



Bill Analysis

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Bill Number: AB 1296

Subject: Joint Enforcement Strike Force on the Underground Economy: Labor Enforcement Task Force

Summary

This bill would, under the Government Code (GC), expand the required membership and duties of the Joint Enforcement Strike Force (JESF) as provided for in the Unemployment Insurance Code (UIC), and require information sharing among the JESF members and the continuation of two investigative teams maintained by the Department of Justice (DOJ).

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

Reason for the Bill

The reason for the bill is to expand or continue existing multiagency investigative teams that investigate and prosecute crimes in the underground economy.

Effective/Operative Date

This bill would be effective and operative January 1, 2020.

Program Background

In 1994, state law established in the UIC, the JESF, with the Employment Development Department (EDD) Director serving as the team's Chairperson, to include, but not be limited to, representatives of the following agencies:

- EDD
- Department of Consumer Affairs (DCA)
- Department of Industrial Relations (DIR)
- Department of Insurance (CDI)

In January 2005, Governor Schwarzenegger's budget established the Economic and Employment Enforcement Coalition (EEEC), a targeted joint effort by state and federal agencies to combat the underground economy to ensure safe working conditions and proper payment of wages. This coalition consists of investigators and auditors from DIR, EDD, DCA, the Contractors' State License Board, the Bureau of Automotive Repair, the former Board of Equalization (BOE) (now California Department of Tax and Fee Administration (CDTFA)),¹ the CDI, the DOJ, and the Department of Alcohol and Beverage Control (ABC). The Internal Revenue Service (IRS) provides audit leads to EDD. The EEEC was renamed the Labor Enforcement Task Force (LETF) in 2012.

In 2013, state law established in the GC, the Revenue Recovery and Collaborative Enforcement (RRaCE) team, as a pilot program, to complement the state's underground economy enforcement efforts. The team included the Franchise Tax Board (FTB), the DOJ, the former BOE (now CDTFA), and the EDD, and allowed participation by other state agencies, including the California Health and Human Services Agency, the DCA, the DIR, and the Department of Motor Vehicles (DMV). The team members were authorized to exchange intelligence, data, documents, information, complaints, or lead referrals for the purpose of investigating criminal tax evasion associated with underground economic activities. The legislation did not require any one agency to head the team or be responsible for the team's work. Upon signing the bill in 2013, Governor Brown directed the DIR to lead the RRaCE team. The team was required to report specific information to the Legislature on or before December 1, 2017. The RRaCE expired on January 1, 2019.

Facilitated by AB 576, the 2013 legislation that allowed cooperation between agencies, the former BOE (now CDTFA) and the DOJ administratively created the Tax Recovery and Criminal Enforcement (TRaCE) Task Force, as a pilot program, housed within DOJ in 2014. The TRaCE task force is directed by an advisory council known as the TRaCE Task Force Executive Board, located in Sacramento. This board is comprised of public officials from the DOJ, the CDTFA, the DMV, the FTB, the ABC, the EDD, the Federal Bureau of Investigation, Homeland Security Investigations, and the IRS, and holds public meetings in Sacramento and Los Angeles regions. TRaCE has offices in Sacramento and City of Commerce and facilitates on-line reporting by the public of criminal tax evasion, labor fraud, piracy, counterfeiting, human trafficking and other economic crimes, through the CDTFA website.

The creation of TRaCE resulted in four separate multiagency teams working to combat the underground economy. Currently, three teams remain.

¹ The CDTFA was established in 2017 when many of the tax and fee administration duties, powers, and responsibilities of the State BOE were transferred to the department as a result of the Taxpayer Transparency and Fairness Act of 2017.

State Law

State law specifies, in the UIC, the duties of the JESF as follows:

- Facilitate and encourage the development and sharing of information by the participating agencies necessary to combat the underground economy.
- Improve the coordination of activities among the participating agencies.
- Develop methods to pool, focus, and target the enforcement resources of the participating agencies.
- Reduce enforcement costs by eliminating duplicative audits and investigations.

The JESF is empowered to:

- Form joint enforcement teams when appropriate to utilize collective investigative and enforcement capabilities of the JESF members.
- Establish committees and rules of procedures.
- Solicit the cooperation and participation of district attorneys and other state and local agencies.
- Establish procedures for soliciting referrals from the public, including, but not limited to, an advertised telephone hotline.
- Develop procedures for improved information sharing among the participating agencies such as shared automated information database systems, the use of a common business identification number, and a centralized debt collection system.
- Develop procedures to permit the participating agencies to use more efficient civil sanctions in lieu of criminal sanctions whenever possible.
- Evaluate, based on its activities, the need for any statutory change to do any of the following:
 - Eliminate barriers to interagency information sharing.
 - Improve the ability of the participating agencies to audit, investigate, and prosecute tax and cash-pay violations.
 - Deter violations and improve voluntary compliance.
 - Eliminate duplication and improve cooperation among the participating agencies.
 - Establish shareable information databases.
 - Establish a common business identification number for use by participating agencies.
 - Establish centralized, automated debt collection services for the participating agencies.
 - Strengthen civil penalty procedures to allow JESF to emphasize civil rather than criminal penalties wherever possible.

Annually, by June 30, the JESF is required to report on its yearly activities, as specified by law, to the Governor and the Legislature.

This Bill

Joint Enforcement Strike Force

This bill would, under the UIC, require the JESF membership to include representatives of the following additional agencies:

- DOJ
- CDTFA
- FTB

The JESF would be allowed invite the following state agencies to serve in an advisory capacity:

- California Health and Human Services Agency
- DMV
- California Highway Patrol
- ABC

The JESF's duty to facilitate and encourage the development and sharing of information by the participating agencies necessary to combat the underground economy would be expanded to include activities to enforce labor, tax, insurance, and licensing laws.

The JESF's authorized tasks as specified would be revised to include the following:

- Develop procedures for improved information sharing among the participating agencies and the LETF, such as shared automated information database systems, the use of a common business identification number, and a centralized debt collection system, to the extent permitted by state and federal laws and regulations.
- Develop procedures to permit the participating agencies to use civil sanctions.
- Provide participating agencies with investigative leads where collaboration opportunities exist for felony-level criminal investigations, including, but not limited to, referring leads to agencies with appropriate enforcement jurisdiction, and pursuing criminal prosecution when unscrupulous businesses violate the state's labor, employment, licensing, insurance and tax laws, with respect to the underground economy.

In addition, the bill would remove the requirement to evaluate the need for any statutory change to strengthen civil penalty procedures to allow the strike force to emphasize civil rather than criminal penalties.

Information Sharing

This bill would, under the GC, allow the agencies of the JESF² to request information for a JESF case, including, but not limited to, cases that involve tax or fee administration associated with underground economic activities, including known or suspected felony violations involving tax-related or fee-related crimes, from the EDD, CDTFA, and the FTB.

Upon request, the EDD, CDTFA, and FTB would be required to fully and timely provide, to the JESF agencies, intelligence; data, including confidential and tax and fee information; documents; information; complaints; reports; analysis; findings; 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 determine restitution owed to the state.
- To prosecute violations.
- To conduct data analytics associated with assessing a lead or referral or conducting an investigation pursuant to the JESF.

Federal tax data would be specifically excluded from disclosure absent authorization from the IRS.

Investigative Teams

Under the GC, this bill would require the DOJ to maintain, at a minimum, two multiagency investigative teams, in Sacramento and Los Angeles. The teams would be part of the newly named Tax Recovery in the Underground Economy (TRUE) Criminal Enforcement Program that would replace the former TRaCE Task Force, and would include the DOJ, the EDD, the CDTFA, and the FTB. The teams would be required to continue collaboration for the recovery of lost revenue to the state by investigating and prosecuting criminal offenses in the state's underground economy, including, but not limited to, tax-related and fee-related crimes.

The bill would define the term "collaboration" as follows:

- Each agency works with the investigative teams to assess leads; and
- An agency assists the investigative team with the investigation and prosecution of the case when a case involves the jurisdiction of that agency.

² UIC section 329(a).

Confidential Information

Under the UIC, any person that was or has been involved in the JESF, and at any time obtained confidential information, would be precluded from divulging or making known in any manner not provided by law, any of the confidential information received by or reported to the JESF members. 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 applicable federal and state laws.

Under the UIC, JESF members would be allowed to cooperate and share appropriate information with the LETF, established in 2012, if related to the underground economy, including activities to enforce labor, tax, insurance, and licensing laws, as permitted by state and federal laws and regulations. LETF members who have obtained confidential information would be precluded from divulging or making known in any manner not provided by law, any of the confidential information received from the JESF.

Under the GC, any person from an agency of the JESF³ who received confidential information obtained pursuant to this bill would be precluded from divulging or making known in any manner not provided by law, any of the confidential information received by or reported to the agency. Confidential information authorized to be provided 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 provisions listed below.

- GC section 11183, as that section pertains to the DOJ.
- UIC sections 1094, 1095, and 2111, as those sections pertain to the EDD. Part 603 of Title 20 of the Code of Federal Regulations as those provisions pertain to the disclosure of confidential unemployment compensation information.
- Revenue and Taxation Code (R&TC) sections 19542, 19542.1, and 19542.3, as those sections pertain to the FTB.
- GC section 15619, Public Resources Code section 42464.8, and R&TC 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, as those sections pertain to the CDTFA.
- Any other information confidentiality provisions in federal and state law.

³ UIC section 329(a)

However, except for federal statutory restrictions, sharing of confidential information authorized in this bill⁴ would not be prohibited.

Double Joining

The bill includes language to prevent chaptering issues with AB 593 and AB 1340, as explained below.

In addition to this bill's provision in the UIC to permit the use of unemployment insurance information to enable JESF and LETF to carry out their duties, and to provide information for JESF cases, this bill would incorporate a provision in the UIC for the EDD to facilitate access to quarterly wage data and a provision in the UIC that would permit the use of quarterly wage data by the Bureau for Private Postsecondary Education to perform the labor market outcome reporting data match.

Legislative History

SB 1272 (Galgiani, et al. 2017/2018) would have permanently established the Tax Recovery and Criminal Enforcement (TRaCE) Task Force in the DOJ to combat underground economic activities through a multiagency collaboration. The executive board would have included a representative from FTB. SB 1272 was vetoed by the governor whose veto message stated in part, "This bill... codifies a task force that is already operational via MOU... potentially unlimited scope of operations... reluctant to do this without additional and more detailed scrutiny through the budget process."

AB 576 (Perez, Ch. 614, Statutes of 2013) established under the GC the RRaCE team as a pilot program that was repealed by its own terms on January 1, 2019.

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 Michigan, Minnesota, and New York* laws found no current comparable joint enforcement efforts.

Massachusetts currently has a Council on the Underground Economy that consists of 17 agencies whose members share information to bring businesses and individuals into compliance with state labor, licensing, tax, and insurance laws.

⁴ GC section 15925(b).

Fiscal Impact

The language in the proposed bill is not clear as to whether full-time participation will be required at each specified location for participating departments. If the current level of participation meets the requirements of this bill, the department would have no additional costs.

If it is determined that a full-time resource is required for each current location (Sacramento and Los Angeles regions), staff estimates a need for two additional investigative staff positions and related travel and equipment costs, effective January 1, 2020. Staff estimates a cost of approximately \$316,000 for fiscal year 2019-2020, and \$372,000 for fiscal years 2020-2021 and thereafter, with an additional cost of \$2,500 every three to five years to refresh equipment.

This bill would allow for additional locations to be established. If additional locations are established and the department is required to provide a full-time resource at these locations, staff estimates a cost of \$184,000 per resource annually, with an additional cost of \$1,200 every three to five years to refresh equipment. The department notes that despite these cost estimates, the department will not pursue funding or position authority through the legislative budget change proposal process in the near term due to recruitment difficulties. Once the department is able to overcome current recruitment challenges, we can pursue any needed funding and position authority to fully meet the requirements of this bill.

Economic Impact

Revenue Estimate

This bill as amended on September 10, 2019, would have a revenue impact, but the amount 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.

Revenue Discussion

To date, the FTB's participation in the RRaCE team joint task force pilot program has resulted in ordered restitution of \$3.3 million. Because it is difficult to predict the frequency and the value of future task force criminal investigation actions, the revenue impact is unknown.

Appointments

None.

Votes

Location	Date	Yes Votes	No Votes
Concurrence	September 14, 2019	78	0
Senate Floor	September 13, 2019	40	0
Assembly Floor	May 29, 2019	77	0

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