
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1272 **Hearing Date:** April 17, 2018
Author: Galgiani
Version: February 16, 2018
Urgency: No **Fiscal:** Yes
Consultant: EC

Subject: *Tax Recovery and Criminal Enforcement (TRaCE) Task Force*

HISTORY

Source: Attorney General's Office, Department of Justice

Prior Legislation: AB 576 (Perez), Chapter 614, Statutes of 2014
SB 1185 (Price), held in Assembly Appropriations Committee
SB 1490 (Johnston), Chapter 1117, Statutes of 1994

Support: California Construction and Industrial Materials Association; California District Attorneys Association; California Landscape Contractors Association; California Pool & Spa Association; California State Association of Electrical Workers; California State Pipe Trades Council; Department of Justice; Flasher Barricade Association; International Anti-Counterfeiting Coalition; International Union of Elevator Constructors; Little Hoover Commission; Laborers' International Union of North America; Louis Vuitton; Prada, Rolex, SIEU; Sacramento-Sierra Building & Construction Trades Council. State Building and Construction Trades Council; Western States Council of Sheet Metal Workers

Opposition: None known

Analysis reflects author's amendments to be offered in committee

PURPOSE

The purpose of this bill is to expand the Tax Recovery and Criminal Enforcement (TRaCE) Task Force from Sacramento and Los Angeles to San Diego, Fresno, and the San Francisco Bay area to combat underground economic activities.

Existing law provides that all property is taxable unless otherwise provided by the California Constitution or the laws of the United States. (Cal. Const., Art. XIII, § 1.)

Existing law establishes the California Board of Equalization which administers sales and use of taxes, excise taxes, special taxes, and the state's fee programs. (Cal. Const., Art. XIII, § 17.)

Existing law allows taxes on or measured by income to be imposed on persons, corporations, or other entities as prescribed by law. (Cal. Const., Art. XIII, § 26.)

Existing law contains various provisions criminalizing tax evasion. (Rev. & Tax. Code, § 7152-7153.5)

This bill establishes the TRaCE Task Force in the Department of Justice (DOJ) to combat underground economic activities through 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.
- 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.

This bill states that the DOJ shall be responsible for the management and supervising of the TRaCE Task Force and retain supervisory control of the personnel assigned to the TRaCE Task Force.

This bill states that the TRaCE Task Force shall include an executive board to ensure efficient and effective multi-agency collaboration in furtherance of this act. The executive board shall consist of the following representatives from:

- The Division of Law Enforcement at the DOJ.
- The Criminal Law Division at the DOJ.
- The Investigations and Special Operations Bureau at the CA Department of Tax and Fee Administration.
- The Criminal Investigation Bureau at the Franchise Tax Board.
- The Investigation Division at the Employment Development Department.

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

This bill states that the TRaCE Task Force shall include TRaCE teams located in Sacramento, Los Angeles, San Diego, the San Francisco Bay area, and Fresno.

This bill requires that duly authorized team members shall exchange intelligence, data, documents, information, complaints, or lead referrals for the purpose of investigating criminal tax evasion associated with underground economic activities.

This bill requires that any member or ex-member of the team, any agent employed by any agency listed, or any person who has at any time obtained such knowledge from any of the foregoing agencies or persons shall not divulge, or make 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 section shall retain its confidential status and shall otherwise remain subject to the confidentiality provisions contained in law.

The bill requires the TRaCE Task Force to submit a report to the Legislature a report on January 1, 2014, that includes, but is not limited to, the following information:

- The number of leads of 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 requires the section on report submission be repealed on January 1, 2028.

COMMENTS

1. Need for This Bill

The author states:

The underground economy has significant negative effects on Californians. Many workers go without basic rights and protections, law-abiding businesses are put at a competitive disadvantage, consumer protections are threatened, and tax revenues are lost that could otherwise fund programs such as education, law enforcement, infrastructure projects, or reduce taxes for the majority of Californians who play by the rules.

According to a 2013 report by the UCLA Labor Center, the state's underground economy is estimated at \$60 to \$140 billion annually. An estimated \$8.5 billion in corporate, personal, and sales and use taxes go uncollected each year.

In response to this problem, the Tax Recovery and Criminal Enforcement (TRaCE) Task Force pilot program was created to investigate and prosecute the most egregious felony-level underground multijurisdictional economic crimes in the state. Participating agencies include the Department of Justice, the Department of Tax and Fee Administration, the Franchised Tax Board, and the Employment Development Department.

The TRaCE Task Force currently consists of two teams—one in Sacramento and one in Los Angeles. In the short time the task force has been in place, it has identified \$210 million in unreported gross receipts and \$46 million in associated tax loss to the state. Through its enforcement efforts, the TRaCE Task Force has been collecting millions of dollars for tax loss, court ordered restitution, and cost of investigations.

In 2015, the Little Hoover Commission published a report on the underground economy that recognized the success of the TRaCE Task Force and recommended expanding the program to every major metropolitan region. To assist TRaCE in expanding to every major metropolitan region in the state, and to ensure the long-term efficiency and effectiveness of the program, legislation is necessary.

SB 1272 would permanently establish the TRaCE Task Force program and expand the program into other major metropolitan regions in the state by codifying the existing TRaCE teams in Sacramento and Los Angeles and establishing additional TRaCE teams in San Diego, the Bay Area, and Fresno.

2. Underground Economy Task Forces

There are currently existing efforts to combat the underground economy. The Joint Enforcement Strike Force (JESF), the Employment Enforcement Task Force (EETF), and the Labor

Enforcement Task Force (LETF) are also responsible for investigating California's underground economy.¹

Governor Pete Wilson's Executive Order W-66-93 created JESF on October 26, 1993. Subsequently, in 1995, the Governor signed SB 1490 which placed the provisions of the Executive Order into the California Unemployment Insurance Code. The Employment Development Department (EDD) is the lead agency for the JESF, and the Director of EDD is the chairperson. JESF is responsible for developing and sharing of information necessary to combat the underground economy, improve the coordination of enforcement activities, and develop methods to pool, focus, and target enforcement resources. JESF's membership is comprised of EDD, multiple agencies within Department of Consumer Affairs, multiple divisions within the Department of Industrial Relations (DIR), Department of Insurance, Franchise Tax Board, Board of Equalization (BOE), CA Department of Alcoholic Beverage Control, Internal Revenue Service, and the DOJ.²

EETF, the first program implemented by JESF, works with partner agencies to conduct joint on-site business inspections to identify employers who operate in the underground economy. EETF's goal is to identify and bring into compliance individuals and businesses participating in the underground economy that are in violation of payroll tax, labor, and licensing laws. The participating agencies include the EDD, DIR, Contractors State License Board, Bureau of Security and Investigative Services, Alcoholic Beverage Control (ABC), BOE, Bureau of Automotive Repair (BAR).³

Under the direction of the Department of Industrial Relations, the LETF is a coalition of the California State government enforcement agencies to share information and resources to ensure employees are paid properly and have safe work conditions and honest, law-abiding businesses. The participating agencies are the DIR, Division of Labor Standards Enforcement, the Division of Occupational Safety and Health, EDD, BOE, California Department of Insurance, the State Attorney General, ABC, the Department of Consumer Affairs, Contractor's State Licensing Board, and BAR.⁴

While TRaCE targets felonies and JESF, EETF, and LETF target civil cases and/or misdemeanors, most of the participants of these tasks forces overlap.

3. Jurisdiction

AB 576 (Perez) established the TRaCE pilot program where there are existing TRaCE teams headquartered in Sacramento and Los Angeles however, the teams are not limited to those counties. Along with the existing teams in Sacramento and Los Angeles, the bill establishes teams in San Diego, Fresno, and the San Francisco Bay area to combat underground economic activities.

4. Argument in Support

According to the Little Hoover Commission:

¹ "Underground Economy Operations," accessed March 26, 2018, http://www.edd.ca.gov/payroll_taxes/underground_economy_operations.htm.

² "Joint Enforcement Strike Force (JESF)," accessed April 4, 2018, http://www.edd.ca.gov/payroll_taxes/Joint_Enforcement_Strike_Force.htm.

³ "Underground Economy Operations."

⁴ "Labor Enforcement Task Force," accessed April 4, 2018, <http://www.dir.ca.gov/letf/letf.html>.

In order to transform business culture into one of voluntary compliance, the impact of TRaCE must be felt by run-of-the-mill criminals: Those who are not running elaborate multi-state operations or trafficking humans on the side.

A change of culture necessitates significant outreach to educate those who are misinformed and for the truly criminal, recognizing there is a real possibility the task force could be coming for them. During its short tenure, the TRaCE team has shown promising results...But these two multi-agency financial crimes teams with two prosecutors are not enough in a state as large as California. At a minimum, California should have a multi-agency financial crimes-focused task force based in every major metropolitan region.

5. Author's Amendments

The Senate Committee on Governance and Finance suggested, the author has agreed to the following amendments to be taken in our committee. These amendments are meant to clarify under which provisions team members or ex-members may be subject to confidentiality. The suggested amendment is to Section 2 of Government Code § 15928, and reads as follows:

15928. Duly authorized team members listed in subdivision (c) of Section 15926 shall exchange intelligence, data, documents, information, complaints, or lead referrals 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 listed in subdivisions (c) and (d) of Section 15926, or any person who has at any time obtained such knowledge from any of the foregoing agencies or persons shall not divulge, or make 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 section shall retain its confidential status and shall otherwise remain subject to the confidentiality provisions contained in law: **contained in the following provisions**

(a) Department of Justice: Section 11183.

(b) Employment Development Department: Sections 1094 and 1095 of the Unemployment Insurance Code.

(c) Franchise Tax Board: Sections 19542, 19542.1, and 19542.3 of the Revenue and Taxation Code.

(d) California Department of Tax and Fee Administration: Section 15619 of this code, Section 42464.8 of the Public Resources Code, and Sections 7056, 7056.5, 8255, 9255, 9255.1, 30455, 38705, 38706, 43651, 45981, 45982, 45983, 45984, 46751, 50159, 50160, 50161, 55381, 60608, and 60609 of the Revenue and Taxation Code.

(e) For any agency added to the pursuant to subdivision (d) of Section 15926, any information confidentiality provisions in law applicable to that agency.

The suggested amendments also add Senator Moorlach, Senator Dodd, and Assemblymember Cervantes as co-authors.