scope of work to do a survey first.</p> <p>Bill Kemble of the Roofers asked about the roofer survey that was just done. Nothing has been determined yet but we were trying to get this looked at quickly.</p> <p>Paul Ingham stated that there are 2100 roofers in the state so there were not enough mailed out. 12.5% response rate is very low and therefore may be flawed.</p>	<p>There were some problems with the schedule so Gustavo will get a new schedule emailed out.</p> <p>Need to bring the Modular Building Scope of Work to the Scopes subcommittee to discuss.</p>	

<ul style="list-style-type: none"> • Other Business 	<p>Linda Alexander of the Benton PUD has resigned from the committee – this is her last meeting.</p>	<p>Linda was thanked by L& I and the PWAC for her service and she was presented with a commemorative desk set.</p>	
<p>Dates and Locations for upcoming meetings</p>	<p>Next PWAC committee meeting scheduled at the department’s Tukwila office on December 13, 2007, in the Training Room #1, from 9:30 a.m. – 11:30 a.m.</p> <p>The Scope of Work subcommittee will meet in the same room from 1:00 p.m. to 3:00 p.m.</p>		