



2017 Potential Agency-Request Bills

October 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. These bills must first be approved by the Governor's office before being submitted as agency 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. Effective August 1, OSHA increased maximum penalties for general, serious, posting and failure to abate violations from \$7,000 to \$12,471 and for willful or repeat penalties from \$70,000 to \$124,709. Washington does not issue monetary penalties on first time general violations. Minimum penalties for willful violations are also being raised from \$5,000 to \$8,908. OSHA is also expected to apply annual inflation adjustments to these penalty limits, which are expected to increase before the state amounts are adopted. As a "state plan" state, penalties under the Washington Industrial Safety & Health Act (WISHA) must be "at least as effective as" OSHA's.

This proposal would modify state law to set up an annual adjustment system which would retain the current penalty maximums and willful minimum 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 of changing these caps and one minimum 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 the department 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 state general fund, 7 percent of fee revenues collected each quarter would be transferred to the general fund. Penalties would continue to be deposited in the state general fund. New this year is that the proposal would sunset the 7 percent revenue transfer after six years. The current appropriation of about \$19.1 million would shift from the state general fund to the new dedicated account, while about \$4.8 million in penalties and the 7 percent revenue transfer would accrue to the state general fund. After the 7 percent fee transfer ends, penalties would continue to be deposited in the state general fund.

The bill would take effect July 1, 2017.

3. Eliminating inspection requirements for some elevator alterations 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 B permit" similar to the electrical program. It would give the department authority through rule-making to establish criteria for an elevator company to become eligible and retain eligibility to purchase Class B permits. It would also define what "minor alterations" would be eligible to be performed under this type of permit. Eligible elevator companies could purchase books of permits to perform minor alterations of conveyances or installations of residential chair lifts. Once the work is completed, a portion of the permits will be inspected on a random basis.

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

When the department issues a citation for a safety and health violation, an employer may appeal the violation and penalties to the Board of Industrial Insurance Appeals (BIIA). An employee or employee representative may appeal the timeline in the citation within which the hazards must be corrected. If appealed, the department has an opportunity to "reassume" jurisdiction to attempt to reach a resolution to the appeal, including a settlement. The law currently allows 30 working days to decide these reassumption appeals. If the 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 BIIA. If a case is settled at reassumption, it often also results in the business doing more to abate the hazard than required to do by law or rule. Such settlements result in making workplaces safer. Examples of a business doing more typically involve: engaging safety consultants, providing additional training, or making changes at additional facilities, not just the site that was inspected. However, the current overall limit of 45 days is a tight timeline to evaluate difficult and complex questions, evaluate new evidence, and conduct settlement negotiations. This proposal would increase from 15 to 45 days the one-time extension for resolution of appeals of violations of the Washington Industrial Safety and Health Act (WISHA) if agreed-to by the parties.

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 was submitted in September 1, 2016 though the group continues to meet. If consensus proposals for legislation result from this work, the department will consider those for agency request.

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