



Summary Analysis of Amended Bill

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Sponsor:

Bill Number: SB 1272

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Amended: July 3, 2018

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Related Bills: See Prior Analysis

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

Summary

This bill would, under the Government Code (GC), establish the TRaCE Task Force within the Department of Justice (DOJ).

Recommendation – No position.

Summary of Amendments

The July 3, 2018, amendments stipulated when confidential tax or fee information can be disclosed to a person employed by an agency invited to join the TRaCE executive board, clarified that the TRaCE executive board is responsible to ensure the protection of confidential tax and fee information, changed a report due date, and added information required to be included in the report. These amendments resolved all the technical concerns identified in the department's analysis of the bill as amended May 25, 2018, and June 13, 2018, and raised a new implementation consideration and several new technical concerns.

Except for the "This Bill," "Implementation Considerations," "Technical Concerns," and "Support/Opposition" sections, the remainder of the department's analysis of the bill as amended May 25, 2018, and June 13, 2018, still applies. The "Fiscal Impact" and "Economic Impact" sections are restated for convenience and the "Support and Opposition" section has been updated to reflect newly available information.

This Bill

This bill would establish the TRaCE Task Force within the DOJ to combat underground economic activities through a multiagency 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 TRaCE Task Force would include an executive board to ensure efficient and effective multiagency 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 California Department of Tax and Fee Administration (CDTFA).
- A representative from the Criminal Investigation Bureau at the Franchise Tax Board (FTB).
- A representative from the Investigation Division at the Employment Development Department (EDD).

The TRaCE Task Force would be able, as the executive board deems appropriate, to invite other state and federal agencies to join the executive board in a membership or advisory capacity. The addition of an agency to the TRaCE Task Force executive board would be by written agreement between the TRaCE Task Force executive board and the agency joining the TRaCE Task Force executive board. The written agreement would govern the participation of the agency joining the TRaCE Task Force executive board.

In addition to the executive board, the TRaCE Task Force would include TRaCE Task Force investigative teams located in Sacramento, Los Angeles, San Diego, the San Francisco Bay area, and Fresno.

Each TRaCE Task Force investigative team would have a committee established by the TRaCE Task Force executive board to ensure efficient and effective multiagency collaboration in each region. The addition of an agency to the TRaCE Task Force investigative team would be by written agreement between the TRaCE Task Force executive board and the agency joining the TRaCE Task Force investigative team, and such agreement would govern the participation of the joining agency.

The TRaCE Task Force executive board and each TRaCE Task Force investigative team's committee would be required to meet as needed, but at least quarterly, to conduct its business.

For cases that involve tax or fee administration associated with underground economic activities, duly authorized members of the TRaCE Task Force would be required to exchange intelligence, data, including confidential tax or fee information, documents, information, complaints, or lead referrals for the following purposes:

- To assess leads or referrals in order to determine if an investigation is warranted.
- To conduct investigations.
- To prosecute violations.
- To conduct data analytics.
- To enforce judgments.

The TRaCE Task Force investigative team members would be precluded from disclosing confidential tax or fee information to a person employed by an agency invited to join the executive board, unless all of the following criteria are met:

- The person who receives the confidential tax or fee information is a peace officer.
- The confidential tax or fee information utilized for the same criteria as disclosure between TRaCE Task Force investigative team members.
- The person receiving confidential tax or fee information has a legitimate need to know.
- There is a nondisclosure agreement that prohibits the person receiving the confidential tax or fee information from disclosing the information to an unauthorized person.

Confidential information authorized to be exchanged pursuant to this bill would retain its confidential status and otherwise remain subject to the confidentiality provisions contained in, but not limited to, all of the following provisions:

- Section 1183 of the GC as that section pertains to the DOJ.
- Sections 1094 and 1095 of the Unemployment Insurance Code as those sections pertain to the EDD.
- Sections 19542, 19542.1, and 19542.3 of the Revenue and Taxation Code (R&TC) as those sections pertain to the FTB.
- Section 15619 of the GC, Section 42464.8 of the Public Resources Code, and Sections 7056, 7056.5, 8255, 9255, 9255.1, 30455, 32455, 32457, 38705, 38706, 43651, 45981, 45982, 45983, 45984, 46751, 50159, 50160, 50161, 55381, 60608, and 60609 of the R&TC, as those sections pertain to the CDTFA.
- Any other information confidentiality provisions in state law.
- Any information confidentiality provision that is applicable to any agency that is added to the TRaCE Task Force.

Members of the TRaCE Task Force would be prohibited from exchanging federal tax data without authorization from the Internal Revenue Service.

The TRaCE Task Force executive board would oversee the TRaCE Task Force to ensure the protection of confidential tax and fee information.

The TRaCE Task Force would be required to develop, to the extent the Legislature appropriates funds, a data analytics system that enhances the efficiency and effectiveness of the multiagency collaboration required by this bill.

On or before March 31, 2020, and annually thereafter, the DOJ, in consultation with the executive board of the TRaCE Task Force, would be required to submit a report in compliance with Section 9795 of the GC to the Legislature that includes, but would not be limited to:

- 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.

- The amount and final dispositions of moneys collected through TRaCE Task Force enforcement efforts.
- The status of the multiagency collaboration required by this bill.
- A list of agencies that received confidential tax or fee information, as specified.
- The number of instances, if any, of unauthorized or suspected unauthorized access, use, or disclosure of confidential tax or fee information. The report must include the number of instances, if any, of unauthorized or suspected unauthorized access, use, or disclosure of confidential tax or fee information dating back to the inception of the TRaCE Task Force.
- The status of any efforts to plan for, develop, and implement a data analytics system that enhances the efficiency and effectiveness of the multiagency collaboration required by this bill.
- 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, 2024.

Implementation Considerations

The bill states the TRaCE Task Force executive board will ensure the protection of confidential tax and fee information. The FTB has independent obligations to ensure its confidential information is not disclosed that should not be delegated. The bill should be amended to require each agency and agency employee be obligated to report to the FTB of any unauthorized disclosure of FTB information.

Technical Concerns

The following changes are suggested for clarity and grammatical accuracy.

On page 6, line 8 “a person” should be “persons”

On page 6, line 9, after “executive board” add “or an investigative team”

On page 6, line 23, “exchange” should be “exchanged”

On page 6, line 23, to add after “for” “one or more of” to clarify one or more items must be met.

On page 7, line 7 “Sections” should be “sections”

On page 7, line 17, “provision” should be “provisions”

On page 7, lines 17 and 18, strike out “pursuant to subdivision (c) of Section 15926.” and insert: “executive board or an investigative team pursuant to subdivision (c) of Section 15926 or subdivision (a) of Section 15927”

Fiscal Impact

Staff estimates a cost of approximately \$440,000 in fiscal year 2018-2019, and on-going annual costs of \$360,000 for additional staffing, equipment, and training. The department will pursue a budget change proposal.

Economic Impact

Revenue Estimate

This bill would establish the TRaCE Task Force. To date, the 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.

Support/Opposition¹

Support: California Attorney General (Sponsor), California District Attorneys Office California, Landscape Contractors Association, California Pool & Spa Association, Sacramento-Sierra's Building & Construction Trades Council.

Opposition: None provided.

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¹ According to the Assembly Revenue and Taxation Committee bill analysis, dated June 22, 2018.