



BILL ANALYSIS

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Bill Number: SB 1272

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).

Reason for the Bill

The reason for the bill is to combat underground economic activities through a multiagency 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 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 Joint Enforcement Strike Force includes the Employment Development Department (EDD), the Department of Consumer Affairs, the Department of 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, and the DOJ. The Joint Enforcement 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, a targeted joint effort by state and federal agencies to combat the underground economy. This team consists of investigators and auditors from the Department of Industrial Relations, the Division of Labor Standards Enforcement, the Division of Occupational Safety and Health, the EDD, the Department of Consumer Affairs, and the Contractors' State 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 each 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 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 voting 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 the following state agencies to join the executive board in an advisory capacity:

- The California Health and Human Services Agency.
- The Department of Consumer Affairs.
- The Department of Industrial Relations.
- The Department of Insurance.
- The Department of Motor Vehicles.
- The Department of the California Highway Patrol.
- The Department of Alcoholic Beverage Control.
- The Bureau of Cannabis Control.
- The Contractors' State License Board.

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 an advisory capacity, subject to the limitations on the sharing of confidential tax or fee information as discussed below. The addition of an advisory agency to the TRaCE Task Force executive board would be by written agreement between the voting members of 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. The written agreement would be required to include provisions ensuring that confidential information is shared only when necessary to assess leads, conduct an investigation, or prosecute a case.

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 under the direct oversight of the DOJ.

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 employed by an agency that are voting members of the executive board or employed by an agency specifically named that joined the TRaCE Task Force in an advisory capacity 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 members employed by an agency that are voting members of the executive board¹ or employed by an agency specifically named in this bill that joined the TRaCE Task Force in an advisory capacity² would be precluded from disclosing confidential tax or fee information to a person employed by an agency other than those specifically named that are invited to join the executive board, except for cases that involve a known or suspected felony level tax or fee evasion crime.

For cases that involve a known or suspected felony level tax or fee evasion crime, voting members and advisory members would be allowed to share confidential tax or fee information with other members of an investigatory team of the TRaCE Task Force if all of the following criteria are met:

- The confidential tax or fee information is obtained by a voting member or advisory member of the TRaCE Task Force pursuant to existing law, agreements authorized by existing law, or order by the Governor.
- 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 to assess leads, conduct an investigation, or prosecute a case.
- There is a nondisclosure agreement that prohibits the person receiving the confidential tax or fee information from disclosing the information to any person that is not part of the TRaCE Task Force or any other 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 11183 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 provisions that are applicable to any agency that is added to the TRaCE Task Force.

¹ GC section 15926(b).

² GC section 15926(c).

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.

Legislative History

AB 576 (Perez, Chapter 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 have each formed a joint enforcement task force concentrating on the underground economy and employee misclassification.

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 for two 3-year limited-term positions that would be part of the investigative teams located in up to two locations, 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 RRACE 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 dollar 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.

Appointments

None.

Support/Opposition³

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.

³ According to the Assembly Revenue and Taxation Committee bill analysis, dated June 22, 2018.

Votes

Location	Date	Yes Votes	No Votes
Concurrence	August 31, 2018	39	0
Assembly Floor	August 30, 2018	79	0
Senate Floor	May 3, 2018	37	0

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