

Joint Legislative Task Force on the Underground Economy in the Construction Industry
Recommendation Matrix – Summary of Responses (**UPDATED 12-17-2007** – *numbers and information in bold italic are new*)

Responders are noted as business (B), labor (L), and agency (A). Bold indicates items recommended for 2008 for which support/no support numbers differ from those provided at the December 13th meeting. Highlighted items are ones for which all those responding expressed support. Agency detail on concepts they submitted and priorities is endnoted. ESD notes are also at the end of the document.

	Support		Priority			Comments
	Yes	No	High	Med.	Low	
(1) Enforcement						
(a) Add 3 staff (one a working supervisor) to L&I's FAIR contractor fraud team. ¹	4 B 4 L 2 A		4 B 4 L 2 A			<ul style="list-style-type: none"> Individual compliance agents and auditors should be subject to monthly performance reviews. Non-performers should be retrained, reassigned or terminated. In essence, the quality of the auditors is as important as the quantity of the auditors. There is potential for additional staffing to be of no effect unless performance standards are incorporated into this plan. Refer priority of L&I staffing issues to L&I. Defer to L&I prioritization.
(b) L&I to add 3-4 auditors to the north Puget Sound area. ¹ ESD – Add auditors DOR – Add auditors	4 B 4 L 2 A		4 B 4 L 2 A			<ul style="list-style-type: none"> Hire number appropriate to transition to effective use (2 comments) 2 ESD; 2 DOR. Support within funding constraints. ESD recommends 4 – 8 new auditor positions based on the premises of new funding available for them. However, if funding is to be from existing resources, such as the penalties and interest fund, ESD is concerned the positions may not be sustainable. No additional FTEs for DOR; issues and programs distinct from L&I and ESD.
(c) L&I to add 1 Assistant Attorney General dedicated to handle contractor compliance criminal cases. ¹	3 B 4 L 2 A (12/13 total was 7)	1 B	3 B 4 L 2 A			<ul style="list-style-type: none"> We need to request a Governor's directive which prioritizes the various State counties to prosecute non-compliant offenders. This will send the message on the local level that our State government wants to get tough on controlling the underground economy. Additional funding for the State Attorney General will result in prosecuting the most egregious offenders while avoiding the real issue of the prosecutorial bottleneck on the county level. Refer priority of L&I staffing issues to L&I. Defer to L&I prioritization.

	Support		Priority			Comments
	Yes	No	High	Med.	Low	
(d) Funding. In general, increase funding to be used towards enforcement activities. This includes recruiting, retaining and training auditors; and increasing the pay scale for auditors.	4 B 4 L 3 A		4 B 4 L 3 A			<ul style="list-style-type: none"> • Additional funding should be aimed at all areas; salary structure should be patterned after private sector approaches, i.e., incentives. • Raising the pay scales will likely improve retention significantly. It doesn't seem that the problems have been in recruitment just that our current system has become a private sector training program. • The entry level ESD auditor pay grade is 30% below the industry standard. This problem requires immediate attention. L&I compliance officers are compensated fairly. For these officers, we need to invest in their training to be street smart investigators. • The agencies are working with DOP on this matter (3 comments).
(e) Require local governments to verify compliance with registration and other requirements before issuing a business license.	4 B 4 L		4 B		4 L 1 A	<ul style="list-style-type: none"> • Require reports to state agencies of new licensures. • This should not be a burden. A call or an online crosscheck is all that is required. • There is a subcommittee meeting with local government entities on the 6th. This will be discussed at that time (2 comments). • Defer to subcommittee task force recommendations
(f) Provide funding to local governments to assist in notifying L&I of construction activity and enforcement requirements.	4 B 4 L 2 A		1A	3 B 1 A	1 B 4 L	<ul style="list-style-type: none"> • Use local incentive funds to aid in providing responses to standardized data forms prepared and administered by state agencies. (2 comments) • FTE funding towards local building inspectors. No incentives. • Refer priority of registered contractor issues to L&I.
(g) Require contractors to post their registration on the job site.	4 L 2 A	4 B	4 L	2 A		<ul style="list-style-type: none"> • Too unwieldy to administer effectively. Perhaps a more workable alternative may be to require registration information to be produced on request at jobsite. • This would prove to be a significant positive change. If contractors knew they would have to post their registration at the jobsite at least those that are not currently registered would be much more apt to register thus becoming more visible and easier to track. Must include all sub and sub tier subcontractors. • Refer priority of registered contractor issues to L&I.

	Support		Priority			Comments
	Yes	No	High	Med.	Low	
(h) Develop a process to report new hires to L&I. See Process to Improve Worker Reporting, Revised Process to Improve.	4 L 1 B	2 A	1 B	4 L		<ul style="list-style-type: none"> • One question would be the cost to L&I in terms of developing the database and if this could be done within the current IT capacity, or if new systems would need to be developed and if so what that cost would be? Implement after fraud detection is fully implemented/funded. • This will be a fundamental tool in controlling fraud and abuse for L&I. As it stands, L&I does not process data on the specific employees they insure, only payroll hours. This allows for dishonest employers to enjoy the benefit of adding a worker(s) to the L&I insurance docket after an industrial accident without ever paying into the insurance system beforehand. A total negation of the pay in advance insurance principle. This L&I informational blackhole arrangement amounts to a de facto State sanctioned free lunch for criminals. Adding insult to injury, honest employers are fiscally penalized in their higher than necessary premium payments that subsidized this abuse. • Refer priority of L&I-specific issues to L&I. (Making some information publicly available could raise privacy concerns. ESD information could not be published.)
(2) Penalties and Requirements						<ul style="list-style-type: none"> •
(a) In general, increase penalties. This could include publicizing the names of those people who have been penalized, or imposing training requirements on those who have been penalized.	4 B 4 L 2 A	1 A	4 L 3B 1 A	1 B	2 A	<ul style="list-style-type: none"> • Emphasis on civil penalties and non-criminal sanctions except most serious offenses. • Both criminal and civil. • L&I collects on only 33% of the citations issued. This proves that the majority of offenders do not take financial penalties seriously. The message needs to be, “you break the law and you are caught, you are going to spend time in jail.” Therefore, these offenders need to be subject to criminal law in the local county courts. • Potential concepts for research have been presented by L&I previously. Any specific recommendations would require research before responding with support or action. • See ESD Notes at end of document. • DOR believes there are strong penalties existing for excise taxes; no increases needed.
(b) Increase unregistered contractor criminal penalty from gross misdemeanor to a class C felony for the 3 rd offense ²	4 B 4 L 2A		2 A	4 B 4 L		<ul style="list-style-type: none"> • Labor believes this should be increased to Class C felony for second offense. • Refer priority of registered contractor issues to L&I. • Defer to L&I as lead agency on this issue.

	Support		Priority			Comments
	Yes	No	High	Med.	Low	
(c) 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 ²	4 B 4 L 2 A			4 B 2 A	4 L	<ul style="list-style-type: none"> Probably needs a bit more examination; i.e., who is required to have photo if contractor has employees? This will help enforcement if combined with photo identification cards for employees too; see (1)(h). Refer priority of registered contractor issues to L&I. Defer to L&I as lead agency on this issue.
(d) 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 ²	3 B 4 L 2 A	1 B	4 L	3 B 2 A		<ul style="list-style-type: none"> Who would be required to attend classes, and what curriculum would be included to fill class time? This should be a priority issue. This should be part of an overall competency and qualification testing process for all new and out of state contractors. Refer priority of registered contractor issues to L&I. Defer to L&I as lead agency on this issue.
(e) Explore civil/criminal penalties for falsifying information on a contractor registration.	4 B 4 L 2 A (12/13 total was 9)		3 B 4 L	2 A		<ul style="list-style-type: none"> Could include higher bond requirements and “flagging” of violation history on website. If recommended, L&I will do research on what this might look like⁴ Refer priority of registered contractor issues to L&I. Defer to L&I as lead agency on this issue.
(f) Explore prevailing wage strike for willful or repeat violation of workers’ compensation reporting or contractor registration laws.	4 B 4 L 2 A		4 L	3 A	1 B	<ul style="list-style-type: none"> Contractors who willfully violate these laws should not be allowed to bid on public works projects. L&I strike system would be an excellent tool for enforcement in this regard. If recommended, L&I will do research on what this might look like.⁴ Consider for willful or repeat violation of unemployment insurance (ESD) reporting also. Defer to L&I as lead agency on this issue.
(g) Provide agencies with greater flexibility in issuing penalties, including the authority in extreme cases to close down a business.	3 B 4 L 3 A	1B	1 A	3 B	1 A	<ul style="list-style-type: none"> Needs more examination and accountability protections. We support the concept but need a clearer understanding of what more/added flexibility is needed.

	Support		Priority			Comments
	Yes	No	High	Med.	Low	
(h) Create penalties for homeowners who intentionally do not follow the rules.	3 B	1 B 4 L 2 A			4 L	<ul style="list-style-type: none"> • Should not unnecessarily emphasize “intent” when penalizing transgressions—thereby creating counterproductive immunity. • Unenforceable. • Refer priority of registered contractor issues to L&I. • Exists currently for excise taxes. Homeowners would owe penalties for failing to pay appropriate sales/use tax.
(i) Create penalties for persons who accept cash for payment.	3 B	1 B 4 L 2 A		3 B		<ul style="list-style-type: none"> • Penalties should attach to the undocumented cash payment events – penalizing cash payers and recipients that have the effect of evading tax obligations. • Too vague a concept, unenforceable, underlying assumption that those persons receiving cash aren’t paying taxes. • Cash is not the issue; recordkeeping is. (2 comments) • There are already penalties in place for recordkeeping, as well as the ability to estimate worker’s comp premiums. • Increase penalties for recordkeeping issues for UI. See ESD notes at end of document. • Constitutional issue; can only penalize for failing to provide records and documentation.
(j) Create a criminal penalty for a contractor who intentionally reports that an employee is an independent contractor.	4 L 1 A	4 B	4 L			<ul style="list-style-type: none"> • Issues needs better definition. Employers who take advantage of workers are one thing, but many situations are not as clear and per se violations will not work. • This would make every contractor think twice about misclassifying an employee as an independent contractor – gets to the core of the abuse. • This law already exists in a more general form as both civil and criminal willful misrepresentation⁴ • Suggested rewording: Explore criminal sanctions for willingly misreporting employees as non-employees. • Defer to L&I as lead agency on this issue.

(3) Education and Outreach						
(a) In general, enhance contractor/consumer education.	4 B 4 L 3 A		4 B		4 L	<ul style="list-style-type: none"> • All levels of government should be involved. From traditional outreach efforts to new efforts implemented at the building permit level should be utilized. Particular emphasis should be given to consumers about the perils of not acting responsibly. • We support contractor/consumer education. However, we first need to have a consistent test for the 3 departments to use, a definition of an Independent Contractor, the contractor registration form changed and the UBI board discussion so that there can be meaningful Education and Outreach that would not be changed the very next year. • See ⁴. • Refer priority of registered contractor issues to L&I.
(b) Change the contractor registration form and provide information to increase understanding of laws, risks, and responsibilities.	4 B 4 L 3 A		1 B 4 L 3 A			<ul style="list-style-type: none"> • Effective if undertaken in concert with other ongoing efforts at education of registrants. • Labor supports this as a high priority. There appeared to be consensus from Business and Labor on this issue. • Rated high based on ability to take action rapidly on this. • Provide ESD information as well as L&I requirements. • Defer to L&I as the lead agency on this issue.
(c) Approach UBI Board to discuss potential changes to the contractor registration form to increase understanding of laws, risks, and responsibilities.	1 B 4 L 3 A		4 L	1 B 2 A	1 A	<ul style="list-style-type: none"> • Not sure how this might help. UBI process should assure that other required registration/licensure is obtained. Info should be shared inter-agency more effectively to allow cross-checking of business registrations. • Labor supports this as a high priority as suggested by L&I as a process for improvement. • This is not about changes to the contractor registration form. It is about changes to the Master Business Application.⁴ • Recommendation would rate higher if it referred to Master Business Application not contractor registration form and if changes are not limited to registered contractors and licensed electrical contractors. • Defer to L&I as the lead agency on this issue.

<p>(d) Establish a construction training and outreach team. Add 2 staff to provide direct contactor 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, develop training and present statewide, and help establish mass education campaigns. Funding for travel, mailings, and materials is also needed.³</p>	<p>4 B 2 A</p>	<p>4 L</p>	<p>2 A</p>	<p>4 B</p>	<ul style="list-style-type: none"> • Effective if undertaken jointly with multiple agencies. Resources could be leveraged with production of CD/web-based/Youtube training devices for use without direct staff instruction. Also enhances non-English capacity. • Information was provided to the Task Force that these activities are already taking place and we believe enforcement activities are a much higher priority and also serve as education and outreach. • Delete all language after “team” on line 2 and insert “at L&I that addresses both contractor registration and workers comp issues.” • Refer priority of L&I staffing issues to L&I. • Defer to L&I as the lead agency on this issue.
<p>(e) Create a social marketing campaign aimed at consumers, warning of risks and potential consequences. This could include providing public service announcements and other similar materials to the media; providing information on violations and penalties; and encouraging legitimate contractors and the public to report fraud.³</p>	<p>4 B 4 L 2 A</p>	<p>1 A</p>	<p>4 B</p>	<p>4 L 2 A</p>	<ul style="list-style-type: none"> • Critical element to address the demand side of the equation. • We believe this could be a program of great value depending on its resources and how it's implemented. Again, we believe we must have a consistent test for the 3 departments to use, a definition of an Independent Contractor, the contractor registration form changed and the UBI board discussion so that there can be meaningful Education and Outreach that would not be changed the very next year. • Suggest addition of “and employees being treated as independent contractors” after “consumers.”

(f) Provide additional training opportunities for contractors. This should be in multiple languages.	3 B 4 L 2 A	1 B		3 B 4 L	2 A	<ul style="list-style-type: none"> • Could be undertaken cooperatively with trade organizations and CCs. • Require an OSHA 10. Refer to (3)(a) and include this concept in that process. • This is incorporated into the concept noted under (d) above. • Refer registered contractor issues to L&I.
(g) Establish a rebate program for homeowners who report use of a registered contractor to L&I. See Compliant Contractor Rebate Form.	4 B 4 L	2 A	1 B	3 B	1 A	<ul style="list-style-type: none"> • An interesting concept that bears further examination. • Labor supports this concept. However there are clearly questions concerning the cost and resources to pay for the program. • This is a multi-faceted approach to controlling the underground economy. It informs the homeowner about contractor registration requirements and offers them a financial incentive if they choose a legal contractor. It also collects important data on the contractors that are cited in the rebate form. This data can be helpful in agency audits. • Refer registered contractor issues to L&I. • Defer to L&I as the lead agency on this issue.
(4) Data-Sharing and Detection						
(a) Enact laws to allow state agencies to share all information regarding workers and employers with other state agencies, regardless of the source of such information.	4 B 4 L 3 A		4 B 4 L 3 A			<ul style="list-style-type: none"> • No brainer... • This should be a high priority issue as noted in Labor's initial recommendations to the Task Force. • We defer to ESD on time period. • See⁵. • Support changes for ESD data sharing.
(b) Enact a law, similar to RCW 50.12.070, for all industries that requires employers using the services of an independent contractor to keep the worker's UBI number on file, as well as compensation paid to the worker.	3 B 4 L 3 A	1 B	4 L 2 A	3 B 1 A		<ul style="list-style-type: none"> • As recommended by ESD, this would be a critical tool for agency tracking and enforcement. • We defer to ESD on time period. • See⁵ • Support ESD recommendation.
(c) Require that all businesses have a UBI number, even if exempt from DOR reporting requirements.	4 B 4 L 3 A		3 B	1 B 4 L 2 A	1 A	<ul style="list-style-type: none"> • This may involve legislation from DOR, or multiple entities. • See⁶

(d) Enhance funding for the Master Business Application Systems.	4 B 4 L 3 A			4 B 2 A	4 L 1 A	<ul style="list-style-type: none"> We defer to ESD on time period. ESD recommended this on behalf of DOR and will defer to DOR for specifics.
(e) Complete secure database for IRS data-sharing.	4 B 4 L 3 A		4 B 4 L 2 A			<ul style="list-style-type: none"> Do what's needed. Data sharing between agencies is a high priority outlined in Labor's initial recommendations to the Task Force. Refer priority of L&I specific issues to L&I; ESD has secure data transport for IRS data. Could facilitate data sharing.
(f) Finish feasibility study for a comprehensive employer fraud/abuse detection system.	4 B 4 L 2 A		4 B 4 L 2 A			<ul style="list-style-type: none"> Refer priority of L&I specific issues to L&I. Defer to L&I as lead agency on this issue.
(g) Submit budget package for employer fraud detection system based on results of feasibility study.	4 B 4 L 2 A		4 B 4 L 2 A			<ul style="list-style-type: none"> Funding for the implementation of the system established based on the results of the feasibility study is critical to the shared goals of this Task Force. Refer priority of L&I specific issues to L&I. Defer to L&I as lead agency on this issue.
(h) Enter into data-sharing with local jurisdictions regarding building permit data.	4 B 4 L 2 A		4 B 1 A	4 L 1 A		<ul style="list-style-type: none"> Place administrative responsibility on state agencies to lessen excuses for non-participation. This will be a valuable tool for the enforcement and detection of the underground activities in the construction industry. Potential budget needs from local jurisdictions. This will be discussed at the sub-committee meeting on Dec. 6th. Refer priority of registered contractor issues to L&I. This will be discussed at the sub-committee meeting on Dec. 6th. Very helpful for excise tax purposes.
(i) Continue negotiating with IRS for joint data-sharing agreement for ESD, DOR, and L&I to allow sharing of IRS data between the agencies when appropriate.	4 B 4 L 3 A		4 B 4 L	4 L	3 A	<ul style="list-style-type: none"> This is a high priority issue as reflected in Labor's initial recommendations to the Task Force.

(5) Other						
(a) Benchmarks. L&I to evaluate potential needs regarding additional enforcement, focusing on the following areas: Audit staff (statewide), contractor compliance, whether another AAG is needed for criminal cases.	4 B 4 L 3 A		4 B 4 L		2 A	<ul style="list-style-type: none"> • Benchmarks measuring efficiency as well as effectiveness in achieving the desired results are essential. Accountability of public agency actions will be assured with performance/sunset audits along with periodic progress reports to the Legislature. • As a budget item this would likely be best addressed in the '09 biennium, however it will provide critical information in reference to the highest levels of enforcement to eliminate underground activities in the construction industry. • Agency goals and strategies for '11-'13 biennium will be reviewed during '09-'11 biennium. • Refer priority of L&I-specific issues to L&I. ESD supports the use of benchmarks for program evaluation. • Defer to L&I as the lead agency on this issue.
(b) Definition of independent contractor. Create one statutory definition of independent contractor to be used by L&I, ESD, and DOR.	4 L (12/13 total was 5)	4 B 1 A (12/13 total was 4)	4 L	1 AG (for education)		<ul style="list-style-type: none"> • Labor considers its work with the subcommittee a high priority for 2008 legislation. Creating a single test concerning RCW 51.08.180 and 51.08.195 in our opinion, will help eliminate confusion and manipulation in current statutes governing the construction industry. • A statutory definition of an independent contractor was presented as Labor's highest priority in our initial recommendations to the task force. • Labor continues to support, as our highest priority, the position that a clear single statutory definition of an independent contractor would be the most valuable enforcement tool in this ongoing process. • In our opinion, the combination of the subcommittee's work in conjunction with a statutory definition of an independent contractor will: <ol style="list-style-type: none"> 1) Help better educate contractors. 2) Perform more effective and clearer education and outreach. 3) Create more consistency with enforcement. 4) Create more consistency with the auditors. • ESD is committed to working with agencies, business, and labor to clarify definitions of employees, covered workers, and who is not included in those definitions. • No change needed for excise tax, as current law relies on employee definition for ESD. Would not support any change to DOR definitions.

(c) Contractor registration/licensing. Create a competency test for contractors.	4 L 1 A	1 B	4 L		3 B 1 A	<ul style="list-style-type: none"> • If testing on legal requirements – may be possible. Questions about who takes the test and the value to the consumer must be addressed. Competency examinations are not yet feasible, as there are too many unanswered questions – however, the question could be placed on a long-term agenda. • See California law. • There may be an interim step that will address some issues. Please see (2)(d) on page 3 – 4. • Refer priority of registered contractor issues to L&I. • Defer to L&I as the lead agency on this issue.
(d) Contractor registration/licensing. Should independent contractors be required to carry workers’ compensation coverage?	4 L	1 B 2 A	3 B 4 L			<ul style="list-style-type: none"> • Examination of the proposal is a more feasible alternative than trying to shoe-horn a “one-size-fits-all” definition of independent contractor. • Yes, Labor supports this action and concurs with Business that this should be done. • L&I concerns were laid out in our pros/cons document. • Refer registered contractor issues to L&I. • Defer to L&I as the lead agency on this issue.

¹ L&I: Concept for discussion purposes when viewed under task force recommendations to increase compliance.

² L&I: Concept for discussion purposes when viewed under task force recommendations to increase penalties and requirements.

³ L&I: Concept for discussion purposes when viewed under task force recommendations to increase education.

⁴ L&I priority levels were gauged by the viewpoint of the Fraud Prevention & Compliance Program within L&I, and could change when compared with other agency priorities (Safety, Electrical, other Workers’ Comp.), particularly with respect to items that would require budget or legislative action.

⁵ ESD is not offering as agency request legislation; timing is only an indicator of when the Task Force could accomplish the recommendation.

⁶ ESD is not offering as agency request legislation.

ESD notes:

Prime Contractor Liability for ESD

Replace 50.04.145 with 51.12.070

ESD to redisclose data

Modify 50.13.060(1) and (5) (ESD releasing info to other govt. agencies) as well as 50.13.060(9) (use of data by other govt. agencies). Modify 50.13.060 to allow redisclosure of information under 20 CFR 603.9(c)(v)-(viii)

All employers must maintain UBI of independent contractors

Modify RCW 50.12.070(1)(b) to apply to all employers who contract with an independent contractor and so the penalty applies per worker per quarter

Locating registered contractors

Change RCW 18.27.030(1)(b) to require that all businesses have a UBI number, even if exempt from DOR reporting requirements

Giving ESD & DLI priority similar to DOR to collect on Public Works

Revise 60.28.040 to include Titles 50 and 51 in the opening sentence; also similarly revise 60.28.010 and 60.28.011

Giving ESD a stringent penalty for an employer's failure to keep records

Adopt a provision similar to RCW 51.48.030 for ESD

Prepared For: Joint Legislative Task Force on the Underground Economy in the Construction Industry
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