Expanded 2004 Transition Description
Tier 2

Department of Labor and Industries

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Tumwater, WA
http://www.LNI.wa.gov/

Field offices are in Aberdeen, Bellevue, Bellingham, Bremerton, Colville, East Wenatchee, Everett, Kennewick, Longview, Moses Lake, Mount Vernon, Okanogan, Port Angeles, Pullman, Seattle**,** Spokane, Tacoma, Tukwila, Tumwater, Vancouver, Walla Walla and Yakima.

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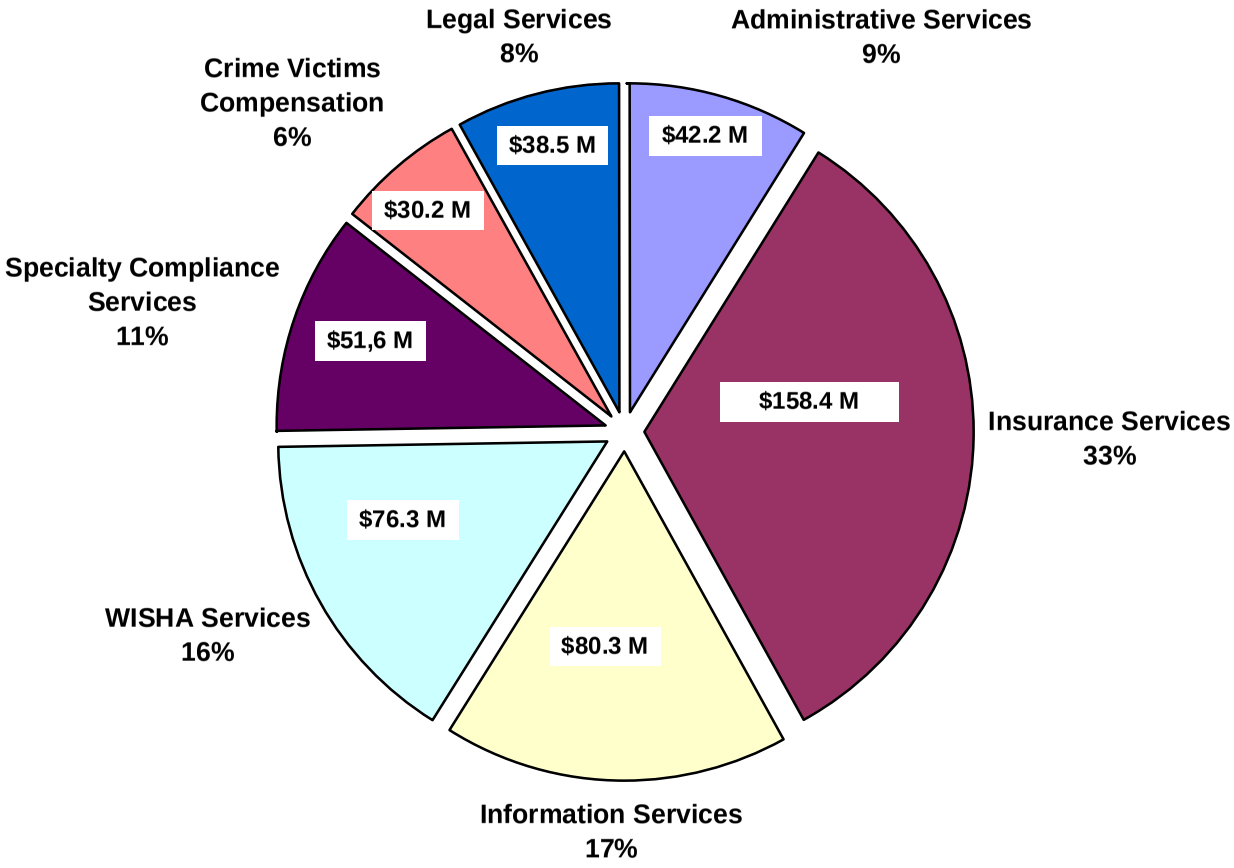
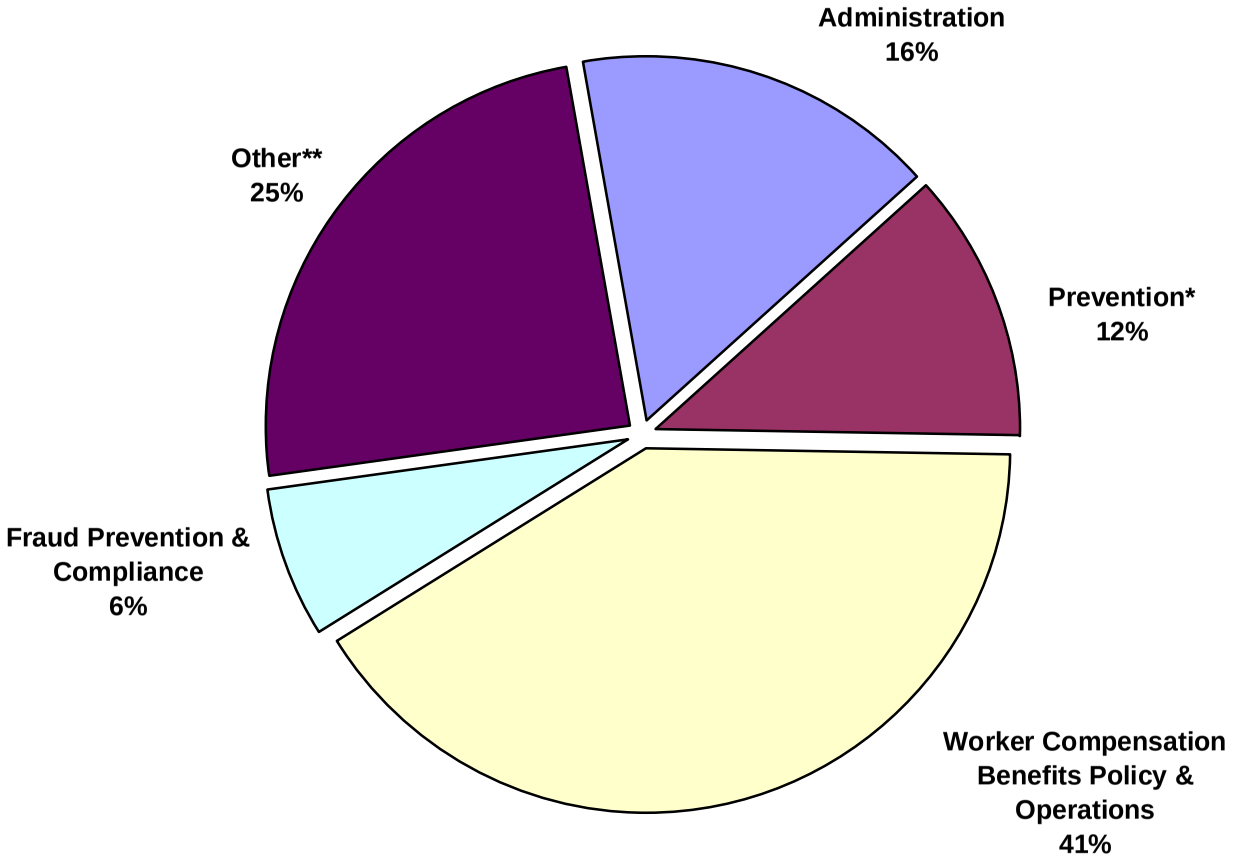
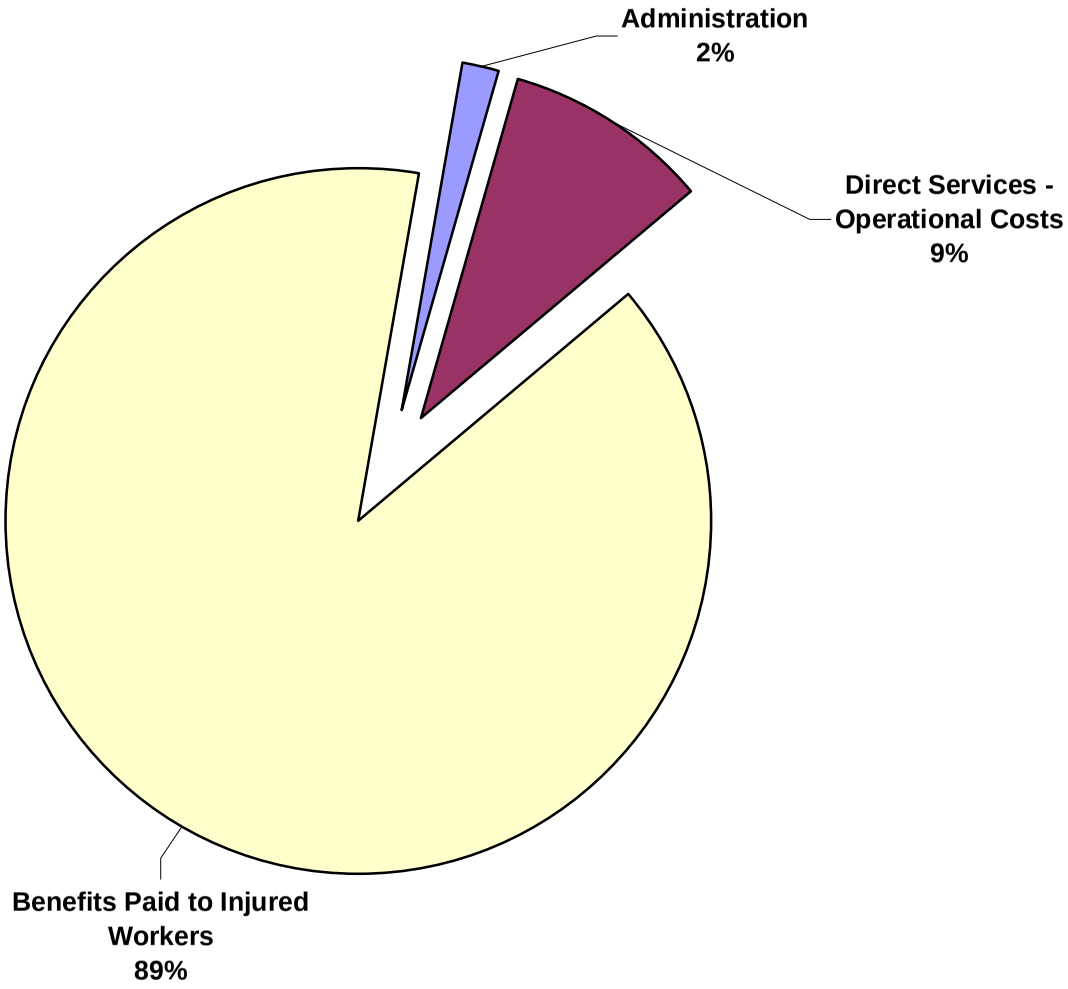
Washington State Department of Labor and Industries
Agency-Wide Appropriated Budget by Program
2003-05 Biennium - $477.7 Million Total Funds



Washington State Department of Labor and Industries
2003-2005 Biennium State Accident Fund and Medical Fund Only
Appropriated Expenditures - $377.8 Million



Washington State Department of Labor and Industries
2003-2005 Biennium State Accident Fund and Medical Fund Expenditures
& Benefits Paid - $3.4 Billion



LNI Budget Office

NOTE: Includes appropriated and non-appropriated funds

10/29/2004

Note: the L&I organization chart is included in the Executive Summary document (Tier 1)

Executive Management Team Biographies

Paul Trause was appointed Director in January 2003. He formerly served as Deputy Commissioner of the Employment Security Department, Director of Management and Budget with the King County Prosecutor's Office, Deputy Secretary and Acting Secretary for the Department of Social and Health Services and in a number of federal positions.

Judy Schurke was named Deputy Director for Operations in April 2003. She was the employer member, Board of Industrial Insurance Appeals, and corporate workers' compensation manager at the Boeing Company. She started at L&I in 1974 as a clerk typist and left in 1989, after supervising the self-insurance program compliance unit.

Joel Sacks was named Deputy Director for Field Services in December 1998. He formerly was assistant to the director for executive policy. He was acting director of reinvention at the U.S. Occupational Safety and Health Administration (OSHA) and quality management supervisor at New York City's Department of General Services.

Robert J. Malooly was named Assistant Director of the Insurance Services division in February 2003. He established the Illinois unemployment insurance actuarial function, restructured the Illinois Department of Employment Security, served as chairman and CEO of Industrial Commission of Illinois and participated in two private sector insurance data start-up enterprises.

Dr. Michael Silverstein was named Assistant Director for Industrial Safety and Health in 1997. He was L&I's associate medical director, director of policy for OSHA, State Health Officer, Department of Health, and assistant director for Health and Safety, United Automobile Workers Union. He also practiced family and occupational medicine.

Patrick Woods has been Assistant Director for Specialty Compliance Services since 1998. He worked for 15 years as non-partisan staff on the State Senate's Commerce and Labor Committee. As staff coordinator/director, he had oversight of Workforce Development, L&I, Employment Security, Liquor, Lottery, Gambling, Economic Development, and International Trade.

Kim Contris was named Communications Director for L&I in 1997. She formerly was Director of Education and Information for the Department of Ecology, Director of Quality and Communications Services for the Department of Licensing, and Director of Media and Legislative Relations for the Department of General Administration.

Stewart Henderson leads Management Consulting Services, a team of consultants helping the agency's top leaders focus on and deliver results. He has degrees from Dartmouth and the Leadership Institute of Seattle (LIOS). He's been a Peace Corps volunteer, elected city councilman, and consultant to dozens of agencies across the country.

Shelagh Taylor was appointed Assistant Director for Information Services in 1992. She has over 30 years of experience in the information technology field and serves on multiple statewide committees. A 1984 business administration graduate of Pacific Lutheran University, she has worked for L&I since 1984.

Dave Stewart was appointed Assistant Director for the Office of Human Resources in October 2003. Before joining L&I, Dave was the Deputy Director for the Alaska State Department of Personnel and also held positions as human resource manager for the Alaska Departments of Education and Labor.

Melanie Griffin Roberts was appointed Assistant Director for Administrative Services Division in April 2004. She formerly was L&I's Budget Director and Program Manager for Management Services, operating budget chief for the Department of Social and Health Services and held a number of budget posts at state agencies, including the Office of Financial Management.

Kerry Ivey was appointed Regional Administrator of Region 1 in 1998. Previously, she was regional Insurance and Consultation Program Manager and Assistant Director for the Vocational Dispute Resolution Office. A former vocational educator, she began her tenure with L&I in 1981 as a vocational work evaluator.

Chris Bowe was appointed Regional Administrator for Region 2 in May 2003. His career began as an L&I revenue officer in Tacoma. He served as Revenue Supervisor and Risk Management Supervisor in King County, and as Insurance Consultation Program Manager and Compliance Manager in Region 2.

Nickie Moran was appointed regional administrator for Region 3 in January 2000. She earlier served as regional Compliance Manager, Deputy Insurance Commissioner and Program Manager and Assistant Director for L&I's ESAC Division. She also was a college instructor and staff to the director of Metro's Water Pollution Control Department.

Lorne Sanford was appointed acting Regional Administrator for Region 4 in June 2004. Previously, he was the Region 4 Compliance Manager and has held regional positions as WISHA Industrial Hygiene Compliance officer, WISHA Appeals Hearings Officer, and Safety Compliance Supervisor.

Monty Paradis was appointed Regional Administrator for Region 5 in September 1996. Previously, he was an Employer Tax Manager covering five Northwest Washington counties. A University of Washington graduate, he operated a private business for five years and was a criminal law enforcement officer in Seattle for 10 years.

Kelly Honeychurch was appointed Regional Administrator for Region 6 in April 2000. She previously served as the regional Insurance and Consultation Program Manager. Before joining L&I she was a manager in non-profit organizations, including serving as the executive director of the Spokane YWCA.

Hal Dygert was appointed Chief of the L&I Division in the Attorney General's Office in February 2001. He has worked in the Attorney General's Office since 1984, serving as division chief for the Agriculture and Health Division and lead counsel to the Department of Health.

Suzanne Mager was appointed Program Manager for the Legislative and Governmental Affairs Office in 1996. She has been with L&I since 1991, serving as a staff attorney, Assistant Director for WISHA, and Assistant Director for Consultation and Compliance. She was Deputy General Council for the Massachusetts Department of Public Health.

Chris Freed was named Budget Director and Program Manager for Management Services in June 2004. She formerly served five years as Budget Director for Mason County, eight years as budget analyst for OFM on the DOT budget, and six years as Budget Officer for OFM before coming to L&I

Carl Hammersburg was appointed Program Manager for the Fraud Prevention and Compliance Section in July 2004. He formerly was Insurance and Consultation Manager for L&I's Region Four and has held a number of positions including revenue officer, collections regional supervisor and senior budget analyst.

Suzanne Stafford was appointed as Manager for Leadership Development in June 2004. She directs, manages and coordinates the executive leadership development for the agency. She has been coaching and consulting since 1994. She holds a Bachelor of Science degree in Business and a Masters degree in Applied Behavioral Science.

Lisa Rodriguez was appointed Executive Assistant to the Director in February 2003. She began working for L&I in 1987 as the Director's receptionist and has worked in progressively more responsible administrative positions, including most recently as the Administrative Assistant to the Assistant Director for Administrative Services.

Authorizing Environment and Environmental Scan

References to major statutory authorities (RCW numbers and titles)

RCW 43.17.010	Department of Labor and Industries' enabling statute
Chapter 43.22 RCW	Department of Labor and Industries' enabling statue
Chapter 7.68 RCW	Victims of Crimes – Compensation, Assistance
Chapter 18.27 RCW	Registration of Contractors
Chapter 18.106 RCW	Plumbers
Chapter 19.28 RCW	Electricians and Electrical Installations
Chapter 19.30 RCW	Farm Labor Contractors
Chapter 39.12 RCW	Prevailing Wages on Public Works
RCW 43.05.090	Department of Labor and Industries – Consultative visit, report – compliance inspection, citation
RCW 43.22.340	Mobile homes, commercial coaches, recreational vehicles, and park trailers
RCW 43.22.450	Factory built housing and commercial structures
Chapter 49.04 RCW	Apprenticeship
Chapter 49.12 RCW	Industrial Welfare
Chapter 49.17 RCW	Washington Industrial Safety and Health Act
Chapter 49.19 RCW	Safety – Health Care Settings
Chapter 49.22 RCW	Safety – Crime Prevention
Chapter 49.24 RCW	Health and Safety – Underground Workers
Chapter 49.26 RCW	Health and Safety – Asbestos
Chapter 49.28 RCW	Hours of Labor
Chapter 49.30 RCW	Agricultural Labor
Chapter 49.38 RCW	Theatrical Enterprises
Chapter 49.40 RCW	Seasonal Labor
RCW 49.44.090	Unfair practices in employment because of age of employee or applicant
Chapter 49.46 RCW	Minimum Wage Act
Chapter 49.48 RCW	Wages – Payment – Collection
Chapter 49.52 RCW	Wage – Deductions – Contributions – Rebates
Chapter 49.66 RCW	Health Care Activities (Labor Disputes)
Chapter 49.70 RCW	Worker and Community Right to Know Act
Chapter 49.78 RCW	Family Leave
Title 51 RCW	Industrial Insurance
Chapter 67.42 RCW	Amusement Rides
RCW 68.50.103	Autopsies in Industrial Deaths
Chapter 70.74 RCW	Washington State Explosives Act
Chapter 70.79 RCW	Boilers and Unfired Pressure Vessels
Chapter 70.87 RCW	Elevators, Lifting Devices, and Moving Walks
Chapter 70.162 RCW	Indoor Air Quality in Public Buildings
Chapter 88.04 RCW	Charter Boat Safety Act

Major partner, supplier and customer groups

Customer groups:

Employers

- Virtually all employers who must comply with workplace safety rules
- Large, medium-sized and small employers who receive workers' compensation coverage from L&I's State Fund.
- Large employers who are self-insured
- Washington Self Insurers Association.
- Business organizations such as Association of Washington Business, Washington Farm Bureau, National Federation of Independent Business, Independent Business Association, Washington Growers League, Associated General Contractors, Building Industry Association of Washington, Washington Manufactured Housing Association, etc.
- Retrospective Rating Associations

Labor and related worker advocate groups

- Injured workers
- Workers who file complaints regarding safety, wages or WIHSA or industrial insurance discrimination complaints
- Washington State Labor Council
- Washington State Trial Lawyers Association
- Columbia Legal Services
- Northwest Justice project
- Washington State Building and Construction Trades Council
- International Brotherhood of Electrical Workers
- Service Employees International Union
- UA
- United Farm Workers
- Local affiliates of labor unions

Suppliers:

- Health care providers
- Pharmacists
- Vocational rehabilitation providers

Governmental Partners:

- Employment Security Department
- Department of Revenue
- U.S. Social Security Administration
- County prosecutors' offices
- U.S. Department of Labor, including Occupational Safety and Health Administration (OSHA), Bureau of Labor Statistics and Wage and Hour Division
- Internal Revenue Service
- U.S. Department of Housing and Urban Development

External Environment

Emerging trends in caseload:

- The number of workplace injuries continues to decrease both nationally and in Washington State – reflecting better safety practices and reductions in hazardous jobs.
- Average workers' compensation claim costs are rising nationwide, reflecting an aging workforce, wage growth and increasing medical costs. Duration of time-loss claims has risen significantly in recent years. This disturbing trend appears to be flattening.
- The industry mix in Washington has been changing from a natural resource and industrial base to an increasing information technology and service sector share of employment. This means different workplace injury hazards and exposures.
- Increase in permits requiring electrical inspections.
- Costs of crime victims' claims have increased dramatically, driven in part by higher hospital costs for severe injuries and an increase in the number of claimants without health insurance.

Authorizing environment:

- Business and labor leaders are increasingly polarized over what changes should be made in L&I programs, especially workers' compensation and workplace safety.
- Although numerous issues for workers' compensation reform have been discussed over the past few years, we were able to find agreement on only two – hearing loss and fraud and abuse prevention.
- Both the business and labor community have filed initiatives to the legislature.
- Most agency programs work closely with an active advisory committee with members from organized labor and the business community. Many of these committees are statutorily mandated to provide guidance and direction to the department.

Risks:

- If the economy falters, L&I reserve funds earnings will be affected. These earnings now pay about 28% of claims costs. A drop in investment earnings could result in higher premium rates or a call for reduced benefits.
- The number and costs of injured worker pensions is rising. Failure to deal with these increases would mean higher premium rates.
- Litigation could change the operating environment in a number of L&I programs. Five cases are now before the State Supreme Court to expand the definition of wages for injured worker benefits. If successful, the expansion would increase premium costs both directly and as a result of more complex claims adjudication processes. In addition, the agency's authority to obtain a warrant to enter workplaces to conduct safety inspections is being challenged in federal court.
- Failure by business and labor to achieve a consensus on solutions for L&I issues could undercut efforts to control costs and improve the system.
- Failure to conduct enforcement in a targeted and appropriate manner could result in erosion of employer support for state workplace safety, construction compliance and workers' compensation laws.

- Employers transfer their risks of workplace accident and injury to L&I. These risks are large and extremely uncertain. L&I assumes both the insurance risk and investment risk on $9 billion in assets.

Challenges:

- Washington's work force is aging which means more complex medical treatment issues, longer time-loss claims and difficulty in returning injured workers to employment.
- L&I has difficulties helping low-wage workers recover wages owed them because the agency has no administrative authority to sanction employers who choose to violate employment standards laws, such as minimum wage and overtime requirements.
- L&I's work force also is aging with many veteran staff eligible for retirement in the next five years. Much expertise will be lost and qualified replacements will be difficult to find, given the state's non-competitive pay scales.
- Returning injured workers to work as early as possible is a challenge, particularly with small employers who have fewer resources and flexibility. While larger employers may be able to provide light duty jobs or alternative work for recovering workers, small employers sometimes have difficulty supplying such positions.
- Quality medical care is an important component of hastening recovery of injured workers. L&I's challenge is to encourage top-notch medical care at a reasonable cost while maintaining the right of workers to choose their doctors.
- Fraud and abuse of the system by workers, employers and medical providers is difficult to detect and prosecute. The department is becoming much more sophisticated in discouraging, detecting and preventing fraud. A new program is underway to address system fraud and abuse, but obtaining necessary evidence of wrongdoing is often difficult and county prosecutors are often reluctant to take on white-collar crime cases. What appears to be fraud and abuse may not qualify legally as such, leaving public perceptions that the department of not doing enough in this area.
- Funding for workplace injury prevention is far short of what would be needed for a comprehensive safety inspection program. Most employers will never be inspected under current levels. L&I's challenge is to better target its current resources to encourage high-risk employers toward better worker safety.
- No consensus exists among our stakeholder groups on an appropriate balance between the agency's role for regulation enforcement and our assistance in achieving voluntary compliance in virtually all of the agency's programs.
- A difference exists between business community stakeholder perceptions and independent survey results from individual employers regarding satisfaction with L&I services and programs. The survey results indicate high employer satisfaction with L&I services while stakeholder groups report their members are very unsatisfied. L&I must enhance its efforts to meet the needs of employers and employer associations across the state.

Strategic Plan Highlights
Agency Mission

Our mission is to promote a safe and healthful environment in which to work and live and do business. In partnership with our customers, we strive to prevent injury, occupational illness and disability and to limit economic hardship.

Major goals and strategies being used to carry out the agency mission

GOAL: Make Washington the safest place to work in America, measured by an injury and illness rate that improves at twice the rate of the national average.

STRATEGIES:

- Strategically focus compliance and outreach activity in a manner that maximizes agency impact on the reduction of worksite hazards and work-related injuries and illnesses.
- Broaden Prevention Services and improve coordination of services across the agency.
- Partner with business and labor groups to address injury rates in specific industries.
- Continue to provide consultation and education services, such as workshops and online training.
- Continue regulatory improvement work, rewriting WISHA rules in plain language.

GOAL: Administer one of the premier workers' compensation organizations in the world in quality of service, benefits and costs.

STRATEGIES:

- Improve the speed, fairness and quality of our decision-making.
- Return workers to their jobs as quickly as possible
- Ensure injured workers' access to quality medical care through expanded Centers for Occupational Health Education and appropriate payment and purchasing methods.
- Increase efforts to detect and eliminate fraud and abuse by workers, employers and providers.
- Involve employers earlier and more often in L&I processes.
- Continue to expand web-based business applications through the ORCA Project.

GOAL: Protect low-wage workers.

STRATEGIES:

- Increase the number of resolved wage claims for workers making less than $11 an hour.
- Target industries with low-wage occupations.
- Concentrate outreach efforts to the most vulnerable worker communities, such as non-English-speaking workers.
- Work with community-based organizations to explain worker-protection rules to individuals in low-wage occupations, so they know their rights and file complaints.
- Raise awareness of teen-worker safety issues via workshops, presentations and the news media.

GOAL: Level the playing field for businesses that compete against the underground economy.

STRATEGIES:

- Focus L&I's efforts on the construction industry to ensure compliance with regulations.
- Educate the contractor community about contractor registration, workers' compensation and workplace safety requirements, and penalties for failing to comply.
- Work with the construction industry, trades and other state agencies to identify unregistered contractors and those who may not be paying appropriate workers' compensation premiums.
- Communicate across L&I programs when inspectors identify potential violations of wage-and-hour, industrial insurance and job safety rules and lack of contractor registration.
- Educate consumers about contractor registration, bonding and insurance, and steps they can take to protect themselves from unscrupulous contractors.

GOAL: Promote public safety by inspecting electrical work, elevators, boilers and factory-built structures and by making sure safety codes and requirements are met.

STRATEGIES:

- Ensure timely, accurate and effective inspections of electrical work, elevators, boilers and factory-built structures.
- Use technology to make it easier for electrical contractors to purchase permits and schedule inspections.
- Coordinate with local inspectors and city jurisdictions to identify players in the underground economy and target compliance efforts to identify unlicensed electrical contractors, uncertified electricians and those who fail to obtain proper electrical permits and inspections in the underground economy.
- Make referrals to other L&I programs when electrical inspectors observe potential violations of general contractor, industrial insurance and job safety rules.
- Increase customer awareness of the need for inspections to ensure public safety.

GOAL: Play a leadership role in developing and maintaining high-quality apprenticeship programs in Washington State.

STRATEGIES:

- Partner with other agencies in the workforce education and training system to increase the role of apprenticeship in high-demand fields, such as nursing and other health professions.
- Work with the Washington State Apprenticeship and Training Council and apprenticeship community to streamline and improve apprenticeship rules and policies required by law.

GOAL: Provide better service to crime victims.

STRATEGIES:

- Address serious funding issues.

- Continuously improve the speed, quality and consistency of the crime victims' claim process.
- Increase awareness and access to information about the Crime Victims' Compensation program.

Strengths, Weaknesses, Opportunities, Threats Analysis

Strengths

- The workers' compensation system provides benefits that are among the top 25% of all states while holding premium costs below the national average.
- L&I has a good performance management system that sets clear objectives and establishes measurements that accurately gauges activities. Examples:
    - For workers' compensation, we have increased collections from employers who are not registered or not paying premiums by more than 40%.
    - Workplace safety inspectors and consultants set and reach a goal of identifying and persuading employers to eliminate 40,000 workplace hazards each year.
    - The agency has an ongoing campaign to help low-wage workers obtain the pay they are owed. This year, the agency's goal is to help workers collect $1.4 million in back wages.
- The agency has dependable funding sources for most of its programs, especially funding that derives from workers' compensation premiums.
- L&I has a top-notch information technology staff that considers how new technology tools can best support department staff and agency customers. For example:
    - Agency customers continue to request Internet services to enable them to do business with the department at their convenience. Significant initiatives are underway to expand those capabilities.
    - Agency staff frequently work from remote locations and initiatives are underway to expand remote access which will allow them to be more productive.
    - Reliability of agency business systems is critical and system availability consistently rates 99.95%.

<u>Weaknesses:</u>

- The workers' compensation system is inherently complex and adversarial in nature. Determinations must be made regarding the validity of a claim, the eligibility of a worker to receive benefits, the amount of benefits based on past work history and family status, and many other factors. Premium rates must be set based on claim experience and type of work. Both employers and workers can and do challenge L&I decisions. Because of the complexity, changes in the system are difficult to make and often have unintended results.
- Workers and employers have historically sought more communication regarding claims than the agency has been able to provide. For example, the volume of telephone calls far exceeds the capacity to answer them or provide prompt callbacks. Attempts to increase telephone capacity have been matched by increased number of customer calls.
- Some of the agency's primary information technology systems are decades old and were built using technologies that are not flexible. This limits the agency's ability to implement changes needed to support agency priorities.
- L&I has an aging workforce. Many retirements are expected in the next five years. The agency will lose a great deal of expertise and historical knowledge. We expect it

to be difficult to replace these positions with experienced staff because of non-competitive state pay scales.

- Several small, dedicated funds are insufficient to provide statutorily mandated program services or have frequent fluctuations that make management difficult.
- The number of workplace safety inspectors, auditors, investigators and industrial relations agents is far short of the amount needed for conducting safety inspections, audits and other activities. In order to address these concerns, we must improve our targeting system.
- The Crime Victims' Compensation Program's funding source is declining while program financial demands have become more volatile.

Opportunities

- We have many efforts under way to increase the speed and accuracy of workers' compensation claim processing. L&I is making decisions and communicating its decisions much more quickly. For example, we authorize or deny physical therapy requests within a matter of hours, rather than days and sometimes weeks. Our phone system has been changed to ensure that an injured worker or employer can call us and talk to a real person rather than voice mail. We are improving the effectiveness of vocational rehabilitation by paying for results, that is, actual return-to-work outcomes. We are approving surgery requests faster for those suffering from carpal tunnel syndrome, thus greatly hastening the treatment and healing process. We are making it easier for employers to communicate with claim managers by assigning all claims for a particular employer to a single claim manager.
- L&I currently has safety consultants who help employers avoid unsafe workplaces. The agency also has inspectors who investigate workplace accidents and complaints. We are looking at increasing efforts. The basic idea is: employers are entitled to a package of prevention services. Depending on the specific needs of the employer and particular workplace, the package includes a review of workplace injuries, illnesses and workers' compensation claims with an assessment of losses and information on how to control claim costs. It would include on-site reviews of workplace hazards, with recommendations for and assistance in preventing injuries.
- We have a number of activities under way to combat fraud and abuse of the workers' compensation system. That means early detection and denial of fraudulent claims; making sure all employers pay the premiums they owe and pursuing health care providers who overcharge. Persons willfully abusing the system will be referred to a prosecutor and charged with fraud. For cases not rising to the level of fraud, we are using our strongest appropriate administrative remedies, such as asset seizures, assessments, penalties, and suspension of registrations or licenses.
- We also have a new effort under way to return workers to the job as soon as possible. Here's how it works: when an injured worker has been off work for 14 days, his or her claim is automatically referred to an Early Return-to-Work team in one of L&I's field offices. The team makes contact as soon as possible with the injured worker as well as his or her employer and health care provider. The idea is to promote early return-to-work options, such as having the worker do a light duty job until fully recovered or arranging for some kind of job modification such as providing a lifting device. An early return to work reduces the wages lost due to the injury while lowering the employer's costs of the claim.

- We see opportunities to increase our communication with customers, especially through Internet connections. Employers have told us that they often don't know when a claim has been filed by one of their employees. We now immediately notify an employer when a time-loss claim has been filed. We are improving our systems so that each employer will have a key account manager. This account manager will maintain an ongoing business relationship with employers. Among other things, the account manager will look for trigger events such as a fatality or recent increases in the number of claims. The agency's ORCA project allows employers and injured workers to review the status of claims online and to submit information electronically.

Threats

- Economic conditions can be a major factor in L&I decision-making. An economic downturn, for instance, can reduce the amount of reserve investment earnings. The length of time-loss claims tends to grow longer during tough economic times as injured workers see no work prospects. This, in turn, means that premium rates must be raised to make up for the investment earnings and increases in time-loss.
- Problems of fraud and abuse and the "underground economy" need to be successfully addressed. Customers who voluntarily comply with requirements to pay workers' compensation premiums, obtain electrical permits and licenses, register as a contractor, etc., must believe the agency's efforts to root out scofflaws is credible and effective.
- A major threat to the workers' compensation system is the lack of consensus between business and labor and within the business community regarding needed reforms. This includes the use of dedicated workers' compensation funds for programs that are not direct benefits, such as workplace safety, research, apprenticeship and employment standards. This standoff lessens any chance for system improvement and tends to make any decision "symbolic."
- State courts can make considerable changes in L&I operations, especially in decisions that expand workers' compensation benefits. These decisions add to the complexity of claim management, which increases costs, and also fuel calls for radical changes by employers.
- Funding shortfalls in some areas at L&I can create operational problems. Currently, the agency predicts that the Crime Victims' Compensation Program will run out of funds in early 2005 because of unexpectedly higher medical costs.

Emergent or Hot Issues

30 Day Issues

- **Crime Victims' fund may run out of money.** The Crime Victims' Compensation Program is very likely to run out of money and may have to stop payment for services provided to all victims of crime by the end of March 2004, unless a supplemental budget appropriation is approved. By the end of January 2005, L&I will identify all active registered providers in our system currently treating victims. These providers and victim claimants will be notified of the situation and the potential eventual shut down of the program. This will probably generate a lot of correspondence to the Governor's Office and receive considerable media attention.

- **Workers' compensation rate increase.** Workers' compensation premiums are proposed to increase an average of only 3.7 percent beginning January 1, 2005. Seven public hearings on the proposed increase are scheduled for November and the director of L&I will make a final decision on rates in late November. The increase is the lowest in three years because of higher investment earnings and positive program trends. If adopted, the higher premium rate would cover anticipated increases in the cost of workers' compensation benefits for workers injured on the job next year. The proposal would bring in an additional $52 million next year. We expect the rate hearings to raise concerns about benefit levels, L&I management of claims and the appropriate size of the contingency reserve.

- **Ergonomics enforcement lawsuit.** SuperValu, Inc., a national grocery distributor, has filed a lawsuit challenging L&I's authority to use its general safety rules to address hazards that cause musculoskeletal problems. L&I has been conducting an inspection at the Tacoma food distribution center following a worker complaint about ergonomics hazards. General state workplace safety rules require employers to address recognized hazards not covered by other specific rules. These general rules existed long before the ergonomic rule was adopted and repealed and always applied to all recognized hazards not covered by specific standards, including those associated with work-related musculoskeletal disorders. These general rules were not repealed or otherwise affected by Initiative 841, and they remain fully in effect. SuperValu is seeking to test L&I's authority to apply general safety rules to musculoskeletal hazards.

- **Two workers' compensation reform initiatives and other legislation.** Reforming the workers' compensation system has been a major legislative topic in recent years. Business has been concerned about premium costs, operational efficiencies and expansions in benefits. They have favored legislation to limit benefits and operational parameters. Labor has generally opposed limiting benefits. The Building Industry Association of Washington has launched an initiative to the Legislature this fall, which would change workers' benefits. The State Labor Council also has launched an initiative to the Legislature that would expand workers' benefits and eliminate workers' contribution, which amount to about 25% of premiums paid. If the required signatures are obtained, the initiatives would be presented to the 2005 legislature for adoption or referral to the 2005 general election ballot. Other legislation regarding workers' compensation reform also is expected during the 2005 session.

- **Agriculture Safety and Health Rules**. The agency continues its effort to provide one workplace safety and health regulation book for the agriculture industry, incorporating the requirements of all the plain language workplace safety standards applicable to agriculture into the specific agriculture code, Chapter 296-307 WAC. Public hearings are completed and the comment period is still in process. The agency expects to adopt appropriate changes to WISHA rules following careful review of all public comment; adoption is expected by the end of December 2004 with the rules becoming effective in April 2005. Because the Washington Farm Bureau has informed the agency that it believes many of the rules are new for agriculture and that they have not previously applied, it is believed that in the first 30 days of a new administration that the Governor would be contacted and requested to intervene.

- **Retrospective ratings issues.** Questions have been raised by both business and labor about the department's criteria for admitting businesses into retrospective rating groups. The statute requires that businesses by substantially similar. In order to encourage retro members, the agency has historically permitted government entities to join a particular construction retro group. The retro organization representing cities had withdrawn from the program and, since the cities' operations involve various aspects of construction, they were permitted to join. The Farm Bureau has also raised questions as to businesses with differing degrees of relationships to traditional agriculture. The department is considering rule development for the retro program. The Washington State Labor Council (WSLC) has requested a listing of employers that participate in the Building Industry Association of Washington's (BIAW) retrospective rating plan. BIAW has filed an injunction preventing the release of the information with Thurston County Superior Court. The court approved the release but stayed the order pending a potential appeal.

- **Self-Insurance penalty.** Corrective action and accompanying penalties amounting to $150,000 to $250,000 may be issued against a Seattle self-insured firm. This action is the result of a four year self insurance compliance audit and accompanying investigation resulting in charges of significant noncompliance as well as significant patterns of abuse by the firm consistent with the audit findings. This would be the largest fine ever issued under the Self Insurance Program.

- **Electrical/Boiler report**: A report is being prepared for the legislature that evaluates whether electrical licensing, certification, inspection, and permitting requirements should apply to maintenance work on boilers. This report will be submitted to the legislature by December 1, 2004. This issue is important because it involves concerns of both the Board of Boiler Rules and the Electrical Board, and questions and possible legislation may arise once the report is submitted to the legislature.

- **New Elevator Licensing Program**: Licensing for elevator mechanics and elevator contractors commenced on July 30, 2004, and the program has begun implementing the new requirements, developing licensing exams, and helping stakeholders understand the new rules for the profession. This issue is hot because the program will likely encounter issues and challenges that typically accompany the start of a new licensing program and the expiration of a "grandfather" provision.

- **Testing farm workers for pesticides.** L&I oversees a program of testing blood of farm workers who handle pesticides regarding cholinesterase levels. Exposure to organophosphates and N-methyl carbamate pesticides may lower the body's level of available ChE, causing symptoms such as blurred vision, diarrhea, tremors, seizures, loss of consciousness and even death. Farm worker advocacy groups and the Mexican consulate in Seattle have expressed concern about the high level of exposure indicated in the tests. Farm groups are questioning the test results and who will pay for future testing. Both are likely to raise issues at the 2005 Legislature.

60-day issues

- **Independent review of workers' compensation rate calculation work:** L&I is assisting the Workers' Compensation Advisory Committee (WCAC) to hire a contractor for an independent review of L&I's actuarial work. This will allow this committee to have an expert look at the assumptions and conclusions used each year to set premium rates.

- **Hearing aid payment review:** A coalition of health care professionals has sued L&I over a new payment plan for hearing aids and hearing loss services. Effective September 1, 2004, L&I began paying separately for hearing aids versus professional services. Workers benefit from the change because the agency raised the amount it will pay for hearing aids, allowing patients to select more expensive, state-of-the-art hearing aids. Providers who sued want higher fees to dispense and service hearing aids. L&I reviewed the payment levels of 22 other workers' compensation insurers before setting the fees. The agency has promised providers that it will evaluate the new policy in March 2005 to determine if it has unfairly impacted them or claimants.

- **Apprenticeship Utilization on Public Works Projects**. This rulemaking seeks to adopt rules to clarify the use of limited training agents on public works projects. Rules are slated for adoption in February 2005 and will be effective in March 2005. This issue is hot because the public hearing and rule adoption process are likely to be contentious events involving both business and labor stakeholders.

- **Limiting use of workers' compensation funds.** Employer interests will ask the 2005 Legislature to limit use of workers' compensation premium dollars to benefits and direct administrative costs. Most premium and investment dollars (89%) are spent to pay injured workers' medical costs and partial replacement for lost wages. Funds also are used on enforcement of workplace safety standards and workplace consultation services and workplace safety research. Previous legislatures also have approved using workers' compensation funds for L&I's apprenticeship and employment standards enforcement and a small appropriation to the Department of Health for migrant worker housing. L&I's stance has been that promoting workplace safety is an important part of the workers' compensation effort, i.e., fewer injuries mean fewer workers' compensation claims. The State General Fund would have to absorb more than $4 million in costs for the Apprenticeship and Employment Standards current-level activities. Additional funding also would be needed for the UW and Department of Health activities.

90-day issues

- **Obtaining expert medical advice:** The Washington State Medical Association's (WSMA) Industrial Insurance Committee has provided L&I with policy level advice on all aspects of health care benefits purchased for the state's workers' compensation program. Early in 2004, the WSMA Executive Committee decided to discontinue this activity. This action was taken in response to a controversial issue brought to that committee. The department must now develop a new policy level advisory clinical quality improvement committee, with representation from key types of providers who care for injured workers. The department has prepared legislation.

- **New duties for nurse practitioners and physician assistants:** The 2004 legislate gave new authorities to Advanced Registered Nurse Practitioners (ARNPs) and Physician Assistants (PAs) for the treatment of injured workers. Rules are currently being drafted to implement the new authorities. Both ARNPS and Pas may lobby the legislature to expand this new authority.

- **Spinal Cord Stimulator Pilot Project**. The University of Washington is conducting a pilot test of spinal cord stimulation for injured workers with low back and leg pain following failed back surgery. Because this technology is otherwise not covered by L&I, only workers who meet specific entry criteria, and who agree to be surveyed before and after stimulator implant will be eligible. Legislators and the device manufacturer, Medtronic, are closely watching this pilot.

- **Court decision on crime victims' counseling benefits:** The State Supreme Court may issue a ruling on a case concerning eligibility of counseling benefits under the Crime Victims' Compensation Act for immediate family members of a homicide victim. The issue is whether the sister of a homicide victim is eligible for counseling benefits for psychological conditions that arose four years after her brother was killed.

- **Appliance repair specialty licensing report**. The last two years, the appliance repair industry requested an exemption from specialty licensing (administered through the electrical program) and did not receive it. Though the governor vetoed a bill granting the exemption, he upheld the section of the bill requesting a report to the legislature on the impact of licensing regulations on the profession. The report is due December 31, 2004. This issue is hot because issues and questions, and possibly legislation, related to the report may arise before the end of the legislative session.

- **Farm Bureau pursues federal lawsuit on safety inspections**. The Washington State Farm Bureau is pursuing a lawsuit that challenges L&I's statutory authority to conduct workplace inspections without a warrant. The issue is now before the 9th Circuit Court of Appeals.

Legislative proposals

L&I has proposed several pieces of legislation which currently are being reviewed by the Office of Financial Management and the Governor's Office. None has been approved.