



2017 Potential Agency-Request Bills

July 2016

Summaries

The Department of Labor & Industries (L&I) is considering six agency-request proposals for the 2017 session. One is an updated bill from 2015-16; all of the others are being newly developed. At this time, L&I is requesting stakeholder input in early August. Once fully developed, the department will submit these to the Governor's office for consideration as L&I request legislation.

1. Responding to federal changes by increasing maximum Safety and Health penalties

Under a recent change in federal law, the Occupational Safety & Health Administration (OSHA) must now apply a one-time "catch-up" and annually adjust the maximum civil penalty for workplace-safety violations to reflect inflation. OSHA recently announced maximum penalties will increase from \$7,000 to \$12,471 for serious violations and from \$70,000 to \$124,709 for willful or repeat penalties. Minimum penalties for willful violations are also being raised from \$5,000 to \$8,908. As a "state plan" state, penalties under the Washington Industrial Safety & Health Act (WISHA) must be "at least as effective as" OSHA's.

L&I is working on a proposal to modify state law to set up an annual adjustment system which would retain the current penalty amounts in statute unless required to be higher by OSHA. No changes to the current method for determining penalty amounts are planned, so the net effect is expected to be extremely low. The bill would take effect on January 1, 2018. Penalty money paid as a result of these citations is placed in the workers' compensation supplemental pension fund, helping workers and families of those who have died on the job.

2. Creating a dedicated account for fee-based programs

Currently, all revenues (fees and penalties) collected by the Contractor Registration & Compliance, Factory Assembled Structures, and Elevator programs are deposited into the state's General Fund. The Legislature then appropriates General Fund money to operate the programs.

L&I will again propose to create a dedicated account to receive funds collected by the three programs. To protect the General Fund, 7 percent of fee revenues collected each quarter would be transferred from the dedicated account to the General Fund. New for this year is a proposal to sunset this revenue transfer after six years. The bill would take effect July 1, 2017.

3. Eliminating inspection requirements for some elevators and residential incline chair lifts

Currently, all installations and alterations of elevators, escalators and other conveyances require an acceptance inspection by L&I before the conveyance may be used. This can result in delays while an inspection is requested, scheduled, and conducted. Even minor alterations compete for limited inspector time with annually-required inspections, safety tests, and a final inspection before an elevator may be put into service.

L&I's proposal would reduce the number of inspections required for installation of residential chair lifts and minor alterations of other conveyances by creating a "Class A permit" similar to the electrical program. It would give the department authority through rule-making to establish criteria based on an elevator company's pass rate for alteration inspections for an elevator company to become eligible and retain eligibility to purchase Class A permits. It would also define what "minor alterations" would be eligible to be performed under a Class A permit. Eligible elevator companies could purchase books of 10 permits to perform minor alterations of conveyances or installations of

residential chair lifts. Once the work is completed, 1 in 10 permits will be randomly selected for inspection.

In addition to rule-making, this proposal would require some computer-system modifications (or software purchase) to create the permit; randomly select permits for inspection; and monitor the eligibility of companies based on their inspection history.

4. Extending timeline for Safety and Health appeals where a settlement may be possible

L&I is proposing to retain the current 30 day timeline to resolve reassumption appeals, but increase from 15 days to 45 days the one-time extension that is available if agreed to by all parties. Currently, the law allows 30 working days to decide a reassumption appeal of a Safety and Health citation. If both parties agree, an additional 15 days may be added. "Reassumption" appeals provide an opportunity to resolve cases more quickly than if the case goes to the Board of Industrial Insurance Appeals. The current deadlines provide insufficient time to evaluate difficult and complex questions, evaluate new evidence, and conduct settlement negotiations. The bill would take effect January 1, 2018.

5. Discretion for decreasing installer penalties for factory assembled structures

The purpose of Washington's installer certification program is to ensure the public is safe in manufactured homes. Under current law, there's a flat \$1,000 penalty for violations of the certification program. L&I doesn't have authority to reduce the penalty for minor violations; only an administrative law judge may waive, reduce or suspend the monetary penalty.

L&I is proposing to give the department authority to establish a graduated penalty structure through rule-making that would be capped by the current limit of \$1,000. This would allow the program to issue reasonable penalties based on the severity of the offense.

6. Benefit Accuracy Work Group proposals - PLACEHOLDER

ESB 5510 from the 2016 session established this Benefit Accuracy Work Group to focus on "improving the accuracy, simplicity, fairness, and consistency of calculating and providing wage replacement benefits" for workers' compensation claimants. An interim report was completed in early February, and the final report is due September 1, 2016. If consensus proposals for legislation result from this work, the department will consider those for agency request.

Next steps

L&I must complete its preliminary work and submit drafts to the Governor's office to be considered for agency request proposals. Our goal is to incorporate all possible stakeholder comments prior to submittal. Please send all comments, questions or concerns to Tammy Fellin in early August.

Contact

Tammy Fellin, Legislative Director
360-902-6805
tammy.fellin@lni.wa.gov