

**Underground Economy in the Construction Industry
Priority Items of Labor and Business, Sunrise Review Report Recommendations,
and Other Items Remaining from 2007-2008 Discussions.**

Labor Priorities.

The following are the top five labor priorities sent to staff on November 6, 2008, with notes from the Department of Labor and Industries (L&I). Please note: L&I comments are based on the matrix distributed to task force members at earlier meetings and are not based on Labor comments below.

	Priority Item	Action Needed	Labor Comment	L&I Notes	Notes/ Further Action Needed?
1	Stop work orders <ul style="list-style-type: none"> Provide agencies with greater flexibility in issuing penalties, including the authority in extreme cases to close down a business. 	Legislation	Priority #1	Regarding penalties - L&I already has this ability - see RCW 51.48.160 and RCW 51.48.040, which revokes workers' comp coverage. The business could only continue if it could operate without any employees. Violation is a Class C Felony. Regarding stop work orders - L&I supports in concept. Additional information needed from other states in order to weigh in further.	
2	Workers' compensation coverage <ul style="list-style-type: none"> Require independent contractors to carry workers' compensation coverage. 	Legislation	Priority #2	L&I does not support. This would greatly expand the need for enforcement staff by expanding the pool of 1 to 2 person businesses that we would need to register and to audit and regulate. It might lower costs, or it might increase them. Please see our pros/cons document from prior session.	
3	Misclassification penalty <ul style="list-style-type: none"> Create a criminal penalty for a contractor who intentionally reports that an employee is an independent contractor. 	Legislation	Priority #3	L&I already has this ability - see RCW 51.48.020.	
4	Independent contractor definition <ul style="list-style-type: none"> Define term "independent contractor." 	Legislation	Priority #4 Define the term "independent contractor" for the prevailing wage	We believe that the bill passed in 2008 (ESHB 3122) addressed the gap for workers' compensation to the best extent possible given all stakeholder input.	

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			statutes - chapter 39.12. RCW. Should be a relationship between fraud/PW/Contractor registration.		
5	Education and outreach <ul style="list-style-type: none"> Explore requirements for new and out-of state contractors to attend a contractor training class before allowing registration/licensing, as well as a minimum of 8 hours of ongoing education on law/regulations each year. Add one staff person to implement these changes. 	Legislation Budget	Priority #5 <ul style="list-style-type: none"> Priority Education in omnibus bill from last session should be included. Competency testing should be included as part of this section. 	L&I supports (medium priority)	

Business Priorities.

As of November 6, 2008, business as a whole did not provide a list of priorities to staff. However, Craig Munson requested that the following items be discussed.

	Priority Item	Action Needed	Notes/Further Action Needed?
6	Stop work orders <ul style="list-style-type: none"> Require that a stop work order be issued for failure to comply with DSHS's New Hire Program. Example, "An employer who fails to properly classify a person as a worker under RCW 51.08.181 or who violates RCW 51.48.020(1) or 26.23.040 is subject to a stop work order issued under this section." 	Legislation	
7	DSHS new hire information <ul style="list-style-type: none"> Currently, employers have 20 days to report new hires. Instead, employers should be required to file this information on the day of hire. 	Legislation	

Other Items Previously Discussed by the Task Force.

The following are other items remaining from those items suggested in 2007 for possible study and recommendation in 2008. Labor comments and L&I notes are included. Items marked "high priority" by L&I are listed first, followed by "medium priority" and "low priority" items.

	Priority Item	Action Needed	Labor Comment	L&I Notes	Notes/ Further Action Needed?
8	Employer fraud detection system funding <ul style="list-style-type: none"> Provide funding for employer fraud detection system for L&I based on results of feasibility study. 	Budget	Support	L&I supports as its highest priority on this list. A budget package has been submitted to OFM and the Governor's Office by the agency.	
9	Unregistered contractor criminal penalty <ul style="list-style-type: none"> Increase unregistered contractor criminal penalty from gross misdemeanor to a class C felony for the 3rd offense. 	Legislation	Suggest in report.	L&I supports. (High priority.) This was modified in 2007 to increase this penalty from a misdemeanor to a gross misdemeanor.	
10	Construction training and outreach team <ul style="list-style-type: none"> Establish a construction training and outreach team. Add two staff to provide direct contractor education/outreach to put on contractor training days, attend home shows, perform outreach to consumers and contractors. This also requires funding for travel, mailings, and materials. Add 2 underwriting staff for education and outreach on workers' compensation requirements and premium responsibilities, including independent contractor issues. They would work with new firms individually, and help establish mass education campaigns. Funding for travel, mailings and materials is also needed. 	Budget	Addressed with adoption of item number 5 above.	L&I supports (high priority). A portion of the outreach to home shows and contractor training days was incorporated with the media campaign in 2008 legislation. What remains is the underwriting piece and a new mechanism for engaging with businesses when they first open up.	
11	Prime contractor liability <ul style="list-style-type: none"> Provide prime contractor liability for the Employment Security Department 	Legislation	Support	L&I supports (medium priority)	
12	ESD and L&I priority <ul style="list-style-type: none"> Give the Employment Security Department and the Department of Labor and Industries priority to collect amounts owed from retainage on public works projects. 	Legislation	Priority	L&I supports (medium priority) this concept, as long as this would fall below existing priority groups/categories.	

	Priority Item	Action Needed	Labor Comment	L&I Notes	Notes/ Further Action Needed?
13	Master business application system funding <ul style="list-style-type: none"> Enhance funding for the Master Business Application Systems. 	Budget	Support	L&I supports (medium priority). Again, we defer to ESD for details. We also believe that including information on DSHS New Hire requirements on the Master Business Application would be a positive change that would not require funding.	
14	Contractor training opportunities <ul style="list-style-type: none"> Provide additional training opportunities for contractors. These should be in multiple languages. 	Budget	Addressed with adoption of item number 5 above.	L&I supports (low priority). Some of this was addressed in the funding tied to the outreach/media campaign. We have been able to add additional contractor training days, and have translated the majority of materials into Spanish. We do not have the capability to put on training classes in other languages at this time.	
15	Contractor competency test <ul style="list-style-type: none"> Create a competency test for contractors. 	Legislation Budget	Supports utilizing CA legislation template.	L&I supports (low priority). Please see item number 5 above as an interim step that may be considered.	
16	Enforcement - local government <ul style="list-style-type: none"> Require local governments to verify compliance with registration and other requirements before issuing a business license. 	Legislation Budget	Pilot Project	L&I is supportive of the goal, but would require more information. Most local jurisdictions already have processes in place to handle this.	
17	Enforcement - new hires <ul style="list-style-type: none"> Develop a process to report new hires to the Department of Labor and Industries. 	Legislation Budget	Support but not a priority - possibly in report.	L&I does not support. There is already a New Hire Register in place with DSHS, and we cross-match against it for audit targeting purposes.	
18	Homeowner penalty <ul style="list-style-type: none"> Create penalties for homeowners who intentionally do not follow the rules. 	Legislation	Not a priority.	L&I does not support.	
19	Undocumented cash penalty <ul style="list-style-type: none"> Create penalties for persons who accept undocumented cash payments. 	Legislation	Not a priority.	Who is accepting? L&I cannot identify if this would be a workers' comp premium issue or not.	
20	Registration posting <ul style="list-style-type: none"> Require contractors to post their registration on the job site. 	Legislation	Support but not priority.	Another approach is to mandate that a general contractor has a list of all sub-contractors and their registrations available, including second or third tier sub-contractors. Also, questions about where	

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				to post if no structure is constructed.	
21	Funding for local governments <ul style="list-style-type: none"> Provide funding to local governments to assist in notifying the Department of Labor and Industries of construction activity and enforcement requirements. 	Budget	Pilot project report.	L&I is currently reviewing data. This is likely not needed, as the value of the data may not be sufficient to warrant effort. If it is, many jurisdictions could accomplish this without grant activity.	
22	Contractor registration - identification requirements <ul style="list-style-type: none"> Require a valid photo identification for contractor registration and renewal and make it available for review by consumers to verify the identity of the contractor. 	Legislation Budget	Support priority	L&I believes it has already closed the majority of this loophole. Our new registration form will require either in person i.d. or a notary public certification, which is used on many legal documents. Failure to complete the application will result in denial, and falsification may now be penalized. Additionally, except with very small companies, the actual registered “contractor” is rarely at the jobsite.	
23	Unemployment insurance records penalty <ul style="list-style-type: none"> Provide a stringent penalty for failure to keep Unemployment Insurance records. 	Legislation	Priority		
24	Rebate program for homeowners <ul style="list-style-type: none"> Establish a rebate program for homeowners who report use of a registered contractor to the Department of Labor and Industries. 	Legislation Budget	Not a priority.	L&I does not support.	

DOL Sunrise Review Recommendations

The following items come from DOL's report on its sunrise review of residential contractors. L&I has provided written comments which are incorporated into the table below.

	DOL Sunrise Review Recommendation	Action Needed	L&I Notes	Notes/ Further Action Needed?
25	Registration requirements <ul style="list-style-type: none"> Strengthen registration requirements by authorizing the Department of Labor and Industries (L&I) to suspend registration for cause. Establish mechanisms for monitoring industry performance. 	Legislation	L&I already has the ability to suspend for a number of cause reasons, including loss of insurance or claims against the bond, as well as outstanding liens filed for past due taxes (workers' comp, UI, DOR). 2SSB 6732 also granted the ability to suspend due to falsification or information. One gap that exists is that we cannot deny or suspend a registration based on violations in other states, even outstanding criminal matters. Some of the worst actors in the underground economy will move between states. What else is being considered in this area?	
26	Enforcement resources <ul style="list-style-type: none"> Ensure that enforcement resources, including staff and investigative tools, are adequate to establish compliance by contractors. 	Budget	If additional resources were authorized, we would put them to use. However, the 2008 budget did strengthen this area, including 4 add'l workers comp auditors, 3 add'l FAIR contractor fraud team members, and a dedicated criminal Assistant Attorney General. We are currently reviewing and dealing with potential gaps in tools. (ex: reverse mobile phone search to deal with Craigslist)	
27	Strengthen registration <ul style="list-style-type: none"> Strengthen registration by requiring disclosure of prior business names and/or bankruptcy, two years experience in the construction industry, and evidence of training in regulations and business practices in the construction industry. Consider higher bonding limits. 	Legislation	<p>Three different issues in this recommendation:</p> <ol style="list-style-type: none"> 1. Disclosure – We believe the new registration form, requirement to fill out completely and the new laws for penalties for falsification will deal with this issue. 2. Years of experience may not be the best (or only) requirement. The Dept has previously sought testing or training requirements. See item number 5 above for a potential first step. 3. L&I supports higher bonding limits. In 2001, we proposed \$15,000 for general, \$10,000 for subs before settling to \$12,000/\$6,000. Those amounts have not been adjusted at all for inflation in the past 7 years. There is a new provision for increasing the bond (up to 3x normal) for severe repeat violators (3 judgments on 2 or more residential structures). 	

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28	Recovery fund <ul style="list-style-type: none"> Consider creating a recovery fund to improve consumer protection by backing up bond capacity. 	Legislation Budget	L&I supports the concept of aiding the consumer, but this may not be the best mechanism. Higher bonding limits may provide a better solution without generating a new program.	
29	Central complaint repository <ul style="list-style-type: none"> Create a central complaint repository within State government. Establish database and encourage state agencies and local authorities to share information in a uniform format. 	Legislation Budget	L&I supports the concept of data-sharing, and enters into many agreements. This would cross multiple levels of government and include private agencies if the BBB and others were included. Bigger than where data resides is who is required to take action on it. Our agency already provides information on registration, infractions, past actions against bond, workers' compensation and links to other agencies' information (e.g. DOR) in one place.	
30	Model construction documents <ul style="list-style-type: none"> Develop and require the use of model construction documents and specify prohibited provisions. Documents should include contracts, warranties, bid sheets and lien explanation. Consider elective escrow provisions to avoid problems resulting from advance payments. 	Legislation Budget	This would require legislation to provide, and potentially budget impact, depending on the method of proceeding. How would agreement on "model" be achieved? When L&I previously included a sample Summons and Compliant form for initiating a bond action, we were required by the Washington State Bar Association to remove it for improperly providing legal advice.	
31	Consumer awareness <ul style="list-style-type: none"> Enhance L&I's current efforts to increase consumer skills and awareness of issues, resources and strategies that are important in the area of residential contracting. Connect this effort to the issues identified as critical in this study. Set goals and targets and define metrics for consumer awareness. 	Budget	2SSB 6732 addressed this issue, at least to some degree, placing RCW 18.27.385 into law, and achieving a budget for this activity on an ongoing basis. If additional resources were provided, we would expand the efforts.	