



Analysis of Original Bill

Author: Galgiani, et al.

Sponsor:

Bill Number: SB 1272

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Introduced: February 16, 2018

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Related Bills: See Legislative
History

Subject: Tax Recovery and Criminal Enforcement (TRaCE) Task Force /Executive Board
Includes Criminal Investigation Bureau Representative

Summary

This bill would establish the TRaCE Task Force within the Department of Justice.

Recommendation – No position.

Reason for the Bill

The reason for the bill is to combat underground economic activities through a multi-agency collaboration.

Effective/Operative Date

This bill would become effective and operative January 1, 2019.

State Law

On October 26, 1993, Governor Wilson signed Executive Order W-66-93, which created the Joint Enforcement Strike Force (Strike Force) on the underground economy. On January 1, 1995, Section 329 was added to the California Unemployment Insurance Code. This section placed the provisions of the Executive Order into statutory law. The Strike Force includes the Employment Development Department (EDD), the Department of Consumer Affairs (Consumer Affairs), the Department of Industrial Relations (Industrial Relations), the Office of Criminal Justice Planning, the Franchise Tax Board (FTB), the California Department of Tax and Fee Administration (CDTFA), the Department of Insurance (Insurance), and the Department of Justice (DOJ). The Strike Force is responsible for enhancing the development and sharing of information necessary to combat the underground economy, improving the coordination of enforcement activities, and developing methods to pool, focus, and target enforcement resources.

In January 2005, Governor Schwarzenegger's Budget for the State's Fiscal Year 2005-2006 established the Economic and Employment Enforcement Coalition (Coalition), a targeted joint effort by state and federal agencies to combat the underground economy. This team consists of investigators and auditors from Industrial Relations, Division of Labor Standards Enforcement (Labor Standards), Division of Occupational Safety and Health (Occupational Safety), EDD, Consumer Affairs, and the Contractors' State License Board (Contractors License Board).

Current law, until January 1, 2019, created the Revenue Recovery and Collaborative Enforcement Team Act (RRACE). The RRACE is governed by an advisory committee composed of one representative from the DOJ, the EDD, the FTB, and the CDTFA, appointed by the head of each agency. The RRACE allows duly authorized team members to exchange intelligence, data, documents, information, complaints, or lead referrals for the purpose of investigating criminal tax evasion associated with underground economic activities. Information authorized to be exchanged under the RRACE retains its confidential status.

This Bill

This bill would establish the TRaCE Task Force within the DOJ to combat underground economic activities through a multi-agency collaboration to do, to the extent practicable, the following:

- Pool resources and leverage enforcement efforts.
- Collaborate and share data with state and federal partners.
- Efficiently prosecute violations covering jurisdictions of multiple agencies to address the severity of the crimes and impose appropriate penalties on convicted violators.
- Recover state revenue lost to the underground economy.

The DOJ would be responsible for the management and supervision of the TRaCE Task Force and retain supervisory control of the personnel assigned to the TRaCE Task Force.

The TRaCE Task Force would include an executive board to ensure efficient and effective multi-agency collaboration consisting of the following members:

- A representative from the Division of Law Enforcement at the DOJ.
- A representative from the Criminal Law Division at the DOJ.
- A representative from the Investigations and Special Operations Bureau at the CDTFA.
- A representative from the Criminal Investigation Bureau at the FTB.
- A representative from the Investigation Division at the EDD.

The TRaCE Task Force may, as the executive board deems appropriate, invite other state and federal agencies to join the executive board in a membership or advisory capacity.

The TRaCE Task Force would include TRaCE Teams located in Sacramento, Los Angeles, San Diego, the San Francisco Bay area, and Fresno.

Each TRaCE team would have a committee established by the TRaCE Task Force to ensure efficient and effective multi-agency collaboration in each region.

The TRaCE Task Force Executive Board and each TRaCE team committee would be required to meet as needed, but at least quarterly, to conduct its business.

TRaCE Task Force Executive Board members would be required to exchange intelligence, data, documents, information, complaints, or lead referral for the purpose of investigating criminal tax evasion associated with underground economic activities. Any member or ex-member of the team, any agent employed by any agency in the Executive Board or advisor, or any person who has at any time obtained such knowledge from any of the forgoing agencies or persons would be prohibited from divulging, or making known in any manner not provided by law, any of the confidential information received by, or reported to, the team.

Information exchanged pursuant to this bill would retain its confidential status and otherwise remain subject to the confidentiality provisions contained in law.

The TRaCE Task Force would be required to submit a report in compliance with Section 9795 of the Government Code to the Legislature on January 1, 2024, that includes, but is not limited to, the following information:

- The number of leads or complaints received by the TRaCE Task Force during the reporting period.
- The number of cases investigated or prosecuted through civil action or criminal prosecution as a result of the work of the TRaCE Task Force.
- Policy considerations, if any, to help advance the purpose of the TRaCE Task Force.

This bill's reporting provision would be repealed by its own terms on January 1, 2028.

Implementation ConsiderationsThe department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill requires the DOJ to assume management and supervision of the TRaCE Task Force and retain supervisory control of the personnel assigned to the TRaCE Task Force.

Supervisory control is not a duty that should be delegated, the bill should be amended to delete this provision.

The bill limits information sharing authority to the TRaCE Task Force's Executive Board Members. If the author intends for the same authority to apply to the TRaCE Teams, this bill should be amended.

The bill states the specified information shared will retain its confidential status and will otherwise remain subject to the confidentiality provisions contained in law, yet fails to list the relevant confidentiality provisions. For clarity and consistency with the author's intent, this bill should be amended to specifically identify the relevant confidentiality provisions.

Legislative History

AB 576 (Perez, Ch. 614, Statutes of 2013) established a pilot program, named the Centralized Intelligence Partnership that will be repealed by its own terms on January 1, 2019.

SB 1185 (Price, 2011/2012) would have established a pilot program similar to AB 576. SB 1185 failed to pass out of the Assembly Appropriations committee.

Other States' Information

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

A review of *Florida, Illinois and Minnesota* laws found no comparable joint enforcement efforts.

Massachusetts, Michigan, and New York has each formed a joint enforcement task force concentrating on the underground economy and employee misclassification.

Fiscal Impact

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

Economic Impact

Revenue Estimate

This bill would establish the TRaCE Task Force. To date, FTB's participation in the Revenue Recovery and Collaborative Enforcement Team joint task force pilot program has resulted in ordered restitution of \$2.9 million. Because it is difficult to predict the frequency and the value of future task force criminal investigation actions, the revenue impact is unknown.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual pursuant to Control Section 35.50(e) of the 2012-13 Budget Act.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may argue that this bill will help coordinate governmental efforts in the fight against the underground economy.

Opponents: Some may argue that the creation of another task force is not the best way to combat the underground economy.

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