

**Underground Economy in the Construction Industry
Items for Possible Consideration: Labor and Business Priorities and Other Items
Remaining from 2007-2008 Discussions (Updated 12/4/2008)**

Cross-references: Italicized numbers in the number column are cross-references to the November 19 matrix numbers. Numbers in parentheses under the Priority Item column refer to its item number in the original "Possible Items for study/recommendation in 2008" chart used by the Task Force in previous meetings.

Labor Priorities.

The following are the top labor priorities sent to staff on December 1, 2008. Labor prioritized its top 3 issues as items 1 through 3, below. Labor states: All other labor priorities remain recommendations to be referred to an on-going interagency advisory committee on the construction industry as proposed.

	Priority Item	Action Needed	Labor Comments	Business Comments	Agency Notes	Action Taken on 11/12
1 <i>(1)</i>	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. (Part 1, Number 2 (b)) 	Legislation	Labor Priority #1 Include defining the term "independent contractor" for the prevailing wage statutes - chapter 39.12. RCW. Should be a relationship between fraud/PW/Contractor registration. (See item number 8, below.)	See item number 4, below.	L&I - 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. L&I - Regarding stop work orders - L&I supports in concept. Additional information needed from other states in order to weigh in further.	Deferred to 12/4. There was consensus on studying the issue and a workgroup was directed to be formed.

	Priority Item	Action Needed	Labor Comments	Business Comments	Agency Notes	Action Taken on 11/12
2 (10, 11)	Future of the task force <ul style="list-style-type: none"> Should the task force be extended and/or should the focus be broadened to go beyond the construction industry? Need to include cities and counties in future task forces. 	Legislation Budget	Labor Priority #2 Task Force should be reconstructed as an ongoing interagency advisory committee with labor and business stakeholders for continuation to address identified issues in this matrix and emerging issues re: underground economy in construction	If legislation continues the task force, it should be expanded to be beyond the construction industry.	ESD - In collaboration with L&I, we propose an annual report for two years. Our first report would be in January 2010 for activities in the calendar year of 2009. Our report would address issues such as: <ul style="list-style-type: none"> Number of referrals to L&I for firms misrepresenting payroll or hours. Percent of audited construction firms misclassifying workers and number of misclassified workers.	Deferred to 12/4.
3 (7)	DSHS new hire information (Same as number 5, below) <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	Labor Priority #3 Labor recognizes business perspective to include with stop work order legislation if possible.			Deferred to 12/4. Input is needed to determine the time frame allowable under the federal provisions.

Business Priorities.

Craig Munson requested that the following items be discussed.

	Priority Item	Action Needed	Labor Comments	Business Comments	Agency Notes	Action taken on 11/12
4 (6)	<p>Stop work orders</p> <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				Deferred to 12/4. To be addressed by the stop work order workgroup.
5 (7)	<p>DSHS new hire information (Same as number 3, above.)</p> <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	Labor Priority #3 Labor recognizes business perspective to include with stop work order legislation if possible.			Deferred to 12/4. Input is needed to determine the time frame allowable under the federal provisions.

Other Items Previously Discussed by the Task Force - Additional Items for Discussion.

The following are other items remaining from those items suggested in 2007 for possible study and recommendation in 2008 as well as additional items that have been requested to be added for discussion purposes. Items marked 12/4 were discussed on November 12, 2008, and agreed to be deferred for discussion on December 4, 2008.

	Priority Item	Action Needed	Labor Comments	Business Comments	Agency Notes	Action taken on 11/12
6 (2)	<p>Workers' compensation coverage</p> <ul style="list-style-type: none"> Require independent contractors to carry workers' compensation coverage. (Part 2, Number 5 (b)) 	Legislation	Refer to on-going interagency advisory committee on the construction industry.		<p>L&I - L&I has concerns. 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.</p>	Deferred to 12/4.
7 (3)	<p>Misclassification penalty</p> <ul style="list-style-type: none"> Create a criminal penalty for a contractor who intentionally reports that an employee is an independent contractor. (Part 1, Number 2(e)) 	Legislation	Refer to on-going interagency advisory committee on the construction industry.		<p>L&I - L&I already has this ability - see RCW 51.48.020. ESD - ESD has a misrepresentation penalty at RCW 50.12.220(3). Ten times contributions owing plus costs of auditing.</p>	Deferred to 12/4. L&I indicated that it would provide additional input.
8 (4)	<p>Independent contractor definition - prevailing wage</p> <ul style="list-style-type: none"> Define term "independent contractor" for the purposes of the prevailing wage statutes. (Part 1, Number 3(a)) 	Legislation	Define the term "independent contractor" for the prevailing wage statutes - chapter 39.12. RCW. Should be a relationship between fraud/PW/Contractor registration.		<p>ESD - In addition to investigations of employers, ESD addresses prevailing wage issues through the benefit claim process. After L&I investigates and approves a back pay award for prevailing wage, the claimant requests additional wage credits through the benefit claims process. ESD adjusts the employer account and begins collection action.</p>	Deferred to 12/4.

	Priority Item	Action Needed	Labor Comments	Business Comments	Agency Notes	Action taken on 11/12
9 (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. (Part 2, Number 2(b)) 	Legislation Budget	Refer to on-going interagency advisory committee on the construction industry. Prior comments: <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 - L&I supports (medium priority)	There was agreement to adopt the "priority education" piece. The discussion on "competency testing" was deferred until 12/4.
10 (8)	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. (Part 2, Number 1(b)) 	Budget	Pilot project report.		L&I - 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. ESD - Field offices and central office have contacts with several municipalities and some data received has been useful for developing tips and leads.	Deferred to 12/4.
11 (9)	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. (Part 2, Number 3(c)) 	Legislation Budget	Not a priority.		L&I - L&I does not support.	Deferred to 12/4.

	Priority Item	Action Needed	Labor Comments	Business Comments	Agency Notes	Action taken on 11/12
12 <i>(10)</i>	Future monitoring <ul style="list-style-type: none"> How should future monitoring take place? 	Legislation	Task Force should be reconstructed as an ongoing interagency advisory committee with labor and business stakeholders for continuation to address identified issues in this matrix and emerging issues re: underground economy in construction		ESD - In collaboration with L&I, we propose an annual report for two years. Our first report would be in January 2010 for activities in the calendar year of 2009. Our report would address issues such as: <ul style="list-style-type: none"> Number of referrals to L&I for firms misrepresenting payroll or hours. Percent of audited construction firms misclassifying workers and number of misclassified workers. 	Deferred to 12/4.
13 <i>(12)</i>	Local government tax issues	Legislation				Deferred to 12/4.
13.a	<ul style="list-style-type: none"> Resale certificates 	Legislation				DOR to have a study in June and can report to the legislature on the results. The Task Force report could recommend that the legislature take action when it gets the report.
13.b	<ul style="list-style-type: none"> UBI number on checks 	Legislation				

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14 <i>(13)</i>	Home construction work group <ul style="list-style-type: none"> Preliminary recommendations. 					Deferred to 12/4.
14.a	<ul style="list-style-type: none"> Establish a worker certification requirement in the five areas of greatest potential home damage (roofing, siding, framing, foundation and doors/windows). 					
14.b	<ul style="list-style-type: none"> Enhance contractor registration requirements. 					
14.c	<ul style="list-style-type: none"> Create an ombudsman's office within the Attorney General's Office to receive consumer complaints, provide consumer education, and in the future provide an alternative dispute resolution mechanism for lower cost consumer/contractor disputes. 					
14.d	<ul style="list-style-type: none"> Require some residential construction warranties for homeowners with a narrow statute of limitations. 					
15 <i>(14)</i>	Washington state task force against the trafficking of persons <ul style="list-style-type: none"> How does a forced labor trafficking victim apply for Crime Victims Compensation time loss benefits when no pay stub exists or the victim was never paid, but worked? 	Legislation				