

# **Report of the Construction Site Inspection Task Force**

In Accordance with Act 121  
Regular Session 2010

Prepared by the  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII**

November 2010

---

## TABLE OF CONTENTS

<b>I.</b>	<b>EXECUTIVE SUMMARY</b>	<b>3</b>
<b>II.</b>	<b>INTRODUCTION</b>	<b>3</b>
<b>III.</b>	<b>MEMBERSHIP</b>	<b>4</b>
<b>IV.</b>	<b>DISCUSSION</b>	<b>5</b>
<b>V.</b>	<b>SPECIFIC FINDINGS</b>	<b>15</b>
<b>VI.</b>	<b>RECOMMENDATIONS</b>	<b>19</b>
<b>VII.</b>	<b>APPENDICES</b>	<b>22</b>

---

## **I. EXECUTIVE SUMMARY**

Act 121, Senate Bill No. 2220, S.D.1 H.D.2 C.D.1 (2010), established a Construction Site Inspection Task Force (CSITF) to analyze the feasibility and potential complications of implementing a task force to investigate and inspect construction sites for unlicensed contractors, undocumented workers, and workplace safety violations. The Act also provided that the CSITF examine and report on a number of enforcement-related issues.

The Act also required that the CSITF submit a report to the Legislature no later than sixty days prior to the 2011 regular session.

Pursuant to Act 121, the designee of the Director of the Department of Commerce and Consumer Affairs served as Chair of the CSITF. Members consisted of two representatives each from the Department of the Attorney General; Department of Labor and Industrial Relations' Disability Compensation Division, Occupational Safety and Health Division, and Unemployment Insurance Division; Department of Taxation; and the Department of Commerce and Consumer Affairs. Members also included a representative from the City and County of Honolulu Department of Planning and Permitting and the County of Maui Department of Public Works.

The CSITF convened four times over a five-month period to discuss the various issues raised in Act 121. The CSITF created a permitted interaction group in accordance with Haw. Rev. Stat. 92-2.5.

Based on its discussions and actions taken, the CSITF adopted several recommendations, as detailed in Section VI of this Report.

## **II. INTRODUCTION**

Act 121, Senate Bill No. 2220 S.D.1 H.D.2 C.D.1 (2010), established a CSITF to analyze the feasibility and potential complications of implementing a task force to investigate and inspect construction sites for unlicensed contractors, undocumented workers, and workplace safety violations. The Act also charged the CSITF with examining a number of related enforcement issues.

Specifically, the Act provided that the CSITF examine and report by November 19, 2010, on the following items:

- (1) Advantages/disadvantages of information sharing among the participating agencies necessary to combat unlicensed contracting, the use of undocumented workers, and workplace safety violations, including a discussion of the potential advantages and disadvantages of a shared automated information database systems, common case numbers, and a centralized debt collection system;
- (2) Ways to improve the coordination of activities among the participating agencies;

- 
- (3) Ways to pool, focus, and target the enforcement resources of the participating agencies to deter tax evasion, unlicensed contractor activity, and workplace safety violations and to maximize recovery of penalties for violations of laws and rules;
  - (4) Ways to reduce enforcement costs wherever possible by eliminating duplicative audits and investigations;
  - (5) The scope of potential cases of violations and noncompliance with tax laws that could be identified, audited, investigated, prosecuted through civil action, or referred for criminal prosecution;
  - (6) Actions and authority needed by the task force to undertake and publicize its activities;
  - (7) Recommendations for any legislation needed to accomplish the goals and to implement the recommendations of the CSITF, e.g.:
    - (A) Eliminating barriers to interagency information sharing;
    - (B) Improving the ability of the participating agencies to audit, investigate, and prosecute violations;
    - (C) Deterring violations and improving voluntary compliance;
    - (D) Establishing centralized, automated data collection services for the participating agencies; and
    - (E) Emphasizing civil penalties instead of criminal ones whenever possible; and
  - (8) Identification of funding streams and estimated expenditures needed in order to fully implement the recommendations of the CSITF.

CSITF members met on July 27, 2010, September 7, 2010, October 12, 2010, and November 9, 2010. The CSITF was comprised of 15 members from four State departments and two county offices.

### **III. MEMBERSHIP**

In accordance with Act 121, the CSITF consisted of the following voting members:

Ms. Jo Ann Uchida, Esq.  
Designee of the Director of Commerce and Consumer Affairs, Chair  
Department of Commerce and Consumer Affairs

Mr. Rodney Tam, Esq.  
Mr. Herbert Lau, Esq.  
Department of the Attorney General

Ms. Daria Loy-Goto, Esq.  
Ms. Verna Oda  
Department of Commerce and Consumer Affairs

---

Mr. Keith Kim  
Ms. Wendy Nakahara  
Disability Compensation Division  
Department of Labor and Industrial Relations

Mr. Jamesner Dumlao/Mr. Ryan Markham<sup>1</sup>  
Mr. Clayton Chun  
Occupational Safety and Health Division  
Department of Labor and Industrial Relations

Ms. Tanya Lee  
Ms. Wendy Maher  
Unemployment Insurance Division  
Department of Labor and Industrial Relations

Mr. Ronald Randall/Mr. Thomas Torkildson<sup>2</sup>  
Ms. Gail Nakagawa/Mr. Josh Kreye<sup>3</sup>  
Department of Taxation

Mr. Ralph Nagamine  
County of Maui Public Works Department

Mr. Tim Hiu  
Department of Planning and Permitting  
City and County of Honolulu<sup>4</sup>

## **IV. DISCUSSION**

### **I. OBJECTIVES OF A TASK FORCE TO INVESTIGATE AND INSPECT CONSTRUCTION SITES**

This CSITF was charged with evaluating the feasibility of a task force to investigate and inspect construction sites for unlicensed contractors, undocumented workers, and workplace safety violations, and to examine related enforcement issues. In order to do so, CSITF members discussed a number of possible objectives for such a task force:

---

<sup>1</sup> Mr. Dumlao attended the CSITF meeting on July 27, 2010. Mr. Markham replaced Mr. Dumlao, who left HIOSH, at subsequent meetings.

<sup>2</sup> Mr. Randall attended the CSITF meeting on July 27, 2010. Mr. Torkildson, supervisor of DOTax' new Special Enforcement Section, replaced Mr. Randall at subsequent meetings.

<sup>3</sup> Ms. Nakagawa attended the CSITF meetings on July 27, 2010, and September 7, 2010. Mr. Kreye, investigator with the Special Enforcement Section, replaced Ms. Nakagawa at subsequent meetings.

<sup>4</sup> Representatives of the Kauai and Big Island permitting departments were invited to serve as CSITF members, but fiscal restrictions prevented their participation. Mr. Art Challacombe of the Honolulu City and County Planning and Permitting Department attended all CSITF meetings as a member of the public.

- 
- A. Curtail or deter “underground” or cash businesses, as referenced in Section 1 of Act 121;
  - B. Maximize tax revenues;
  - C. More efficiently prosecute businesses that are noncompliant with workplace safety or labor laws and/or bring businesses into compliance; or
  - D. Use a task force model for three specific types of violations: unlicensed contracting, undocumented workers, and workplace safety.

The questions raised in Act 121 lent themselves to a number of different enforcement tracks, depending upon the particular goals of the task force.

## II. THE CALIFORNIA MODEL

The CSITF was fortunate to have as a resource David Fogt, Chief of Enforcement, Contractors State Licensing Board (CSLB), State of California. Mr. Fogt was generous in providing time, information, and expertise on various aspects of California’s underground economy enforcement initiatives. Mr. Fogt’s insights were valuable because much of the language of Act 121 was similar to or based upon legislation in California.

CSLB handles both licensing and enforcement of the contracting licensing law. California has approximately 300,000 licensed contractors. The CSLB has an estimated 435 positions (including approximately 70 investigators who handle consumer complaints and 65 investigators who handle joint enforcement or unlicensed activity) and an annual operating budget of \$55-60 million that is primarily special funded. CSLB receives approximately 20,000 complaints per year.

Over the course of the past several years, the CSLB has developed a multi-pronged approach to contractor enforcement. The CSLB: 1) has entered into regulatory partnerships with a number of other state and county agencies to share information and delineate enforcement arrangements; 2) is a member of the Economic and Employment Enforcement Coalition (EEEC), which is an agency charged with combating California’s illegal underground economy; and 3) has developed the Statewide Investigative Fraud Team (SWIFT) comprised of CSLB investigators to combat unlicensed activity. The EEEEC funds eleven of the CSLB’s 65 joint enforcement/unlicensed activity investigator positions.

### A. Regulatory Partnerships.

The CSLB is authorized to take disciplinary action against licensed contractors who fail to pay employee wages, pay taxes, or carry workers compensation insurance. The CSLB partnered with other state and federal regulators to facilitate information sharing, and memorialized interagency agreements.

For example, in fiscal year 2006, the CSLB suspended contractor licenses of businesses with tax or wage liabilities. The CSLB achieved:

---

558 license suspensions  
107 settlements reached  
528 restitutions paid  
655 licenses reinstated

These achievements were based in large part upon referrals from other agencies. For example, 12,000 referrals from California's Employment Development Department (tax office) resulted in automatic suspension of those licenses until the judgments were satisfied. The CSLB also has entered into agreements with California's Division of Occupational Safety & Health to receive reports of employers found in violation of safe workplace provisions that result in a fatality or serious workplace injury. The CSLB then takes disciplinary action against the contractor's license. California's Division of Labor Standards Enforcement refers to CSLB reports of Labor Code violations that result in a civil or criminal case or violations that result in a judgment for unpaid wages or penalties. A more detailed description of the CSLB's Memorandum of Understanding (MOU) is attached as an Appendix.

B. Economic and Employment Enforcement Coalition (EEEC).

In mid-2005, the EEEEC was created with the specific mission of combating California's underground economy. The EEEEC consists of the following agencies:

California Labor and Workforce Development Agency  
Department of Industrial Relations, Division of Labor Standards Enforcement  
Department of Industrial Relations, Division of Occupational Safety and Health  
Employment Development Department Tax Branch  
Employment Development Department Workforce Services Branch  
United States Department of Labor  
Department of Consumer Affairs, Contractors State License Board  
Department of Consumer Affairs, Bureau of Automotive Repair  
Business, Transportation and Housing Agency, Department of Alcoholic Beverage Control  
California State Board of Equalization

In addition, various other state and local enforcement and tax agencies participate in special operations. The EEEEC has about 66 authorized positions, including a Director. EEEEC operations involve a wide variety of industries, including agriculture, auto body, car wash, construction, garment, horse racing, janitorial, pallets, and restaurant. A copy of the EEEEC's report to the California Joint Legislative Budget Committee and Director of the California Department of Finance, dated September 2009, is attached as an Appendix. The EEEEC's budget is approximately \$6.2 million annually.

---

C. CSLB Unlicensed Contracting Enforcement: Statewide Investigative Fraud Team (SWIFT).

CSLB's SWIFT receives complaints against unlicensed individuals actively working on a construction project where the cost for labor and materials is \$500 or more. SWIFT work includes EEEEC and regulatory partnership activity.

When the CSLB receives a complaint against an unlicensed contractor, it may issue an administrative citation or file a criminal action with the local district attorney's office. In some cases, it may initiate injunction proceedings against the non-licensee through the Office of the Attorney General or the Office of the District Attorney.

Unlicensed contracting is a misdemeanor in California. The first conviction is punishable by a fine not exceeding \$5,000 or by imprisonment not exceeding six months, or by both. For a second offense, the fine is 20 percent of the contract price or 20 percent of the aggregate payments to the unlicensed contractor, or \$5,000, whichever is greater, and a mandatory jail sentence of not less than 90 days. A third or subsequent conviction is punishable by a higher fine amount and by imprisonment for not more than one year or less than 90 days.<sup>5</sup>

### III. THE HAWAII MODEL

#### A. Roles/Responsibilities of CSITF Members.

##### 1. Department of Labor and Industrial Relations, Hawaii Occupational Safety & Health Division (HIOSH)

HIOSH's primary purpose is to ensure a safe workplace. HIOSH does not have jurisdiction over employers with fewer than 10 employees. HIOSH conducts unannounced program inspections, as well as site visits based upon complaints and reported accidents. Fine amounts range from \$0 to \$70,000. HIOSH employs six (6) safety inspectors statewide: four (4) in Honolulu, one (1) in Kona, and one (1) in Hilo. There are also five (5) health inspectors statewide. HIOSH has had joint enforcement experience through its work with the federal OSHA office.

HIOSH is prohibited by Haw. Rev. Stat. 396-14 from disclosing records to civil litigants and by Haw. Rev. Stat. 396-8(f) from disclosing the names of complainants and witnesses. HIOSH does not disclose copies of its investigation records, even to law enforcement agencies per Haw. Rev. Stat. 92F-19. However, when the requirements of Haw. Rev. Stat. 396-14 and Haw. Rev. Stat. 396-8(f) are met and a final order is entered, HIOSH does disclose redacted copies of its records pursuant to Chapter 92F, Hawaii Revised Statutes. Final orders are public record and are available online.

HIOSH is authorized to interview employees without management present. Because HIOSH's authority or jurisdiction for an inspection is grounded upon the existence of an

---

<sup>5</sup> See California Business and Professions Code Section 7028.



---

employee/employer relationship, the undocumented status of a worker is not usually relevant.

HIOSH is facing staffing shortages and the creation of a task force would exacerbate those staffing problems.

HIOSH has a Consultation and Training section, which provides free education for all employers. It is unknown whether HIOSH has any funds budgeted for consumer education.

HIOSH is unaware of any instance where a Professional Employer Organization (PEO) was cited for HIOSH violations. Generally, HIOSH cites the client, not the PEO, for violations.

2. Department of Labor and Industrial Relations, Disability Compensation Division (DCD)

DCD handles workers compensation, temporary disability insurance (TDI), and health care coverage issues. DCD's jurisdiction is based upon the existence of an employer-employee relationship. DCD enforcement is made up of an Audit Section and an Investigation Section.

DCD has two (2) auditors on Oahu that have statewide jurisdiction. Major audit duties include: 1) audit of employer records for the healthcare premium supplementation program; 2) financial statements review for self-insured employers; 3) financial solvency audits for delinquent employers; and 4) complaint audits for excessive or unauthorized medical and TDI payroll deductions.

DCD auditors are not involved in coverage issues or determination of employer-employee relationships for any of the DCD programs. The scope of the DCD auditor's examination does not include records of undocumented or cash wage workers. Participation in a task force by DCD auditors would not be feasible since their work does not contain any relevant information to share in regards to undocumented workers. As a result of the economic recession and reduction in staffing, the auditors are being directed to concentrate their work primarily on the subsidy program for healthcare premiums and financial reviews of self-insured employers. Minimal audit time is devoted to compliance issues.

DCD has five (5) investigators statewide: one (1) in Hilo handles the entire island of Hawaii; one (1) for Maui, Lanai, and Molokai; and three (3) on Oahu, who also handle all investigations for the island of Kauai. Investigators handle complaints and also work on lists of delinquent registered employers who are not compliant with workers compensation, TDI, or health requirements.

DCD receives approximately 200 health care and 200 TDI complaints per year and an estimated 100 complaints per year involving workers compensation. The DCD can levy

---

finest at \$1/day per eligible employee for TDI and health care with a minimum of \$25 and \$10/day per employee for workers compensation with a minimum of \$250 to an employer for noncompliance. DCD investigation section indicates that collaboration with other state agencies, such as joint interviews of witnesses, could be helpful, given its limited resources and staffing.

The DCD's primary responsibility is to determine worker eligibility and the undocumented status of a worker is not germane to that determination.

Given the number of DCD investigators, participation on a task force would not be feasible. Information sharing, however, such as referring DLIR orders to DCCA, is possible.

The DCD does not have funds budgeted for consumer education or publicity. Primary outreach is conducted through quarterly employer workshops and the DCD website.

The issue of PEOs and whether the PEO or the client company is the employer is currently in debate, however, DCD currently holds the PEO liable for any violations of law.

3. Department of Labor and Industrial Relations, Unemployment Insurance Division (UID)

UID registers companies with one or more employees. Employers must file quarterly reports and make unemployment fund payments. There are thirteen (13) auditors on Oahu and three (3) on the Big Island. UID Special Activities Unit also conducts on-site investigations for alleged unemployment fraud. UID indicates that joint enforcement may be beneficial in specific cases, especially joint interviews of witnesses.

Haw. Rev. Stat. 383-95 provides for confidentiality of UID information, however, information can be shared with other law enforcement agencies pursuant to an MOU. UID and RICO currently operate under an MOU for limited information sharing.

The UID does not consider whether or not a worker is undocumented. It does not refer cases to other agencies for prosecution.

The UID is interested in collaboration with other agencies, outside the context of a formally created, permanent task force. Moreover, it is questionable whether the UID can use federally-funded personnel for a task force.

The UID has no budget for education or publicity. It sponsors quarterly workshops for new employers and offers videos on its website to assist with the application for benefits.

There are no issues relating to PEOs and unlicensed contracting in the UID context.

4. Department of the Attorney General (DAG)

DAG representatives provide legal advice to HIOSH and assist that agency with subpoenas for warrants and other legal matters. DAG also provides legal advice to professional licensing boards, including the Contractors Licensing Board.

5. Department of Taxation, Special Enforcement Unit (DOTax)

DOTax handles violations of tax laws. The Special Enforcement Unit investigates persons or entities that may be in violation of state tax laws, with a special emphasis on "underground economy," and is specially-funded. Both licensed and unlicensed persons pose problems and cash jobs are prevalent. DOTax can issue fines of up to 75% of the taxes owed. Fraud cases are referred for criminal prosecution.

DOTax works with federal, state, and county agencies, but is governed by strict confidentiality restrictions that limit its ability to share taxpayer information. However, the Special Enforcement Unit is interested in receiving information relating to "underground" businesses that are not reporting or are underreporting income.

DOTax had no comment on the issues of undocumented workers, creation of a task force, and PEOs.

DOTax has funds to conduct outreach, distributes pamphlets and posters, and maintains a complaint line for public calls.

6. Department of Commerce and Consumer Affairs, Regulated Industries Complaints Office (RICO)

RICO has enforcement responsibilities for over 45 professions. It administratively prosecutes cases against licensed contractors for license violations and civilly prosecutes unlicensed contractors. There are approximately 127,000 licensees statewide and approximately 12,700 contractor licensees. RICO has 22 field investigator positions in Honolulu, Hilo, Kona, and on Kauai and Maui. RICO received approximately 2,100 complaints in FY 2010, over a quarter of which (550) related to contracting.

A willful violation of any law of the State, or any county, relating to building, including any violation of any applicable rule of the Department of Health, or of any applicable safety or labor law is grounds for discipline against a licensee. Haw.Rev.Stat. 444-17(6).

RICO receives referrals from DOTax when licensees fail to comply with stipulated payment schedules and pursues disciplinary action against licensees for nonpayment of taxes.

With regard to unlicensed activity, when RICO determines that unlicensed activity has occurred or is occurring, it may issue a citation for unlicensed activity or it may file a civil lawsuit against the unlicensed person. A stop work order is issued at the time a

---

citation is issued and, if the unlicensed activity is substantiated, the unlicensed person is assessed a fine. If a lawsuit is filed, RICO seeks an injunction to bar unlicensed activity and may seek civil fines and restitution, as well as orders to disconnect telephone service.

Civil fines for unlicensed contracting activity are \$2,500 or 40% of the total contract price, whichever is greater, for the first offense; \$3,500 or 40% of the total contract price, whichever is greater, for the second offense; and \$5,000 or 40% of the contract price, whichever is greater, for any subsequent offense. Haw. Rev. Stat. 444-23(b).

Any person who engages in unlicensed activity shall be guilty of a misdemeanor and be subject to a fine of not more than \$1,000 or imprisoned not more than one year, or both, and each day's violation shall be deemed a separate offense. Haw. Rev. Stat. 436B-27(b). RICO communicates regularly with criminal or other law enforcement authorities regarding unlicensed contracting activity that may be considered for criminal prosecution.

RICO investigates and prosecutes persons who have impersonated a U.S. citizen to gain licensure and enforces a state law that prohibits a contractor from hiring illegal aliens. In unlicensed cases, particularly involving unlicensed massage therapists, RICO routinely sees undocumented workers and collaborates with the U.S. Immigration and Customs Enforcement (ICE). In unlicensed contracting cases involving undocumented workers, RICO is in contact with other state agencies. RICO also remains open to receiving any and all tip information and to collaborating with other state agencies on joint enforcement initiatives.

RICO supports criminal prosecution of unlicensed contractors in conjunction with existing civil enforcement penalties. More detailed discussions between RICO and criminal law enforcement agencies need to occur before any legislation concerning criminal penalties can be proposed.

In the context of PEOs, there are still on-the-job supervisory requirements for leased employees. RICO noted its concern that employees may be leased for specific activities that require specialized training.

RICO does offer consumer education, however, any special publicity projects related to a new task force during this period of fiscal challenges is not advised.

## 7. Contractors License Board (CLB)

The CLB issues contractor licenses. The CLB is not involved with the enforcement of unlicensed activity, but provides interpretations of the contracting law and issues disciplinary orders involving licensee violations. It is uncertain to what extent the CLB would be able to contribute should a permanent task force be created.

The CLB has no direct involvement with the issue of undocumented workers. However, a licensed contractor must be a U.S. citizen, national, or authorized alien.

---

The CLB receives tax information from DOTax and refers this information to RICO. The CLB has considered the issue of PEOs and has allowed the PEO to obtain necessary workers' compensation.

The CLB has an education fund, which is used to pay for pamphlets and other educational materials. The CLB also uses its website to disseminate information to consumers and licensees.

8. City and County of Honolulu, Department of Planning and Permitting (DPP-HNL)

DPP-HNL oversees building permits and issues approximately 14,000 permits per year. DPP-HNL conducts permit investigations and complaint investigations. There are 60 inspectors for building code violations. Penalties include civil fines of \$50/day up to \$1,000 for violations or work stoppage if there is no permit.

DPP-HNL attempts to coordinate services with other law enforcement agencies, most recently with DOTax, and is willing to share information with other law enforcement agencies, including building permit information that may not be on the DPP-HNL website. Joint enforcement may be difficult to coordinate because investigations often do not occur during regular work hours. DPP-HNL requires permission to access a building site or it must obtain a search warrant.

DPP-HNL requires subcontractor information at the time a permit is issued, and a permit can be closed even if the structure is incomplete. Since the focus is on building safety, the undocumented status of a worker is not relevant. In addition, many persons are not identified on a jobsite.

The DPP-HNL already coordinates services with other agencies, as needed. It recently referred a case to RICO involving life/safety issues and would be willing to refer more cases, as appropriate. The DPP-HNL receives general county funds, which might affect any joint enforcement activities.

The DPP-HNL requires the public to obtain permitting information and to apply for a building permit on-line and provides computers for public use. Permit centers distribute pamphlets from other agencies.

9. County of Maui Public Works Department (CMPW)

CMPW handles complaints, such as construction work without a permit, but it does not know who is performing the work until a site inspection is conducted. Permits are issued to licensed contractors, but the CMPW does not know who the workers are. CMPW has five (5) electrical and plumbing inspectors and three (3) construction inspectors. Inspectors can assess fines, for instance, if a building is occupied before authorization. Fines range from \$200. Collecting fines is a challenge.

---

Copies of notices of violation are sent to RICO's Maui office. CMPW issues warning letters or fines for noncompliance. Due to the specific focus of CMPW's work, there is little opportunity for collaboration with other agencies. Since permits are issued to licensed contractors, there is little or no opportunity for CMPW to know if the workers are undocumented.

Given the difficulty in collecting fines, the CMPW was interested in improving methods to collect fines. The CMPW also would support legislation that expedited fine collections by the counties.

#### B. Regulatory Partnerships – Information Sharing (Shared Databases/MOUs).

CSITF members have entered into MOUs on an as-needed basis, including an MOU between UID and RICO and between DOTax and DPP-HNL. The CLB receives information from DOTax and UID and refers the information to RICO for possible prosecution. DLIR orders are not now, but could be, referred to the DCCA. The DPP-HNL works with RICO on various cases and refers certain cases involving safety issues to RICO. These existing agency partnerships that facilitate information sharing or referral should continue.

Additional regulatory partnerships between RICO and other agencies for information sharing that would assist RICO in identifying unlicensed activity should be explored. Other types of information sharing have the potential of resulting in more license suspensions, disciplinary actions, and collections of fines, primarily against contractor licensees.

#### C. Regulatory Partnerships – Collaborative Enforcement.

CSITF members viewed a video produced by EEEEC that depicted a construction site inspection by EEEEC members, including representatives from the CSLB, the tax office, and the workplace safety office. An EEEEC representative was depicted as speaking to a worker regarding proper use of equipment, and another EEEEC representative (from CSLB) was shown issuing a citation to a subcontractor whose license was no longer current.

Application of the EEEEC model to CSITF members would require more resources and staff than is currently available. While Hawaii's construction industry is much smaller than California's construction industry, some CSITF members indicated that recent budget and staff cutbacks have compelled them to focus on priority or core mission responsibilities, and that it would be a challenge to divert limited resources from those responsibilities.

CSITF members agreed, however, that there are clearly situations in which strategic collaboration is important and desirable among enforcement agencies with concurrent jurisdiction over particular construction jobsites. Members noted that because jobsite

---

situations will necessarily vary, the enforcement agencies could develop a shared contact list to facilitate prompt discussion of relevant enforcement issues.

Members were particularly interested in the extent to which joint interviews of witnesses could be conducted, in order to ensure that witnesses are taking consistent positions with all enforcement agencies. Collaboration prior to any site inspection would be critical in determining which agencies had jurisdiction, what each agency's role would be, and which agencies could participate in a site inspection.

## **V. SPECIFIC FINDINGS**

### **1. Underground economy enforcement should model California EEEEC.**

Act 121 established the CSITF to analyze the feasibility and potential complications of implementing a task force to investigate and inspect construction sites for unlicensed contractors, undocumented workers, and workplace safety violations. Act 121 also particularly emphasized a concern over Hawaii's growing underground economy.

If the focus of the task force is to combat the underground economy, California's EEEEC model should be considered, provided that sufficient resources are allocated to implement the initiative. Subsuming underground economy enforcement into existing programs would be problematic: 1) due to the current shortage of agency staff and budget; 2) because existing programs must address violations by both underground and established entities; and 3) because prosecutions based on cash transactions will be time-consuming and require specialized training and expertise. Also, to the extent underground economy issues, such as undocumented workers, extend across different industries, the jurisdiction of the task force should be more general in scope, rather than focused only on the contractor industry, in a manner similar to California's EEEEC.

In addition, while state agencies can investigate reports of undocumented workers in connection with possible state law violations, the cooperation of and partnerships with federal agencies, such as ICE, would be critical to any strategic effort to address undocumented workers.

### **2. Unlicensed contracting, undocumented workers, and worker safety violations occur at one construction site infrequently.**

The CSITF discussed each member's core responsibilities and how those responsibilities related to the issues of unlicensed contracting, undocumented workers, and worker safety. The CSITF found that the instances in which violations involving unlicensed contracting, undocumented workers, and workplace safety all take place at one jobsite do not occur regularly and that the creation of a specific task force to address this combination of violations is not necessary.



---

3. Advantages/Disadvantages of Information Sharing and Ways to Improve Interagency Coordination.

---

CSITF members discussed the merits of having UID, HIOSH, DCD, and DOTax report to RICO labor and tax law violations that may have been committed by contractor licensees, in a manner similar to the California model. CSITF members raised concerns that referrals and aggressive prosecution (i.e., suspension) of contractor licensees for a variety of state law violations in a manner similar to California would disproportionately impact contractor licensees without addressing concerns regarding "underground economy" contractors or unlicensed contractors.

While there is no question that licensees operating in violation of state law should be prosecuted, the paradoxical result of suspending contractor licenses for all types of state law violations is that the number of unlicensed contractors will be increased rather than reduced. On the other hand, licensees may be willing to pay delinquent fines, penalties, and taxes to the state in order to preserve their licenses, which may increase revenues to the State.

While there appear to be disadvantages to certain types of case referrals, there also are obvious advantages, from an enforcement perspective, in information sharing and collaboration. Act 121 has been the catalyst for discussions among state and county enforcement agencies. For instance, RICO invited CSITF members to its annual staff training in September 2010. CSITF members from DLIR, DOTax, and DPP-HNL attended and spoke about their agency work and functions. These discussions have led to a better understanding of each agency's jurisdiction and enforcement authority and have opened avenues for future collaboration.

As another example of the benefits of agency collaboration, information about who a contractor lists as an employee for DCD, unemployment, and withholding purposes could assist RICO in distinguishing licensee employees from unlicensed contractors. Conversely, detailed information about a business' license structure may assist UID, HIOSH, DCD, and DOTax in identifying bonafide employees versus independent contractors for purposes of compliance with worker safety, labor, and tax laws.

CSITF members support the creation and maintenance of a shared contact list to facilitate proactive, strategic discussions on an ad hoc basis. In addition, because staff turnover and/or reassignment is inevitable, CSITF recommends that enforcement agencies adopt policies that support sustained interaction, cross-training, networking, and information sharing. Networking opportunities can be implemented with little cost to the participating agencies and could be the foundation for future collaborative enforcement activity.

CSITF members discussed the possibility of a shared automated information database system with common case numbers and a centralized debt collection system. Because agencies such as UID, HIOSH, and DOTax are governed by both state and federal law, and are subject to specific confidentiality requirements, the challenges in implementing



such a system appear to outweigh the benefits at this time. CSITF members did, however, examine the benefits of receiving more detailed building permit information from the county building departments, including possible programming enhancements that would provide agencies such as RICO with more detailed information about contractors and subcontractors.

4. Ways to pool, focus, and target the enforcement resources of the participating agencies to deter tax evasion, unlicensed contractor activity, and workplace safety violations and to maximize recovery of penalties for violations of laws and rules. Ways to reduce enforcement costs by eliminating duplicative audits and investigations.

As noted above, most of the CSITF member agencies are governed by certain statutory confidentiality provisions that restrict or prevent sharing of information with other agencies. RICO currently receives some limited information from UID based upon an MOU, however, it appears that the MOU should be revised to allow for a broader range of information and RICO will be preparing and proposing MOU revisions.

The DPP-HNL has attempted to coordinate services with other state agencies, most recently with DOTax. DOTax and UID send information to the CLB, which forwards the information to RICO, as necessary. These existing channels of information sharing should be maintained and expanded to the extent feasible.

HIOSH is prohibited by Haw. Rev. Stat. 396-14 from disclosing records to civil litigants and by Haw. Rev. Stat. 396-8(f) from disclosing the names of complainants and witnesses. HIOSH does not disclose copies of its investigation records, even to law enforcement agencies per Haw. Rev. Stat. 92F-19. However, when the requirements of Haw. Rev. Stat. 396-14 and Haw. Rev. Stat. 396-8(f) are met and a final order is entered, HIOSH does disclose redacted copies of its records pursuant to Chapter 92F, Hawaii Revised Statutes.

CSITF members will be exploring the feasibility of providing for greater sharing of investigative information as part of the group's collective law enforcement responsibilities. Detailed information about particular events or workplace incidents that can be shared with other agencies will assist those agencies in preparing stronger cases against violators and in obtaining higher fines, penalties, and other sanctions.

Several CSITF members expressed interest in conducting joint witness interviews, to the extent feasible, in cases involving multi-agency jurisdiction. Joint interviews could deter witnesses from fashioning their statements to suit the particular agency, a witness would have to be located once rather than several times, and interviewers would have the benefit of listening to the questions and answers concerning related, but separate enforcement matters.

- 
5. Scope of potential cases of violations and noncompliance with tax laws that could be identified, audited, investigated, prosecuted through civil action, or referred for criminal prosecution.

As noted above, DOTax Special Enforcement Unit investigates persons or entities that may be in violation of state tax laws, particularly with regard to Hawaii's "underground economy." However, DOTax is governed by strict confidentiality laws that preclude it from sharing information about its ongoing investigations. DOTax CSITF members encouraged tips from other enforcement agencies regarding unreported or underreported income.

6. Actions and authority needed by the task force to undertake and publicize its activities; potential procedures, including but not limited to an advertised telephone hotline for soliciting from the public referrals of suspected violations.

CSITF members recognize the importance of consumer and industry education regarding enforcement initiatives as a deterrent to violators and to prevent consumers from being victimized. Such initiatives to educate consumers and industry should be included in any comprehensive enforcement proposal. However, given the current budget and staffing restrictions in place, funding publicity or educational initiatives is not a priority.

7. Recommendations for any legislation needed to accomplish the goals and to implement the recommendations of the CSITF, e.g.: eliminating barriers to interagency information sharing; improving the ability of the participating agencies to audit, investigate, and prosecute violations; deterring violations and improving voluntary compliance; establishing centralized, automated data collection services for the participating agencies; and emphasizing civil penalties instead of criminal ones whenever possible.

The CSITF discussed the need for legislation in the context of information sharing, improving agency efforts to prosecute and deter violators, establishing centralized data collection services for members, and civil and criminal penalties. As noted above, CSITF members recognize the value in sharing information and support agency collaboration on an ad hoc basis. However, given the existing comprehensive state and federal statutory provisions, including confidentiality provisions, that currently govern CSITF member agencies, the CSITF found that additional legislation was premature at the present time and could unintentionally compromise core functions.

The CSITF also found that 1) civil enforcement alone is not sufficient to deter or control unlicensed activity; and 2) extensive discussions with criminal law enforcement agencies are necessary before any legislation to strengthen criminal penalties can be proposed.

In California, enforcement of unlicensed contracting is addressed primarily through the use of criminal laws. Under California law, unlicensed contracting is a misdemeanor. A person who commits a second violation receives mandatory jail time. Some CSLB investigators are peace officers or have authority to issue summons to appear.

In Hawaii, unlicensed contracting is generally prosecuted through the civil courts and results in an injunction and a fine. It is also a misdemeanor, but criminal law enforcement authorities are reluctant to prosecute unless the crime includes a more serious additional violation, such as theft. As a result, few criminal prosecutions occur.

As an example of the need for both civil and criminal enforcement measures, RICO cited and obtained numerous civil judgments against Tevita Ungounga for unlicensed contracting. Mr. Ungounga was also convicted in an action by the Department of the Attorney General for failure to file tax returns and is currently facing additional charges. In October 2010, Mr. Ungounga was held in contempt for continuing to engage in unlicensed activity while enjoined from doing so. For chronic violators such as Mr. Ungounga, civil judgments and injunctions do not sufficiently deter unlicensed activity.

8. The need for the authority to enter at reasonable times and without prior notice, any property, public or private, for the purpose of investigating and inspecting the condition or operation of a construction site.

Most CSITF members reported that court orders were used in those instances in which access to private property was refused. For instance, DPP-HNL investigations usually do not occur during regular work hours and permission to access a building site is required, in the absence of a search warrant. CSITF members acknowledged the difficulty and time involved in obtaining a court order, but did not consider the process to be problematic. RICO noted that if additional emphasis is placed on criminal prosecution, the feasibility of access to jobsites without a court order should be discussed with criminal law enforcement authorities.

9. Funding streams and estimated expenditures needed in order to fully implement CSITF recommendations.

CSITF members reported numerous staff shortages and budgetary constraints in meeting day-to-day agency responsibilities. Consumer education budgets are reduced or non-existent and most CSITF member agencies utilize cost-effective methods, such as their respective websites, to promote services and educate consumers. Given these personnel and fiscal limitations, existing funding sources for joint enforcement initiatives are not available. As a result, CSITF members support planned, strategic collaboration on an ad hoc basis, including joint interviews of witnesses, as an economical joint enforcement initiative.

## **VI. RECOMMENDATIONS**

1. While a task force may be appropriate to address the broader issue of the "underground economy," the creation of a task force that would specifically address unlicensed contracting activity, undocumented workers, and worker safety violations is not necessary at this time because collaborative enforcement can occur on an as-needed basis without the creation of a special task force. The instances in which all three types of violations occur at one jobsite do not occur with enough frequency to warrant the

---

creation of a dedicated task force and will divert resources from the core functions of the participating agencies. However, more frequent information sharing and proactive, strategic discussion of problematic jobsites can and should occur.

2. The CSITF recommends the creation and maintenance of a shared contact list to facilitate strategic discussions on an ad hoc basis. The CSITF also recommends that enforcement agencies adopt policies that support sustained interaction, cross-training, networking, and information sharing. For instance, RICO invited CSITF members to its annual staff training in September 2010, where CSITF members from DLIR, DOTax, and DPP-HNL spoke about their agency work and functions. At a minimum, opportunities for ongoing inter-agency discussion and collaboration should be encouraged.

3. CSITF member agencies are governed by both state and federal law and are subject to specific confidentiality restrictions. As a result, implementing a shared automated information database system with common case numbers and a centralized debt collection system is not feasible at the present time. Confidentiality restrictions in applicable state and federal laws should continue to be examined and an MOU that facilitates the exchange of information should be pursued, where appropriate.

4. To the extent feasible, the CSITF recommends joint witness interviews in cases involving multi-agency jurisdiction.

5. Given existing state and federal statutory provisions that govern CSITF member agencies, any new legislation is premature at the present time. Legislation may be necessary in the future if interagency MOUs do not result in meaningful information sharing.

6. Although Act 121 sought the use of civil sanctions in lieu of criminal sanctions wherever possible, the CSITF recommends a combination of civil and criminal enforcement measures to address unlicensed contracting violations. Civil enforcement alone is not sufficient to deter or control unlicensed activity. The CSITF also recommends more extensive discussions between affected CSITF member agencies and criminal law enforcement agencies to bolster criminal enforcement efforts.

7. Issues and problems relating to PEOs/employee leasing in the contracting context should be monitored and appropriate restraints should be implemented to limit the use of employee leasing by owner-builders.

8. The CSITF recommends that agencies with an interest in specific building permit information initiate discussions with DPP-HNL on possible database enhancements to facilitate receipt of this information. Until database enhancements can be implemented, the CSITF recommends continued discussions with the various county planning departments responsible for permitting to obtain information as needed.

9. The CSITF recommends continued discussions between RICO and CSLB to obtain more detailed information about site inspections conducted by that agency.

---

10. If further examination of joint enforcement is contemplated by the Legislature, a discussion forum that is not governed by Chapter 92, Hawaii Revised Statutes, should be considered. Discussions relating to law enforcement targets and techniques were difficult to conduct in a public forum.

## **VII. APPENDICES**

Act 121, Senate Bill No. 2220, S.D.1 H.D.2 C.D.1  
Twenty-Fifth Legislature 2010

CSITF Meeting Agendas

CSITF Meeting Minutes

CSITF Meeting Handouts

CSLB Underground Economy Enforcement: Multi-Jurisdictional  
Prosecution of Illegal Operators

EEEC Report to the California Joint Legislative Budget Committee and  
Director of the California Department of Finance, dated September 2009

CSLB MOU

Hawaii Business article: "Hawaii's Underground Economy"

Digest of Chapters 386, 392, 393, HRS

Chapter 92, HRS

The Sunshine Law

DOTax News Release, dated September 14, 2009

California Business and Professions Code Section 7028

Permitted Interaction Group Report and Recommendations

Approved by the Governor

MAY 19 2010

on \_\_\_\_\_

THE SENATE  
TWENTY-FIFTH LEGISLATURE, 2010  
STATE OF HAWAII

ACT 121

S.B. NO.

2220  
S.D. 1  
H.D. 2  
C.D. 1

## A BILL FOR AN ACT

RELATING TO CONSTRUCTION SITES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1       SECTION 1. The legislature finds that Hawaii's economy is  
2 driven by thousands of businesses that provide essential goods,  
3 services, and jobs. However, an underground economy exists that  
4 threatens the ability of legitimate businesses to effectively  
5 compete in the marketplace. Underground business operations  
6 typically:

- 7       (1) Avoid licensing requirements;
- 8       (2) Pay wages in cash, therefore avoiding payroll tax,  
9       unemployment insurance, disability insurance, personal  
10       income tax, and paid family leave requirements;
- 11       (3) Employ vulnerable workers, new immigrants, and  
12       economically disadvantaged individuals;
- 13       (4) Fail to pay minimum wages required by state and  
14       federal law;
- 15       (5) Fail to carry workers' compensation insurance; and  
16       (6) Avoid worker and workplace safety requirements.

17       The legislature further finds that underground business  
18 operations drive down wages, create harsh working conditions,



1 and undercut legitimate business' profit margins. Underground  
2 business operations are a threat to the State's economy,  
3 workforce, and consumers.

4 The purpose of this Act is to create a construction site  
5 inspection task force to analyze the feasibility and potential  
6 complications of implementing a task force to investigate and  
7 inspect construction sites for unlicensed contractors,  
8 undocumented workers, and workplace safety violations.

9 SECTION 2. The director of commerce and consumer affairs  
10 (director) shall convene a construction site inspection task  
11 force. The director or the director's designee shall serve as  
12 chairperson of the construction site inspection task force. The  
13 task force shall include at least two representatives each from  
14 the office of the attorney general, the department of commerce  
15 and consumer affairs, the disability compensation division of  
16 the department of labor and industrial relations, the  
17 occupational safety and health division of the department of  
18 labor and industrial relations, the unemployment insurance  
19 division of the department of labor and industrial relations,  
20 and the department of taxation. The task force also shall  
21 request that a representative from each county permitting  
22 department be included in the task force.





1 The construction site inspection task force shall:

2 (1) Discuss, research, and report on the advantages of  
3 sharing among the participating agencies information  
4 necessary to combat unlicensed contracting, the use of  
5 undocumented workers, and workplace safety violations,  
6 including a discussion of the potential advantages and  
7 disadvantages of a shared automated information  
8 database systems, common case numbers, and a  
9 centralized debt collection system;

10 (2) Discuss, research, and report on ways to improve the  
11 coordination of activities among the participating  
12 agencies;

13 (3) Discuss, research, and report on ways to develop  
14 methods to pool, focus, and target the enforcement  
15 resources of the participating agencies to deter tax  
16 evasion, unlicensed contractor activity, and workplace  
17 safety violations and to maximize recovery of  
18 penalties for violations of laws and rules; and

19 (4) Discuss, research, and report on ways to reduce  
20 enforcement costs wherever possible by eliminating  
21 duplicative audits and investigations.

22 The task force shall have the authority to:



- 1           (1) Form joint discussion teams to discuss ways to utilize  
2           the existing investigation and enforcement  
3           capabilities of the participating members, including  
4           the appointment of inspectors by the director or by  
5           participating members. The joint discussion teams  
6           shall evaluate the efficiencies of conducting site  
7           inspections on sites suspected of engaging in tax  
8           evasion, unlicensed contractor activity, workplace  
9           safety violations, and violations of other labor laws  
10          as well as random site inspections to ensure  
11          compliance with existing laws;
- 12          (2) Solicit the future cooperation and participation of  
13          other state and local agencies in carrying out the  
14          objectives of the task force;
- 15          (3) Establish potential procedures, including but not  
16          limited to an advertised telephone hotline, for  
17          soliciting referrals of suspected violations from the  
18          public;
- 19          (4) Develop procedures to enable the use of civil  
20          sanctions in lieu of criminal actions wherever  
21          possible;



1 (5) Evaluate the need for statutory changes to achieve the  
2 purposes of this section, including:

3 (A) Eliminating barriers to interagency information  
4 sharing;

5 (B) Improving the ability of the participating  
6 agencies to audit, investigate, and prosecute  
7 violations;

8 (C) Deterring violations and improving voluntary  
9 compliance;

10 (D) Establishing centralized, automated data  
11 collection services for the participating  
12 agencies; and

13 (E) Emphasizing civil penalties instead of criminal  
14 ones whenever possible; and

15 (6) Evaluate the need for the authority to enter at  
16 reasonable times and without prior notice, any  
17 property, public or private, for the purpose of  
18 investigating and inspecting the condition or  
19 operation of a construction site.

20 SECTION 3. The construction site inspection task force

21 shall submit a report to the legislature no later than sixty  
22 days before the commencement of the 2011 regular session on its



1 findings and recommendations on implementing a task force to  
2 investigate and inspect construction sites for unlicensed  
3 contractors, undocumented workers, and workplace safety  
4 violations. The report shall include but not be limited to:

5 (1) The scope of potential cases of violations and  
6 noncompliance with tax laws that could be identified,  
7 audited, investigated, prosecuted through civil  
8 action, or referred for criminal prosecution;

9 (2) Actions and authority needed by the task force to  
10 undertake and publicize its activities;

11 (3) Recommendations for any legislation needed to  
12 accomplish the goals and to implement the  
13 recommendations of the construction site inspection  
14 task force; and

15 (4) Identification of funding streams and estimated  
16 expenditures needed in order to fully implement the  
17 recommendations of the construction site inspection  
18 task force.

19 SECTION 4. This Act shall take effect on July 1, 2010.

20

APPROVED this

19

day of

MAY

, 2010

  
GOVERNOR OF THE STATE OF HAWAII

CONSTRUCTION SITE INSPECTION TASK FORCE  
Department of Commerce and Consumer Affairs  
State of Hawaii

AGENDA

Date: Tuesday, July 27, 2010  
Time: 9:00 a.m.  
Place: Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
Conference Room 203  
Honolulu, Hawaii 96813

1. Call to Order
2. Introduction of Construction Site Inspection Task Force (CSITF) Members
3. Sunshine Law Review (Chapter 92, Hawaii Revised Statutes)
4. Act 121 Review
  - a. CSITF Purpose
  - b. CSITF Responsibilities and Authority
  - c. CSITF Report to the 2011 Legislature
5. Department Perspectives on CSITF:
  - a. Department of Commerce and Consumer Affairs
  - b. Department of the Attorney General
  - c. Department of Labor and Industrial Relations
    - (1) Disability Compensation Division
    - (2) Unemployment Insurance Division
    - (3) Occupational Safety and Health Division
  - d. Department of Taxation
  - e. City and County of Honolulu Permitting Department
  - f. Maui County Permitting Department
6. The California Experience: Overview of the Economic & Employment Enforcement Coalition (EEEC)

7. Permitted Interaction Group(s): Discuss and create to address CSITF responsibilities, including methods to combat unlicensed contracting, use of undocumented workers, and workplace safety violations.
8. Department Work Assignments
9. Announcements
10. Next Meeting: Tuesday, September 7, 2010  
9:00 a.m.
11. Adjournment

JMU:ks  
07/20/10

Individuals who require special needs accommodations are invited to call Kellie Sato at (808) 586-2666 at least **4 working days** in advance of the meeting.

CONSTRUCTION SITE INSPECTION TASK FORCE  
Department of Commerce and Consumer Affairs  
State of Hawaii

AGENDA

Date: Tuesday, September 7, 2010  
Time: 9:00 a.m.  
Place: Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
Conference Room 204  
Honolulu, Hawaii 96813

1. Call to Order
2. Additions/Revisions to Agenda
3. Approval of Minutes of Previous Meeting
4. Announcement of Ryan Markham, Special Assistant to the Director, Department of Labor and Industrial Relations as the new task force member. He replaces Jamesner Dumlao who has left the Department of Labor and Industrial Relations
5. Report to CSITF members on the Permitted Interaction Group discussion that was held on Monday, August 9, 2010
6. Department Work Assignments
7. Announcements
8. Next Meeting: Tuesday, October 12, 2010  
9:00 a.m.
9. Adjournment

JMU:ks  
8/31/10

Individuals who require special needs accommodations are invited to call Kellie Sato at (808) 586-2666 at least **4 working days** in advance of the meeting.

CONSTRUCTION SITE INSPECTION TASK FORCE  
Department of Commerce and Consumer Affairs  
State of Hawaii

AGENDA

Date: Tuesday, October 12, 2010  
Time: 9:00 a.m.  
Place: Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
Conference Room 204  
Honolulu, Hawaii 96813

1. Call to Order
2. Additions/Revisions to Agenda
3. Approval of Minutes of Previous Meeting
4. Permitted Interaction Group Report--Review and Action
5. Report to the 2011 Legislature
6. Department Work Assignments
7. Announcements
8. Next Meeting: Tuesday, November 9, 2010  
9:00 a.m.
9. Adjournment

JMU:ks  
10/05/10

Individuals who require special needs accommodations are invited to call Kellie Sato at (808) 586-2666 at least **4 working days** in advance of the meeting.



CONSTRUCTION SITE INSPECTION TASK FORCE  
Department of Commerce and Consumer Affairs  
State of Hawaii

AGENDA

Date: Tuesday, November 9, 2010  
Time: 9:00 a.m.  
Place: Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
Conference Room 203  
Honolulu, Hawaii 96813

1. Call to Order
2. Additions/Revisions to Agenda
3. Approval of Minutes of Previous Meeting
4. Report to the 2011 Legislature
5. Announcements
6. Adjournment

JMU:ks  
10/27/10

Individuals who require special needs accommodations are invited to call Kellie Sato at (808) 586-2666 at least **4 working days** in advance of the meeting.

CONSTRUCTION SITE INSPECTION TASK FORCE  
Department of Commerce and Consumer Affairs ("DCCA")  
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by §92-7(b), Hawaii Revised Statutes ("HRS").

Date: Tuesday, July 27, 2010

Time: 9:00 a.m.

Place: Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
Conference Room 203  
Honolulu, Hawaii 96813

Present: Jo Ann Uchida, Chairperson  
Clayton Chun, Member  
Jamesner Dumlao, Member  
Tim Hiu, Member  
Keith Kim, Member  
Daria Loy-Goto, Member  
Herbert Lau, Member  
Tanya Lee, Member  
Gayle Nakagawa, Member  
Wendy Maher, Member  
Ralph Nagamine, Member  
Wendy Nakahara, Member  
Verna Oda, Member  
Ronald Randall, Member  
Rodney Tam, Member  
Sean Kinilau, Regulated Industries Complaints Office ("RICO")  
Catherine Chun-Hoon, RICO  
Kellie Sato, RICO  
Alice Worthy, Professional & Vocational Licensing Division ("PVLD")

Guests: Art Challacombe, Department of Permitting & Planning, City & County of Honolulu ("DPP-HNL")  
Ryan Markhem, Director's Office, Department of Labor & Industrial Relations ("DLIR")  
Pamela Martin, Administrator, Wage Standards Division, DLIR

Call to Order: Chairperson Uchida called the meeting to order at 9:05 a.m., at which time quorum was established.

Introduction of  
Construction Site  
Inspection Task  
Force Members:

Chairperson Uchida welcomed the members of the Construction Site Inspection Task Force ("Task Force"), thanked them for agreeing to serve on the Task Force, introduced DCCA staff, and asked the Task Force members to introduce themselves:

DCCA Staff:

Sean Kinilau, Investigations Manager, RICO  
Catherine Chun-Hoon, Consumer Projects Attorney, RICO  
Kellie Sato, Division Secretary, RICO  
Alice Worthy, Secretary, PVLD

Task Force Members:

Verna Oda – DCCA-PVL, Executive Officer, Contractors Licensing Board  
Daria Loy-Goto – DCCA-RICO, Supervising Attorney  
Tim Hiu – Acting Chief, DPP-HNL  
Ralph Nagamine – Development Services Administrator, County of Maui  
Public Works ("CMPW")  
Gayle Nakagawa – Acting Compliance Division Administrator,  
Department of Taxation ("DOTax")  
Ronald Randall – Acting Deputy Director, DOTax  
Rod Tam – Deputy Attorney General ("DAG"), CED Division; Attorney for  
Contractors Licensing Board  
Herbert Lau – DAG, Labor Division  
Tanya Lee – Employer Services Chief, DLIR, Unemployment Insurance  
Division ("UID")  
Wendy Maher – Unemployment Insurance Program Specialist, DLIR, UID  
Wendy Nakahara – Auditor, DLIR, Disability Compensation Division  
("DCD")  
Keith Kim – Investigation Unit Supervisor, DLIR, DCD  
Jamesner Dumlao – Operations Manager, DLIR, Hawaii Occupational  
Safety & Health Division ("HIOSH")  
Clayton Chun – Supervisor, DLIR, HIOSH

Chairperson Uchida introduced public observers: Pamela Martin from Wage and Standards Division-DLIR and Art Challacombe, DPP-HNL. Mr. Challacombe will serve as alternate Task Force member, as needed.

Each member received a binder with copies of the following informational materials: Agenda, Act 121, Chapter 444, HRS, and related 2010 Acts, HAR Title 16 Chapter 77, California State License Board's "Underground Economy Enforcement: Multi-jurisdictional Prosecution of Illegal Operators", Report of the California Economic & Employment Enforcement Coalition ("EEEC"), Memorandum of Understanding, Hawaii Business article-"Hawaii's Underground Economy", and DLIR Statutes Digest.

Chairperson Uchida gave a brief explanation of each tabbed document.

Chairperson Uchida also distributed copies of materials given to consumers regarding RICO's contractor complaint process.

Task Force members were advised to contact staff if there were questions or if members needed additional copies.

Sunshine Law  
Review:

DAG Rod Tam gave a brief summary of the Sunshine Law, Chapter 92, HRS. Task Force members received copies of Chapter 92, HRS, and a handout from the Office of Information Practices on the Sunshine Law.

Chapter 92, HRS, requires public notice of meetings, including an agenda, quorum (eight members would constitute quorum for the Task Force), motions, seconds, and majority vote, and minutes. Meetings not subject to Chapter 92, HRS, include discussions between two members only, permitted interaction groups ("PIG"), and executive sessions. A PIG is comprised of two or more members, but less than a quorum; is created at one meeting, the PIG reports its findings and recommendations to the entire group at a second meeting, and formal action is taken at a third meeting. Consideration of whether the Task Force should establish a PIG is on the agenda.

Act 121  
Review:

Chairperson Uchida gave a brief summary of Act 121.

a. Task Force Purpose

The purpose of the Task Force is to analyze the feasibility and potential complications of implementing a task force to investigate and inspect construction sites for unlicensed contracting, undocumented workers, and workplace safety violations.

b. Task Force Responsibilities and Authority

The Task Force shall: 1) explore ways to coordinate enforcement activities among various departments and counties; 2) identify opportunities to pool agency resources and reduce costs; 3) improve sharing information; 4) sharing database; 5) the pros and cons of instituting advertised hotlines; 6) prepare a report of task force findings; and 7) to pull resources together.

c. Task Force Report to the 2011 Legislature

The Task Force must submit a report to the 2011 Legislature sixty days prior to session. The report shall contain findings and recommendations.

Department  
Perspectives  
on Task Force:

DLIR

a. HIOSH

Mr. Dumlao and Mr. Chun reported that HIOSH's primary purpose is to ensure a safe workplace. Licensing issues are not within HIOSH's jurisdiction, nor does HIOSH have jurisdiction over employers with less than 10 employees. HIOSH would be interested in how the California EEEEC model works, as there is room for improvement regarding more coordinated enforcement among Hawaii agencies.

HIOSH enforcement procedures: 1) receives complaint call on HIOSH hotline; 2) assess immediate danger; 3) filtered to supervisor; 4) conduct site visit, if warranted; 5) issue proposed citation/citation; and 6) final order/penalty, if citation is uncontested. In addition, a program inspection is another enforcement method. Fine amounts range from \$0 to \$70,000. HIOSH employs six (6) safety inspectors statewide: four (4) in Honolulu, one (1) in Kona, and one (1) in Hilo. There also are five (5) health inspectors statewide.

HIOSH has had joint enforcement experience through its work with the federal OSHA office.

Generally, in a cash-only economy, it has been HIOSH's experience that employers tend to skimp on workplace safety.

b. DCD

Mr. Kim reported that the DCD handles workers compensation, TDI, and health care issues. DCD has five inspectors statewide: one (1) Hilo; one (1) Maui, Lanai and Molokai; and three (3) Oahu/Kauai. Inspectors handle complaints and also work on the lists of delinquent employers and registered employers who are not compliant with workers compensation, TDI, or health requirements.

The DCD receives approximately 200 health care and 200 TDI complaints a year and an estimated 100 complaints a year involving workers compensation. The DCD can levy fines at \$1 day to an employer for noncompliance.

Collaboration with other state agencies would be helpful, given the DCD's limited resources and staffing.

c. UID

Task Force member Wendy Maher reported that the UID registers companies with one or more employees. Employers must file quarterly reports. Contributions are based on the number of employees and are deposited into a fund used for employee benefits.

The DCD's audit section has federal and state goals/quotas on September 30th each year. There are thirteen (13) auditors on Oahu and three (3) on the Big Island. The Special Activities Unit also conducts on-site investigations for fraud. Fines include penalty and interest. Joint enforcement would be helpful; a certificate of compliance for employers would be useful for investigating agencies.

DAG

a. Herbert Lau, Labor Division

Mr. Lau provides legal advice to HIOSH and assists that agency with subpoenas for warrants and other legal matters.

Confidentiality issues arise, based on HIOSH statutes, which limits disclosure of certain information in civil proceedings.

b. Rod Tam, CED Division

Mr. Tam provides legal advice to the Contractors Licensing Board. Focus has been on catching unlicensed contractors and educating consumers, employers, and employees about the dangers and consequences of using unlicensed workers.

DOTax

Ronald Randall reported that DOTax handles violations of tax laws. The Special Enforcement Unit is self-funded, but currently has no staff. Both licensed and unlicensed persons pose problems and cash jobs are prevalent.

DOTax audits non-tax filers, state and federal contractors. There is abuse among filers and non-filers. DOTax issues fines of up to 75% of taxes owed; fraud cases are referred to the criminal unit.

DOTax works with federal, state, and county agencies. Work with DLIR has been challenging due to statutory confidentiality restrictions. Work with the counties to identify unlicensed contractors has resulted in access to building permit information.

Working together with other agencies that face similar staffing and resource restrictions will help.

Gayle Nakagawa of DOTax Compliance Division reported that evidence of offer and transaction is needed before any action can be taken against those persons not in compliance. Ms. Nakagawa also confirmed the difficulty in working with other agencies, such as the DLIR, because information sharing often is impacted by confidentiality statutes.

#### CMPW

Ralph Nagamine reported that CMPW handles complaints, such as construction work without a permit, but that it does not know who is performing the work until a site inspection is conducted. CMPW does not now, but could forward complaints of unlicensed activity to the RICO-Maui office.

There are five electrician and plumber inspectors and three construction inspectors. Inspectors can assess fines, for instance if the building is occupied prior to authorization. Fines range from \$200. Collecting fines is a challenge.

CMPW checks licensing before issuing a permit, determines if licensing classification is appropriate, and sends RICO a notice of violation, when appropriate.

#### DPP-HNL

Tim Hiu reported that the DPP-HNL administers building permits and issues approximately 1,400 permits per year. The DPP-HNL conducts permit investigations and complaint investigations. There are 60 inspectors for building code issues, including clean work site inspections. Penalties include civil fines of \$50/day up to \$1,000 for violations or work stoppage if there is no permit.

Art Challacombe of DPP-HNL, Customer Service Office, also commented that they attempt to coordinate services with other state agencies, most recently with DOTax concerning illegal vacation rentals. Due to confidentiality issues, they were unable to obtain certain information and now refer their concerns directly to DOTax. In an effort to expedite the permit process, DPP-HNL offers on-line permitting for small projects. DPP-HNL's own confidentiality policy is not to provide names or personal information when investigating complaints and to follow chapter 92F, HRS.

In response to questions from Task Force members, DPP-HNL representatives informed the group that 1) subcontractor information is required at the time a permit is issued; 2) pursuant to county regulation, a permit holder has 180 days within which to start construction; and 3) a permit can be closed if the structure is incomplete.

DPP-HNL also indicated that there is a problem with cash economy; it has conducted construction site visits with the Honolulu Police Department.

DCCA

a. Daria Loy-Goto, Supervising Attorney, RICO

RICO has enforcement responsibilities for 48 professions. It prosecutes cases against licensed contractors, e.g. contractors without tax clearances, and cases against unlicensed contractors.

b. Verna Oda, Executive Officer, Contractors Licensing Board

The Contractors Licensing Board issues contractor licenses. The Board meets to review/approve/decline applications and determines what kind of work can be done under specific licenses. The Board does not get involved with the enforcement of unlicensed activity; these cases, as well as all complaints, are referred to RICO.

Guests

Art Challacombe – DPP-HNL

Mr. Challacombe indicated that the DPP-HNL handles enforcement and review of building permit applications, mostly owner-builder permits. These permits generate the most complaints.

Tim Liu left at 11:18 a.m.

Chairperson Uchida called for a break at 11:20 a.m.

Chairperson Uchida called the meeting back to order at 11:35 a.m.

Guests (cont'd)

Pamela Martin – Wage Standards Division, DLIR

This division enforces the overtime and minimum wage laws, including enforcement of such laws in the construction context. Ms. Martin reported that the division compiles background information on an employer, then will conduct an on-site visit.

Ms. Martin shared that she received an inquiry from Ms. Stephanie Coble of Molokai who reported problems with owner-builder permits and lack of enforcement of §§444-9 and 444-9.1, HRS. Ms. Coble further indicated that non-residents were obtaining owner-builder permits and requested that owner-builder permits be available on-line.



The California  
Experience:  
Overview of the  
Economic &  
Employment  
Enforcement  
Coalition (EEEC):

The Task Force viewed a video sponsored by the California Economic & Employment Enforcement Coalition ("EEEC") of a construction site sweep conducted jointly by several state agencies.

Permitted  
Interaction  
Group(s) ("PIG"):

See #4 discussion below.

Department Work  
Assignments:

Chairperson Uchida asked that each Task Force member consider and be prepared to discuss the following issues at the next meeting:

- 1) Given your agency laws and policies, what would it take for your agency to participate in joint enforcement activities? Please identify specific barriers to participation.
- 2) If your agency participates in joint enforcement activities, is a Memorandum of Understanding required?
- 3) For DOTax: what is the scope of potential cases of violations and noncompliance with tax laws? Please report back to the Task Force at the next meeting.
- 4) The Task Force discussed whether to create a permitted interaction group ("PIG") as authorized by §92-2.5, HRS. Mr. Dumlao opined that creating a PIG would be helpful. Scope of authority and scope of investigation of the PIG would be to meet, study joint enforcement issues, compile information, and report its recommendations to the Task Force.

Task Force members may volunteer to serve; no more than seven Task Force members are allowed. The following were interested in serving:

JoAnn Uchida, Chairperson  
CCHPD representative (Hiu/Challacombe)  
Ron Randall – DOTax  
Jamesner Dumlao – DLIR – OSHA  
Keith Kim – Labor – DLIR-DCD  
Wendy Maher – DLIR-UID  
Daria Loy-Goto – DCCA-RICO

After discussion, it was moved by DAG Rod Tam, seconded by Wendy Nakahara, and unanimously carried to approve the creation of the PIG for the purpose of studying joint enforcement issues and reporting recommendations to the Task Force.

Announcements: Each of the members was provided with a copy of the EEEEC Training DVD shown to Task Force members.

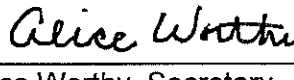
RICO's Annual training session is scheduled for September 15, 2010, and investigative staff of CSITF agencies is invited to attend.

A representative of the California EEEEC will attend the next meeting to discuss the EEEEC's joint enforcement activities.

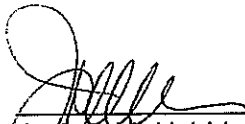
Next Meeting: Tuesday, September 7, 2010  
9:00 a.m.  
Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
Conference Room 203  
Honolulu, Hawaii 96813

Adjournment: There being no further business to discuss, the meeting adjourned at 12:05 p.m.

Taken and recorded by:

  
\_\_\_\_\_  
Alice Worthy, Secretary

Reviewed and approved by:

  
\_\_\_\_\_  
Jo Ann M. Uchida  
Chairperson

JMU/aw  
8/25/10

[ ] Minutes approved as is.  
[✓] Minutes approved with changes. See Minutes of 9/7/10.

CONSTRUCTION SITE INSPECTION TASK FORCE  
Department of Commerce and Consumer Affairs ("DCCA")  
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by §92-7(b), Hawaii Revised Statutes ("HRS").

Date: Tuesday, September 7, 2010

Time: 9:00 a.m.

Place: Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
Conference Room 204  
Honolulu, Hawaii 96813

Present: Jo Ann Uchida, Chairperson  
Clayton Chun, Member  
Tim Hiu, Member  
Keith Kim, Member  
Daria Loy-Goto, Member  
Herbert Lau, Member  
Ryan Markham, Member  
Gayle Nakagawa, Member  
Wendy Maher, Member  
Ralph Nagamine, Member  
Wendy Nakahara, Member  
Verna Oda, Member  
Rodney Tam, Member  
Tom Torkildson, Member  
Sean Kinilau, Regulated Industries Complaints Office ("RICO")  
Catherine Chun-Hoon, RICO  
Kellie Sato, RICO  
Alice Worthy, Professional & Vocational Licensing Division ("PVLD")

Excused: Tanya Lee, Member

Guests: Art Challacombe, Department of Permitting & Planning, City & County of Honolulu ("DPP-HNL")  
Ronald Randall, Department of Taxation ("DOTax")

Call to Order: Chairperson Uchida called the meeting to order at 9:02 a.m., at which time quorum was established.

Additions/  
Revisions to  
Agenda: None.

Approval of  
Meeting Minutes:

It was moved by Rodney Tam, seconded by Tim Hiu, and unanimously carried to approve the minutes of the Construction Site Inspection Task Force ("Task Force") meeting held on July 27, 2010, as amended:

Page 5, 2<sup>nd</sup> paragraph under c. UID: "DOD's" should be "UID's".

Page 6, 1<sup>st</sup> paragraph, 2<sup>nd</sup> line under DPP-HNL: "1,400" should be "14,000".

Page 7, reference to Tim Liu: "Liu" should be "Hiu".

Announcements:

Chairperson Uchida welcomed Ryan Markham, who is replacing Jamesner Dumlao from DLIR/HIOSH, and Thomas Torkildson, DOTax new Special Enforcement Section Supervisor, who is replacing Ronald Randall. Mr. Torkildson stated that he is looking forward to working on the Task Force.

The previously-announced guest speaker from the California EEEEC, who was scheduled to make a presentation at today's meeting, was not able to attend due to work obligations and sends his regrets. Any future communication with the California EEEEC will be through telephone or email.

Members of the Task Force and staff were asked to reintroduce themselves.

Permitted Interaction  
Group Report:

Chairperson Uchida gave a brief recap of the Permitted Interaction Group's discussion held on August 9, 2010, and its Report and Recommendations. Copies of the Report and Recommendations were distributed to Task Force members for their information.

Verna Oda arrived at 9:15 a.m.

Messrs. Hiu and Nagamine requested that line 4 of paragraph 2 under Recommendations on page 3 be amended to read as follows:

"... recommends continued discussions with the appropriate county departments with responsibility for building permits ...".

After a brief discussion, it was moved by Daria Loy-Goto, seconded by Herbert Lau, and unanimously carried to accept the Permitted Interaction Group's Report and Recommendations, as amended.

With reference to paragraph 3 under Recommendations, Chairperson Uchida stated that the Task Force would check with California's EEEEC before adoption of the recommendations.

Department Work  
Assignments:

a. HIOSH:

Joint Enforcement: Both Clayton Chun and Ryan Markham acknowledged the benefits achieved through networking with other agencies. HIOSH has worked with other agencies in the past on a case-by-case basis. However, current staffing issues and resources make joint enforcement efforts difficult at the present time.

Statutory Restrictions on Disclosure of Information/Records: Hawaii Revised Statutes ("HRS") prohibits HIOSH from disclosing the names of complainants and witnesses. HIOSH reports are also precluded from being used in civil proceedings. Final orders are public documents and available on-line.

Herbert Lau stated that HIOSH receives Chapter 92F, HRS, requests. HIOSH must also follow the statutory requirements of Chapter 396, HRS. Chairperson Uchida stated that more information is needed regarding these statutory limitations and Mr. Lau said he would provide more information on this Chapter.

Daria Loy-Goto stated that RICO receives evidence from other agencies and also handles Chapter 92F, HRS, requests. Information received is treated as tip information. Witnesses may be interviewed. RICO depends/relies on other investigators involved in the case. RICO coordinates and works with other agencies on a regular basis.

Clayton Chun stated that OSHA law allows HIOSH the right to interview employees without management present. HIOSH has the right to seek information from the employee; the employee does not testify; only management testifies. HIOSH relies on worksheets from the investigator in reviewing the case. The investigator conducts interviews without management present; fills out interview sheet; elects to keep names confidential. In a contested case, HIOSH will rely on witnesses' statements; pertinent information is redacted. The employer usually does not cross-examine the witness.

Enforcement Legislation: HIOSH does not foresee the need for legislative amendments to facilitate joint enforcement at the present time.

Civil or Criminal Prosecution: There are some criminal penalties in the HIOSH statutes, but these are vague and rarely used.

b. DCD:

Joint Enforcement: Keith Kim commented that the DCD would be interested in joint enforcement activities, such as joint interviews. The

DCD conducts site visits and interviews. However, staffing shortages would make joint activities difficult.

Wendy Nakahara reported that the DCD establishes whether individuals are employees, determines whether or not the transaction is on a cash basis, and focuses on audit of finances, if warranted. Joint enforcement would be difficult because the Audit section currently is concentrating on employer subsidy programs, not compliance issues.

Civil or Criminal Prosecution: DCD only enforces civil statutes; there are no criminal penalties.

c. UID:

Joint Enforcement: Wendy Maher reported that the UID would benefit from joint enforcement, particularly in joint interviews of independent contractors with other agencies.

Statutory Restrictions on Disclosure of Information/Records: UID requires a Memorandum of Understanding ("MOU") before it could disclose any employer information. Section 383-95, HRS, provides for the confidentiality of UID information. Chairperson Uchida commented that the DCCA has an MOU with UID to obtain specific information.

Enforcement Legislation: None needed at the present time.

Civil or Criminal Prosecution: UID enforces civil and criminal statutes, but criminal enforcement is seldom utilized.

d. DOTax:

Joint Enforcement: DOTax is interested in joint interviews on a case-by-case basis, but strict federal confidentiality requirements would affect joint enforcement activities.

Statutory Restrictions on Disclosure of Information/Records: Federal law requires MOUs prior to release of DOTax information. In compliance with federal law, DOTax has MOUs in place with Honolulu and Maui counties to provide specific information. For instance, Honolulu County provides a list of names of persons who have requested a tax credit and DOTax provides additional information on those persons. Receiving agency must follow federal disclosure law or risk prison or significant fines for non-compliance.

Daria Loy-Goto stated that RICO requests are provided certain information, though an MOU may be required on a specific case.

Civil or Criminal Prosecution: Compared to criminal prosecution cases, civil tax cases are preferred because they are resolved more quickly, require a lesser standard of proof, and involve significant penalties.

Chairperson Uchida called for a break at 10:15 a.m.

Chairperson Uchida called the meeting back to order at 10:37 a.m.

Rod Tam left the meeting at 10:38 a.m.

e. MCPD:

Joint Enforcement: Ralph Nagamine reported that due to the specific focus of MCPD's work, there is little opportunity for collaboration. Maui issues warning letters or fines for non-compliance.

Statutory Restrictions on Disclosure of Information/Records: Copies of notice of violations are sent to the RICO Maui office. The website is available for the public to obtain information, including information on notice of violations. RICO would be interested in unpermitted building activities.

Enforcement Legislation: None needed at this time. According to Mr. Nagamine, the biggest challenge now is collecting all the fines.

f. HDPP:

Joint Enforcement: Tim Hiu stated that investigations do not often occur during regular work hours, so joint enforcement may be difficult to set up. HDPP requires permission to access a building site or a search warrant. Having a contact list or arranging strategic meetings on a case-by-case basis is preferred.

Statutory Restrictions on Disclosure of Information/Records: HDPP website is available for public use. MOUs usually are not required. Art Challacombe commented that much information is available on the HDPP website; additional information is shared with Department of Health and DOTax.

Enforcement Legislation: None needed as most HDPP information is already publicly disclosed.

g. RICO:

Joint Enforcement: Daria Loy-Goto reported that RICO is open to joint enforcement activities, including joint interviews. RICO also provides information and refers cases to other law enforcement agencies.

Enforcement Legislation: It may be premature to determine whether legislation is necessary to facilitate joint enforcement activities.

Civil or Criminal Prosecution: RICO primarily pursues civil prosecution; however, unlicensed contracting is a misdemeanor. The Department of the Attorney General or the Prosecutor's Office enforces criminal penalties.

h. **Contractors' Board:**

Joint Enforcement: Verna Oda stated that all licensing complaints are handled by RICO. Sharing of information would be helpful for licensing purposes.

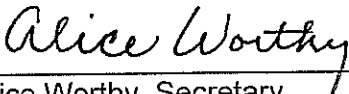
Following the discussion on Department work assignments, Chairperson Uchida informed the Task Force that it has a short timeframe within which to compile and approve a report for submission to the Legislature by November 19, 2010. Chairperson Uchida will email Task Force members information, recommendations, and findings for consideration and discussion at the next meeting. The next meeting will also cover the Permitted Interaction Group Report. The last meeting would be devoted to review and approval of the Task Force's Final Report to the 2011 Legislature.

Announcements: None.

Next Meeting: Tuesday, October 12, 2010  
9:00 a.m.  
Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
Conference Room 204  
Honolulu, Hawaii 96813

Adjournment: There being no further business to discuss, the meeting adjourned at 11:20 a.m.

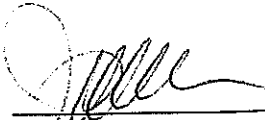
Taken and recorded by:

  
\_\_\_\_\_  
Alice Worthy, Secretary



Construction Site Inspection Task Force  
Minutes of the September 7, 2010 Meeting  
Page 7

Reviewed and approved by:



JoAnn M. Uchida  
Chairperson

JMU/aw  
10/7/10

[ ] Minutes approved as is.

[✓] Minutes approved with changes. See Minutes of 10/12/10.

CONSTRUCTION SITE INSPECTION TASK FORCE  
Department of Commerce and Consumer Affairs ("DCCA")  
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by §92-7(b), Hawaii Revised Statutes ("HRS").

Date: Tuesday, October 12, 2010

Time: 9:00 a.m.

Place: Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
Conference Room 204  
Honolulu, Hawaii 96813

Present: Jo Ann Uchida, Chairperson  
Tim Hiu, Member  
Keith Kim, Member  
Josh Kreye, Member  
Daria Loy-Goto, Member  
Herbert Lau, Member  
Tanya Lee, Member  
Wendy Maher, Member  
Ralph Nagamine, Member  
Wendy Nakahara, Member  
Verna Oda, Member  
Rodney Tam, Member  
Tom Torkildson, Member  
Sean Kinilau, Regulated Industries Complaints Office ("RICO")  
Catherine Chun-Hoon, RICO  
Kellie Sato, RICO  
Alice Worthy, Professional & Vocational Licensing Division ("PVLD")

Excused: Clayton Chun, Member  
Ryan Markham, Member

Guests: Art Challacombe, Department of Permitting & Planning, City & County of Honolulu ("DPP-HNL")  
Wesley Lum, Wage Standards Division, DLIR

Call to Order: Chairperson Uchida called the meeting to order at 9:07 a.m., at which time quorum was established.

Chairperson Uchida introduced Josh Kreye who is replacing Gayle Nakagawa of DOTax. Mr. Kreye is with the Special Enforcement Section.

Additions/  
Revisions to  
Agenda:

None.

Approval of  
Meeting Minutes:

It was moved by Daria Loy-Goto, seconded by Rodney Tam, and unanimously carried to approve the minutes of the Construction Site Inspection Task Force ("CSITF") meeting held on September 7, 2010, as amended:

Page 4, under section b. DCD, first full paragraph should be replaced as follows:

DCD investigators are responsible for determining coverages and establishing whether an employee/employer relationship exists. If it is determined that the transaction involved payment of case wages, then the auditors may become involved to see whether the company has the ability to pay TDI, health care, or workers' compensation benefits. Auditors may audit the accounting and financial records of the company to determine financial solvency and whether the company has the ability to operate as a going concern.

The Audit Section involvement in the joint enforcement would be difficult since the function is usually not to uncover cash wages. Due to a staffing shortage, auditors are currently concentrating on an employer subsidy program for health care premiums and financial reviews for self-insured employers. The Audit Section is not focusing on compliance issues.

Permitted Interaction  
Group Report:

Chairperson Uchida provided members with copies of the PIG Report, which had been amended and unanimously accepted at the September 7, 2010, meeting.

It was moved by Herbert Lau, seconded by Tim Hiu, and unanimously carried to adopt the Permitted Interaction Group's Report and Recommendations.

Report to the  
2011 Legislature:

Chairperson Uchida provided members with three handouts for their information: (a) one page document of the California Business and Professions Code Sec. 7028 regarding engaging in business without a license, fines and punishment, and statute of limitations; (b) DOTax News Release regarding a repeat tax offender charged with multiple violations; and c) draft overview of Report to the 2011 Legislature.

Chairperson Uchida indicated that she has begun to compile information for the Report based on CSITF meetings and the PIG Report. There is a need, however, to specify and confirm the CSITF's specific findings and recommendations. Chairperson Uchida distributed the draft overview of the Report for purposes of further discussion.

### Undocumented Workers

Since Act 121 required the CSITF to look at unlicensed contracting, undocumented workers, and workplace safety, Chairperson Uchida asked CSITF members to consider and respond on the extent to which undocumented workers impact their work and enforcement roles.

#### **DCD:**

Keith Kim indicated that the DCD's primary responsibility is to determine eligibility. It does not consider undocumented worker status in that determination; considering undocumented status is more of a federal responsibility.

#### **UID:**

Tanya Lee reported that the UID does not look at whether a worker is undocumented. However, for UID benefits, the citizen status of a worker is relevant.

#### **HIOSH:**

Herbert Lau reported that HIOSH is focused on whether an employee/employer relationship exists. The status of the worker is not usually relevant. As far as Mr. Lau knew, there have not been any joint operations or referrals to the U.S. Immigration and Customs Enforcement (ICE).

#### **CLB:**

Rodney Tam stated that the Board has no direct involvement with the issue of undocumented workers. It handles licensure and RICO covers enforcement. A licensed contractor, however, must be a U.S. citizen, national, or authorized alien.

#### **DOTax:**

Tom Torkildson reported that he has not dealt with this issue before in the tax context.

#### **CMPW:**

Ralph Nagamine stated that permits are issued to licensed contractors, but CMPW does not know who the workers are. In many instances, there are no workers on site.

#### **DPP-HNL:**

Tim Hiu indicated that often no physical work is being done during inspections. The status of a worker is not related to building safety.

Moreover, many persons are not identified on jobsites, do not wear identification, and could be visitors on the job site.

**RICO:**

Daria Loy-Goto reported that RICO investigates and prosecutes persons who have impersonated a U.S. citizen and enforces a statute that prohibits a contractor from hiring illegal aliens. In unlicensed cases, particularly involving massage therapists, RICO routinely sees undocumented workers and collaborates with ICE. In unlicensed contracting cases involving undocumented workers, RICO is in contact with other state agencies.

Legislation for Civil, Not Criminal Enforcement

Chairperson Uchida reported that RICO supports and encourages criminal prosecution of unlicensed contractors, in addition to the civil enforcement penalties currently available. The California Model primarily relies on criminal enforcement via section 7028 of the California Business and Professions Code. California law also requires mandatory jail time of at least 90 days for a second offense. In Hawaii, a citation for unlicensed contracting triggers civil penalties.

As an example of the need to bolster civil prosecution with criminal penalties, Chairperson Uchida distributed a 2009 press release involving an unlicensed contractor who had been prosecuted civilly on several occasions and criminally for tax offenses, but who continued to engage in unlicensed contracting.

Chairperson Uchida indicated that more detailed discussions between RICO and criminal law enforcement agencies need to occur before any legislation can be proposed.

Whether Task Force Should Be Created?

**DCD:**

Keith Kim indicated that, in general, and due to staff shortages, a task force should not be created. Wendy Nakahara reported that DCD's focus is not on undocumented workers.

**UID:**

Wendy Maher reported that the UID is interested in collaboration with other agencies as the UID fulfills its responsibility to look at unreported wages. The UID is federally funded. She will need to check whether the UID can use federally-funded personnel for the task force.

**HIOSH:**

Herbert Lau emphasized the staffing problems HIOSH faces and reported that this situation would be strained with the creation of a task force. HIOSH receives federal and state funding.

**DOTax:**

Tom Torkildson had no comment as he did not know the Department's position on this matter. Mr. Torkildson reiterated the confidentiality issues involved and indicated that the Special Enforcement Unit is specially funded.

**CMPW:**

Ralph Nagamine stressed that his interest was in improving methods to collect fines and would support legislation that facilitated fine collections by the counties.

**DPP-HNL:**

The DPP-HNL already coordinates services with other agencies in certain instances now. The DPP-HNL receives general county funds, which might affect joint enforcement.

**RICO:**

Ms. Loy-Goto reiterated the value in sharing information, but expressed concern regarding the sharing/receiving of confidential information.

**CLB:**

Ms. Oda questioned to what extent the Board would be able to contribute to a permanent task force.

Chairperson Uchida asked CSITF members to provide her with any additional comments before the next meeting.

Chairperson Uchida stated that the California Model, particularly the EEEEC, has an enormous budget and staff and jurisdiction includes other industries, not just the contracting industry. Limiting the scope to only contracting is problematic, particularly if the focus of a task force is on underground economy. Such a task force should concentrate on any and all industries involved in underground economy, of which the contracting industry would be one component in a much larger initiative.

Chairperson Uchida commented that the CSITF could suggest to the Legislature consideration of the broader California Model as an alternative.

CSITF members Keith Kim, Tom Torkildson, and Tim Hiu provided input on other industries, such as auto repair, restaurant, industry, that are part of Hawaii's underground economy. For DPP-HNL, auto repair and illegal home occupants comprise the highest and third highest complaint categories. Tom Torkildson commented that there is no specific enforcement law to maintain records; surveillance is too time-consuming to undertake.

Information Sharing: MOUs

**HIOSH:**

Herbert Lau referred to §396-14, HRS, which prevents disclosure of HIOSH records for civil litigation. Mr. Lau will check on whether disclosure of unredacted HIOSH reports to RICO is permissible for law enforcement purposes.

Chairperson Uchida commented that under the California Model information is transmitted to the CSLB for prosecution. Chairperson Uchida asked CSITF members for their input on referring cases to other agencies for prosecution versus sharing information with other agencies.

**DCD:**

Keith Kim did not see a problem with referring DLIR orders to DCCA.

**HIOSH:**

Herbert Lau indicated that if referral for prosecution would result in more efficient collection of fines, then deterrence would be enhanced.

**RICO:**

Daria Loy-Goto stated that RICO would be interested in information pertaining to uncollected fines.

**CLB:**

Verna Oda reported that if the licensee says he/she has no employees and signs to that effect, then no workers' compensation insurance is required.

**UID:**

Tanya Lee reported that the UID does not refer cases to other agencies for prosecution.

**DOTax:**

Tom Torkildson stated that DOTax is attempting to create an automated method to cross check its database. Chairperson Uchida said that the DCCA faced a similar challenge, but was able to make certain information available to its several enforcement divisions by using respondent names as the shared identifier.

Chairperson Uchida called for a break at 10:31 a.m.

Chairperson Uchida called the meeting back to order at 10:57 a.m.

Ralph Nagamine left by 10:57 a.m.

Information Sharing (continued)

**DPP-HNL:**

Art Challacombe reported that DPP-HNL works with RICO on various cases, though it only refers cases to RICO where the case involves safety issues. It also has not referred cases to RICO when there is a pattern of unlicensed conduct because DPP-HNL policy is not punitive. There was, however, a recent referral to RICO involving life/safety issues. Mr. Challacombe stated that the DPP-HNL focuses on the property owner in the case of violations and attempts to recover civil fines from every person attached to the jobsite. Chairperson Uchida stressed that RICO was open to receiving referrals and suggested that DPP-HNL contact RICO's Investigations Manager when it has a case to refer. DPP-HNL was willing to refer cases to RICO.

**RICO:**

Daria Loy-Goto reported that RICO would accept any and all tip information. Chairperson Uchida asked that, in the event RICO receives a referral and pursues prosecution, the referring agency be committed to supporting RICO's prosecution.

**CLB:**

Verna Oda stated that the Board receives tax information from DOTax and refers this information to RICO.

**UID, DOTax, CLB:**

The UID reported that clearance from UID and DOTax is required. If the Board receives cases regarding violations of non-compliance with UID and DOTax, the sanction would likely be more educational in nature than punitive.



Education/Publicity Budget

**DCD:**

Mr. Kim reported that the DCD has no budget for consumer education/publicity. The DCD sponsors an employer workshop as its primary outreach and sends new employers an informational booklet. The DLIR website features all press releases.

**UID:**

The UID has no budget for education. It conducts quarterly workshops for new employers. There are also videos accessible on the website on how to apply for benefits.

**HIOSH:**

Mr. Lau was unaware of HIOSH's budget for education, although he did report that HIOSH has a public library and an outreach program. DLIR also has a Consultation and Training section, which provides free education for all employers.

**DOTax:**

DOTax has funds to do outreach. It distributes pamphlets and posters and there is a complaint line for the public to call.

**DPP-HNL:**

DPP-HNL requires the public to use its website to obtain information on and to apply for building permits. Website information is updated on a regular basis. Permit centers distribute pamphlets from other agencies and provide checklists for residential and commercial permit applicants. Complaints and concerns are referred to the Office of Information of Complaint (OIC). The DPP-HNL attempts to handle the complaint first before referring out.

Tim Hiu left at 11:27 a.m.

**RICO:**

RICO staff is available to do community outreach. RICO has a limited education budget; special publicity projects during this period of fiscal limitations would not be advisable.

**CLB:**

The Board has an education fund consisting of monies paid in by licensees. The fund is used to pay for pamphlets and conferences. Board information is available on the website. The Board also distributes

information by mail during renewal every other year. The Board does not have a newsletter.

Professional Employer Organizations (PEO)/  
Employee Leasing Companies

Chairperson Uchida asked if employee leasing companies were a significant issue for CSITF members.

**DCD:**

Keith Kim indicated that the challenge is to determine who is liable as the employer. The issue is not absolutely clear, but DCD is enforcing against the PEO for now. There are no serious difficulties in enforcement or audit sections.

**UID:**

Tanya Lee said that the PEO can do HR, so clients with better tax rates will be treated as an employer. PEOs attempt to obtain better tax rates. There are no issues relating to unlicensed contracting. Tax laws recognize PEOs.

**HIOSH:**

Herbert Lau was unaware of any instance where the PEO was cited for HIOSH violations. HIOSH cites the client, not the PEO, and uses the federal control test.

**CLB:**

Rodney Tam and Verna Oda reported that the Board considered this issue and has allowed the PEO to obtain necessary workers' compensation.

**DOTax:**

DOTax took no position on PEOs.

**RICO:**

If a licensee leases employees, there are still on-the-job supervision requirements. For unlicensed activity, there is a high incidence of owner-builders opting to use leased employees because owner-builders are required to obtain workers' compensation insurance. There is a concern if employees are leased for specific activities that require specialized training.

Chairperson Uchida stated that she will be working on the framework for the report and incorporate comments of the Task Force members into the

report. She will email the members the draft report for review, clarification, etc. and ask that the members get back to her with their comments on the findings and recommendations. Action for approval of the report will be done at the last meeting, which is scheduled for November 9<sup>th</sup>.

Department Work

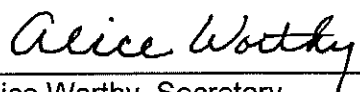
Assignments: None.

Announcements: None.

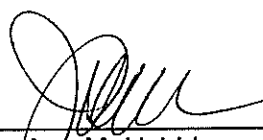
Next Meeting: Tuesday, November 9, 2010  
9:00 a.m.  
Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
Conference Room 203  
Honolulu, Hawaii 96813

Adjournment: There being no further business to discuss, the meeting adjourned at 11:57 a.m.

Taken and recorded by:

  
\_\_\_\_\_  
Alice Worthy, Secretary

Reviewed and approved by:

  
\_\_\_\_\_  
JoAnn M. Uchida  
Chairperson

JMU/aw  
10/26/10

- [ ☒ ] Minutes approved as is.  
[ ☐ ] Minutes approved with changes. See Minutes of \_\_\_\_\_.

CONSTRUCTION SITE INSPECTION TASK FORCE  
Department of Commerce and Consumer Affairs ("DCCA")  
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by §92-7(b), Hawaii Revised Statutes ("HRS").

Date: Tuesday, November 9, 2010

Time: 9:00 a.m.

Place: Regulated Industries Complaints Office  
Department of Commerce and Consumer Affairs  
Leiopapa A Kamehameha  
State Office Tower  
235 South Beretania Street  
9<sup>th</sup> Floor Conference Room  
Honolulu, Hawaii 96813

Present: Jo Ann Uchida, Chairperson  
Clayton Chun, Member  
Keith Kim, Member  
Josh Kreye, Member  
Daria Loy-Goto, Member  
Herbert Lau, Member  
Tanya Lee, Member  
Wendy Maher, Member  
Wendy Nakahara, Member  
Verna Oda, Member  
Rodney Tam, Member  
Sean Kinilau, Regulated Industries Complaints Office ("RICO")  
Catherine Chun-Hoon, RICO  
Kellie Sato, RICO  
Alice Worthy, Professional & Vocational Licensing Division ("PVLD")

Excused: Members Tim Hiu, Ryan Markham, Ralph Nagamine, Tom Torkildson

Guests: Jonathan Wolff, DOTax

Call to Order: Chairperson Uchida called the meeting to order at 9:06 a.m., at which time quorum was established.

Additions/  
Revisions to  
Agenda: None.

Approval of  
Meeting Minutes: It was moved by Rodney Tam, seconded by Daria Loy-Goto, and unanimously carried to approve the minutes of the Construction Site Inspection Task Force ("CSITF") meeting held on October 12, 2010.

Report to the 2011  
Legislature:

Chairperson Uchida distributed a copy of the CSITF's Report to the 2011 Legislature for discussion and approval. The Report is due to the Legislature by November 19, 2010 (sixty days prior to the start of the 2011 regular session). Appendices were included with the Report, except for copies of the minutes of October 12, 2010, and today.

It was moved by Verna Oda, seconded by Wendy Nakahara, and unanimously carried to approve the CSITF's Report to the 2011 Legislature, as amended:

Page 12, 3rd paragraph, 2<sup>nd</sup> sentence: insert "unlicensed" to read "particularly involving unlicensed massage therapists".

Page 19, 1<sup>st</sup> full paragraph, 2<sup>nd</sup> sentence should be: "Mr. Ungounga was also convicted in an action by the Department of the Attorney General for failure to file tax returns and is currently facing additional charges."

Announcements:

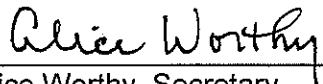
Chairperson Uchida provided CSITF members with a contact list of all members, which was updated.

Chairperson Uchida thanked all CSITF members for their input and staff for their assistance. Chairperson Uchida hoped that the relationships formed and information gained from serving on the CSITF will promote more efficient enforcement among agencies.

Adjournment:

There being no further business to discuss, the meeting adjourned at 9:17 a.m.

Taken and recorded by:

  
\_\_\_\_\_  
Alice Worthy, Secretary

Reviewed and approved by:

  
\_\_\_\_\_  
Jo Ann M. Uchida  
Chairperson

JMU/aw  
11/09/10

[ ] Minutes approved as is.

[ ] Minutes approved with changes. See Minutes of \_\_\_\_\_.



## CONTRACTORS STATE LICENSE BOARD

9821 Business Park Drive, Sacramento, California 95827  
Mailing Address: P.O. Box 26000, Sacramento, CA 95826  
800-321-CSLB (2752)  
[www.cslb.ca.gov](http://www.cslb.ca.gov)

STATE OF CALIFORNIA

Arnold Schwarzenegger, Governor

### California Contractors State License Board

## Underground Economy Enforcement: Multi-jurisdictional Prosecution of Illegal Operators



### Scope and Mission

The California Contractors State License Board (CSLB) protects consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction. CSLB licenses and regulates the more than 302,000 construction contractors in California, in 43 license classifications.

Each year, CSLB receives approximately 20,000 complaints, filed both by consumers and public agencies, against licensed and unlicensed contractors.

Unfortunately, California's construction businesses and workers face an ever-increasing danger. Their ability to compete in the state and global economy is threatened by California's underground economy. This underground economy drives down wages, creates harsh working conditions, and undercuts legitimate construction businesses to a point where they can no longer fairly compete and provide well-paying jobs to Californians.

California's Employment Development Department estimates the size of the state's underground economy to be anywhere from 3 to 40 percent of the aboveground economy, or \$60 to \$140 billion a year.



Construction businesses operating underground typically:

- Avoid licensing requirements, which makes them harder to find and bring into compliance with state and local laws;
- Pay wages in cash, thereby avoiding payroll taxes that fund unemployment insurance, disability insurance, personal income tax and paid family leave;
- Employ vulnerable workers, new immigrants, children, and economically disadvantaged individuals, often paying them far below the state's minimum wage;
- Fail to carry workers' compensation insurance; and
- Avoid minimum worker and workplace safety requirements

No single regulatory agency has the resources or jurisdiction to combat this enforcement problem alone.

### **Enforcement Strategy**

To combat the continuing threat posed by those who insist on working in the underground economy, CSLB has broken new ground in the field of proactive enforcement. By joining forces with other state and federal regulators, CSLB and its partners are increasing the prosecution of illegal underground businesses -- by sharing information and resources, and by eliminating bureaucratic red tape and duplication of efforts.



### **Creating Regulatory Partnerships**

CSLB is mandated by the California legislature not only to license and regulate contractors, but also to ensure that contractors comply with all building, employment, and tax laws. In California, there are several state and federal agencies with responsibility for regulating and enforcing labor law, often with overlapping jurisdiction and enforcement goals.

In the past, these agencies rarely shared information about violations of state licensing, labor and tax laws. CSLB has the authority to impose suspensions against licensed contractors who fail to pay employee wages, pay taxes, or carry workers compensation insurance. The problem was that there was no system in place for other regulatory agencies to notify CSLB about these violations.

Seeing both a need and an opportunity, CSLB established partnerships with other state and federal regulators to memorialize agreements, to join forces in undercover enforcement operations, and to facilitate unprecedented information sharing.

With these partnering efforts, CSLB is not only performing licensure, which ensures compliance with minimum experience and qualifications, but is also taking industry regulation a step further by enforcing proper business practices, protecting employees, and leveling the playing field for legitimate licensed contractors.

### **Memoranda of Understanding**

The first step CSLB took was to develop operational agreements to facilitate the sharing of records and databases. This enables the respective agencies to obtain documentation of





violations from their partner agencies, and take appropriate regulatory action against employers who violate the law.

One of CSLB's successful new strategies is to suspend the licenses of businesses with outstanding tax or wage liabilities. Between July 2005 and June 2006, CSLB achieved:

License Suspensions	558	\$15,258,469.27
Settlements Reached	107	\$4,089,125.66
Restitution Paid	528	\$3,959,350.60
Licenses Reinstated	655	\$8,526,203.05

To formalize its partnering efforts, CSLB entered into four Memoranda of Understanding (MOUs):

Partner	MOU Signed	Results
California Employment Development Department (EDD)	March 2005	EDD referred 12,000 outstanding tax liability cases, which resulted in the automatic suspension of those licenses for outstanding liabilities, until the judgments were satisfied.
California Division of Occupational Safety & Health (DOSH)	July 2005	DOSH provides reports of employers found in violation of safe workplace provisions, resulting in a fatality or serious workplace injury. The CSLB then takes disciplinary action against the contractor's license.
California Division of Labor Standards Enforcement (DLSE)	July 2003	DLSE forwards to the CSLB documentation of Labor Code violations that result in a civil or criminal case; or violations that result in a judgment for unpaid wages or penalties.
		Enhanced the MOU, to set specific statistical reporting timeframes and increase disclosure



2005

of DLSE's administrative actions against  
licensed contractors.

### **Economic and Employment Enforcement Coalition**

In 2005 CSLB took its proactive efforts to combat the underground economy to a new level, by co-sponsoring the Economic and Employment Enforcement Coalition (EEEC). Launched by Governor Arnold Schwarzenegger in July 2005, this coalition of state and federal labor law regulators combined their efforts to combat illegal operators by performing joint sweeps of active construction sites. Participating agencies joining CSLB include the United States Department of Labor, DOSH, DLSE and EDD.

The multi-jurisdictional EEEEC teams conducted monthly construction sweeps between June 2005 and May 2006, with the following results:

#### **Overall Statistics**

Construction Worksites Inspected	447
Construction Industry Employees Effected	8,588

#### **CSLB Participation**

Licenses Checked	980
Citations Issued for Violation of Contractors' License Law	73
Civil Penalties	\$61,100

#### **DOSH Participation**

Safety and Health Violations	859
Projected Civil Penalties	\$1,713,800

#### **DSLE Participation**

Citations Issued for Labor Code Violations	158
--	-----



Assessed Civil Penalties	\$986,750
--------------------------	-----------

**EDD Participation**

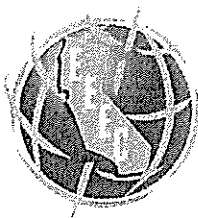
Payroll Audits Opened	16
-----------------------	----

Total Assessed Civil Penalties and Fines	\$1.7 Million
--	---------------

**Conclusion**

The insidious effects of the underground economy infiltrate many facets of California's economy, crossing the boundaries of many regulatory jurisdictions. Illegal operators who fail to pay taxes and obey licensing and insurance laws steal revenues earmarked for public schools, law enforcement, and other public services.

CSLB took the initiative to break through the bureaucracy and join forces with other state and federal agencies charged with fighting underground crime. The resulting multi-jurisdictional partnerships have greatly expanded the efficiency and effectiveness of all involved agencies, and are taking a collaborative bite out of the underground economy.



# **Economic & Employment ENFORCEMENT COALITION**

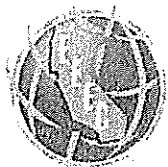
**REPORT TO THE  
CALIFORNIA JOINT LEGISLATIVE  
BUDGET COMMITTEE  
&  
DIRECTOR OF THE CALIFORNIA  
DEPARTMENT OF FINANCE**

**September 2009**

**PREPARED BY THE**



**ACTING SECRETARY DOUG HOFFNER**



## Economic & Employment ENFORCEMENT COALITION

### Members & Contributing Agencies



### MISSION STATEMENT

Economic & Employment Enforcement Coalition (EEEC) is a partnership of state and federal agencies, collaborating for vigorous and targeted enforcement against unscrupulous businesses. EEEEC aids in leveling the playing field while restoring competitive advantage to law abiding businesses and their employees.

## Table of Contents

Secretary's Message	1
The Stark Reality	3
A Persistent Problem	6
A New Approach	8
The Enforcement Team Approach	10
A Short History to Date of the EEEEC	14
Education and Outreach	17
The Re-inspection Program	20
Why EEEEC Should be Made a Permanent Program	23
The Future	25

### Appendices

A. Description of Member Agencies	26
B. The Industries	31
C. Member Agency Staffing	37
D. EEEEC Car Wash Reinspection Program Results	38
E. EEEEC Restaurant Reinspection Program Results	39
F. EEEEC Garment Reinspection Program Results	41
G. EEEEC Program Accomplishments	43
H. EEEEC Program Results July, 1, 2005 through June 30, 2009	44
H1. Clarification of terms	45
I. Citations Issued	47

## Secretary's Message

Following is the Economic and Employment Enforcement Coalition's (EEEC) Report to the California Joint Legislative Budget Committee and the Director of the Department of Finance. I am proud to be able to say that this Report clearly shows not only the consistent success of the EEECs operations, but also the importance of making it a permanently funded program to continue its effort in combating California's illegal underground economy.

As you will see, during the four years since it first began its operations, the EEECs has proven itself to be effective in targeting, citing, and prosecuting the most adverse business offenders operating in the underground economy. EEECs has also become highly successful in providing education to those who wish to learn how to come into full compliance with California's wage, hour, safety, licensing and employment related tax requirements. This is being accomplished through extensive industry specific outreach activities throughout the State.

Since its operations began in mid-2005, EEECs dedicated teams of investigators have inspected over 5,500 employers in those industries most likely to have substantial illegal underground operations. EEECs accomplished this with a total workforce of only 66 personnel from a number of different enforcement agencies, division, and departments, all working together toward a common goal. Those targeted inspections have resulted in over 18,700 citations and violations, amounting to over \$38.7 million in penalties and assessments.

EEECs consistently evolving targeting procedures have brought the number of citations and assessments to an average of almost four per inspection. This high ratio clearly shows that EEECs is focusing on the worst offenders while limiting interference in the business operations of those employers who are in compliance with our state employment, safety, and tax laws. EEECs (with the US Department of Labor) has identified and assessed \$8,242,715 in wages owed to employees. To date, the EEECs has collected \$4,415,260 of those monies owed to the employees. EEECs targeting effectiveness is further supported by 823 criminal referrals made by it to local district attorneys and the 431 criminal convictions that have resulted to date.

From the tax side, EEECs operations have identified almost \$300 million in unreported wages resulting in over \$46 million in assessed employment tax liabilities. The related tax audits have identified over 15,000 previously unreported workers, with many audits still ongoing.

Most importantly, EEECs recently established program of follow-up audits based on randomly selected samples of previously cited businesses, has shown that 82 percent have either come into compliance (41 percent), gone out of business (31 percent), or been sold to new owners who are in compliance (10 percent).

## Secretary's Message

Simply put, EEEEC has proven itself to be highly successful in accomplishing its mission of vigorous targeted enforcement against unscrupulous businesses that unfairly compete with law abiding businesses operating in California. This was done with a minimum of disruption to the business activities of legally operating employers while accomplishing high public awareness of the serious consequences of electing to intentionally violate the State's employment, safety, and tax laws. EEEEC has managed to do all of this at very low cost due, in great part, to the efforts of EEEEC's highly trained, motivated, and dedicated team members. It is now time to provide EEEEC, its employees, the public, law-abiding employers, and California's low wage workers in these traditionally underground economy industries, with the program permanence that is necessary for continued success.



## The Stark Reality

In a small interior room, on the 8<sup>th</sup> floor of a large building that was long-ago a large department store in downtown Los Angeles; six workers are sewing together pieces of dresses for a designer name clothing manufacturer. These workers are being paid piece-rate in an amount that will not allow many of them to earn the California statutory minimum wage of \$8.00 per hour. Upon questioning, we find that they are required to provide their own tools in the form of scissors and various sizes of



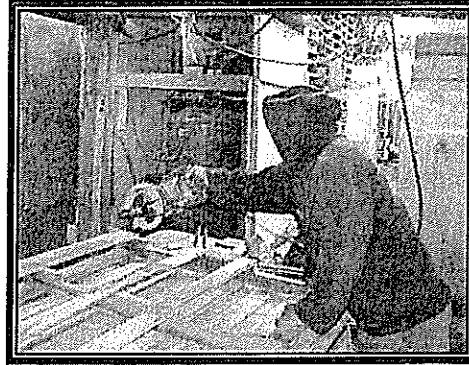
necessary sewing machine attachments. The supervisor claims that he does not know who the owner of the operation is and that he was not aware that he is required to possess a valid garment registration certificate issued by the Labor Commissioner. In any event, he would be unable to obtain one because he does not have the legally required workers' compensation insurance coverage. We notice there are almost no finished products in the room, this is because the employer knows such products could be confiscated if found and are, therefore, regularly removed to an undisclosed licensed manufacturing operation somewhere in the same building.

A restaurant has filed tax reports with EDD indicating that it employs six workers. We visit the location and determine that there are actually 18 people employed there. All but six of the workers are being paid in cash with no deductions being taken or any employment taxes being paid by the employer. All the employees are being paid minimum wage for eight hours per day, five days per week. However, all are actually working 10 hours per day, six days per week with no straight time or overtime pay for any hours over 8 per day and 40 per week.



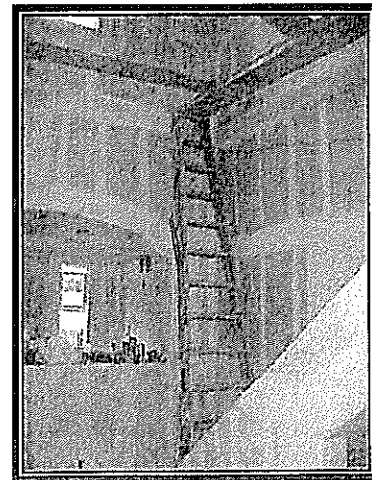
## The Stark Reality

In a vacant lot, an employer has set up a wooden pallet repair operation. He has done this without any permits or licenses and with no utility connections. Instead, he is using a highly unsafe, 220 volt gasoline generator which sits in the mud. Work stations have been "constructed" by piling up old pallets where eight workers are reconstructing damaged pallets using parts from other old unrepairable ones they have disassembled using a large unguarded band saw to cut through the old nails. Each employee has also been provided an electric skill saw that has had its protective blade guard removed or disabled.



There are no toilet facilities or clean drinking water available at the site. The employees tell us they work ten hours per day, Monday through Friday, and four hours on Saturday. When we ask the owner for the time records for the employees, he informs us that there are no employees at the site as all are independent contractors who are paid 50 cents in cash for each pallet they repair. One of the workers shows us that he is missing a finger. He explains that he lost it on an unguarded power saw at a former pallet repair facility where the owner gave him \$200 and told him to go to the county hospital emergency room and tell them that he had no money and had accidentally cut it off a home. When he recovered and returned to work, the owner told him he had been replaced and was no longer needed. He then came to work at the present location. At a second pallet repair facility we are denied access by the owner. When we return with a warrant and local police, the owner admits he has been operating at this same location for 20 years and has never paid any payroll taxes or had any workers' compensation insurance. We also find that he is paying only \$200 per week to employees regularly working up to 45 hours.

In the city of Downey a realtor posing as a general construction contractor is building a large custom home. He has 3 - 4 sub-contractors working at the site. When the EEEEC inspectors inform him that they intend to conduct an inspection, he becomes visibly upset, physically pushing one of the female agents. The local police are called. It soon appears evident why the employer is so concerned. None of the "contractors" are licensed. None have required workers' compensation insurance. All of the employees are being paid in cash without any of the required deductions being taken. None of the employers are making any of the required reports to EDD or making any of the tax payments required by law. In addition, numerous serious safety violations are found. These include illegally constructed "racket" scaffolds attached with only a few nails holding them in place, hanging out of windows 15 - 20 feet above an



## The Stark Reality

iron rod fence with spear-like tips. Also present are unguarded power saws and many serious electrical hazards.

In an agriculture field near Coachella, it is 1:15 in the afternoon and the temperature is in excess of 110 degrees. A crew of eight workers is observed weeding a field of okra. There is no shade anywhere in the vicinity of the field. Upon inspection by the EEEEC investigators it is discovered that there is also very little water, no heat illness emergency response plan and heat illness prevention training has not been provided to any of the workers or their supervisor.



## A Persistent Problem

The preceding scenarios are all actual examples of illegal "underground" business operations. These examples of illegal activities are encountered on a regular basis by the enforcement officers of the EEEEC in their year-round statewide sweeps of traditionally low wage industries. These are excellent examples of how such employers who are operating illegally can effectively and profitably undercut the legitimate businesses who, in good faith, comply with all required California wage, hour, safety, licensing, and tax laws.

The problem of the underground economy in California is one that is not new. Nearly 25 years ago the Commission on California State Government Organization and Economy ("Little Hoover Commission") issued a 58 page report titled *A Review of Selected Taxing and Enforcing Agencies' Programs to Control the Underground Economy*. (August 1985) In their report the Commission stated:

*"The underground economy costs the State of California billions of dollars each year. Although it can probably never be eliminated, a small percentage of reduction can mean hundreds of millions of dollars in increased revenues for additional State services or to reduce the liability of the honest taxpayer. These revenues will be realized both directly through additional taxes, penalties and interest, and indirectly through increased voluntary compliance." (page viii)*

For decades, California has had some of the strongest labor and workplace safety laws in the nation. Business owners who elect to operate in the "underground economy" gain an unfair advantage over law-abiding employers through a number of illegal techniques including the following:

- Failure to report and pay employment taxes on their payrolls.
- Failure to purchase and/or maintain mandatory workers' compensation insurance.
- Paying employees "under-the-table" in cash that is not reported to any governmental taxing agencies and failing to take and/or remit any tax withholdings on their workers' pay.
- Failure to pay minimum wage, premium overtime, shift-differential, reporting time and other legally required types of wages.
- Misclassifying employees as independent contractors to avoid all employment taxes including unemployment insurance and income taxes.

## **A Persistent Problem**

- Failure to provide a safe place of employment. For example, requiring the use of hazardous tools, equipment, and chemicals; having dangerous electrical systems; not providing clean and adequate toilet and washing facilities; not providing unblocked and unlocked emergency exits; using unsafe scaffolding and failing to provide and require the use of adequate fall protection devices.
- Failure to provide required safety training and illness and injury protection plans.
- Failure to secure required licenses and/or registrations.

The underground economy in California has been conservatively estimated to amount to over \$6.5 billion in just unreported taxable wage income every year (*California's Tax Gap*, 2005 California Legislative Analyst's Office). This \$6.5 billion figure significantly understates the problem given that it does not fully take into consideration the failure of underground businesses to fund the unemployment tax program, the workers' compensation system, employer funded worker safety programs, and the like. The tax gap imposes significant burdens on:

### ***California Taxpayers and Compliant Business Owners***

It burdens the State's taxpayers and businesses by causing law-abiding employers to lose jobs to lower bidding, non-compliant businesses and to pay higher workers' compensation insurance premiums, payroll taxes, etc., to make up for costs not paid by non-compliant businesses. The loss of tax revenues from just the practice of paying employees in unreported cash significantly impacts the state's general fund. At times, these additional burdens placed on legitimate businesses are so great that they are unable to sustain sufficient profits and have no choice but to cease doing business.

### ***A Vulnerable Workforce***

It seriously burdens the state's workers through the loss of benefit protections afforded by labor laws, workers' compensation insurance, and unemployment and disability insurance. These workers also often fall victim to unsafe working conditions, less than minimum wage pay and unfair reporting practices.

### ***The Public at Large***

It burdens the public at large by causing unsuspecting consumers to contract with unlicensed businesses, as the State's licensing provisions are designed to ensure minimum levels of contractor skills and knowledge. The ultimate goal of these licensing provisions is to protect the consumer.

Thus, the fundamental impact of businesses operating within the underground economy is the erosion of working conditions and economic stability in this state.

## A New Approach

In mid-2005, the Governor established and the Legislature agreed to fund, the EEEEC. The EEEEC is a targeted joint effort by State and Federal agencies with the specific mission of attacking California's underground economy. It is managed by the Director of Enforcement who acts as the voice of the EEEEC. The Director oversees and coordinates the combined efforts of the many agencies involved with EEEEC activities. The member agencies provide fully-trained investigative and enforcement personnel with specific expertise in each of the employment, worker safety, licensing, and tax law areas regularly violated by companies operating in the underground economy. Member agencies within EEEEC work together to plan and effectuate both regularly scheduled field enforcement operations (targeted industry "sweeps") and significant educational outreach programs for covered employers and employees. The regularly participating agencies are:

- California Labor & Workforce Development Agency (LWDA)
- Department of Industrial Relations, Division of Labor Standards Enforcement (DLSE - The Labor Commissioner)
- Department of Industrial Relations, Division of Occupational Safety and Health (DOSH - Cal/OSHA )
- Employment Development Department Tax Branch (EDD)
- Employment Development Department Workforce Services Branch (EDD)
- United States Department of Labor (DOL)
- Department of Consumer Affairs, Contractors State License Board (CSLB)
- Department of Consumer Affairs, Bureau of Automotive Repair (BAR)
- Business, Transportation & Housing Agency, Department of Alcoholic Beverage Control (ABC)
- California State Board of Equalization (BOE)

In addition, various other state and local enforcement and tax agencies, such as local District Attorney Offices, participate in special targeted operations as appropriate. For a description of the functions and structure of the regularly participating EEEEC team member agencies see **Appendix A** to this report.

One new approach that has proven effective in gaining cooperation and support from both employers and employees involves the ability of EEEEC personnel to communicate effectively with workers and employers. Because California's employer and employee communities reflect the cultural and language diversity of the State, the multi-lingual capabilities of EEEEC staff enhance the effectiveness of these enforcement operations and educational efforts. The availability of translators skilled in over fifty different languages has made a major impact on the effectiveness of EEEEC activities. More than half of the EEEEC field investigators are bilingual, including staff fluent in Spanish, Vietnamese, Tagalog, Punjabi, Korean, Cantonese and Mandarin languages. Additionally, when EEEEC investigators encounter a business whose employees speak a language in which investigators on a particular "sweep" are not fluent, staff from EDD Workforce

## A New Approach

Services offices assist on that sweep. The ability to speak to the workers in their native language has contributed greatly to the success, both during and after the field compliance inspections. The EEEEC investigators report that workers are more cooperative when they understand that the EEEEC partners are there to enforce laws that protect them. In fact, workers seldom flee the locations as had been common in prior field enforcement operations.

Given the statewide jurisdiction of EEEEC, extensive efforts are also undertaken to make certain the greatest possible publicity is afforded to all of its activities. These efforts include direct television, radio and print news participation in actual enforcement actions as well as regularly scheduled press conferences in areas where sweeps have been conducted. As the Little Hoover Commission stated in Recommendation #12 of its 1985 Report

*"Expanded use of print and electronic media will help educate the public to the consequences of participating in the underground economy while also signaling that the State is aggressively investigating and penalizing those who choose to violate State tax and labor laws." (page 49)*

We believe that our approach in the area of accompanied press coverage of our sweep activities, in conjunction with our extensive non-sweep outreach activities (both of which are fully discussed in the "Education and Outreach" section below), have been very successful in "signaling" all employers of the State's intent to stop these illegal activities.

## The Enforcement Team Approach

The EEEEC joint agency team approach works as follows:

- Three or more 5-7 member teams of specially trained and experienced enforcement personnel from each of the member agencies conduct targeted sweeps of a specific low wage industry over a two day period. These sweeps are usually done simultaneously in localized Northern and Southern California geographic areas.
- The employers are not randomly targeted, but are specifically selected for inspection based upon EEEEC developed selection techniques. These techniques include site surveillance as well as extensive review of state tax, licensing, and registration records. This targeting is done to both ensure that the worst offenders are inspected and to prevent any unnecessary interruption of the business operations of law-abiding employers in the sweep areas.
- EEEEC developed targeting techniques vary for each of the seven industries within EEEEC's current jurisdiction. Constant improvements in these techniques have allowed EEEEC to increase the number of weeks sweeps are conducted to 40 per year. This leaves one week each month (12 weeks/year) that is utilized for completing investigative reports, testifying at resulting hearings, conducting potential target surveillance, and team member training.

Enforcement Team inspections include the following activities:

- Pre-sweep operational meetings the morning of the first day of the sweeps.
- Immediately upon arrival at the site of an inspection, an introductory meeting is held with the employer or site supervisor to explain the process and to gain the employer's cooperation with the inspection.
- Where the employer raises an objection to being inspected, the Labor Commission Investigator informs the employer of the provisions of the California Labor Code section 90, which specifies that Deputy Labor Commissioners "shall have free access to all places of labor" and that any person who refuses admission "is guilty of a misdemeanor." In the very rare instances where the employer continues to deny access, EEEEC attorneys secure warrants for entry.
- An initial observation of the site is conducted for worker safety violations and to determine the number and ages of the employees.
- The team interviews the employees. Given the nature of the workforce employed in these underground industries, a large number of these interviews require the use of the multilingual skills of the team members.



## The Enforcement Team Approach

- Written worker rights information is given to the employees and they are assured that their right to work in a safe place and to be paid in accordance with California law is not, in any manner, based upon their immigration status.
- Records are inspected, photocopied, and/or photographed. These records include timecards, workers' compensation insurance documentation, required state registrations and licenses in farm labor, garment, car wash, construction, and auto body repair, required safety equipment inspection certificates, employer safety and emergency response plans, employee notification posters, etc.
- Citations for violations are issued and explained, in detail, to the employer.
- Where there is no workers' compensation insurance, a "Stop Order" is issued, which prohibits use of employee labor at the job site until the appropriate insurance is obtained. In these instances, all employees are informed of their right to continue to be paid for up to 10 days while the employer acquires the insurance.
- Where it is determined that the place of employment has a machine, device, apparatus, or equipment, which constitutes an imminent hazard to employees, an "Order Prohibiting Use" (OPU) is issued. These orders may prohibit the use of specific equipment or of the entire location, depending on the nature of the hazard encountered. OPUs can also include outdoor work locations that do not meet the California requirements for prevention of heat related injuries such as not making shade available on hot days.
- Records are subpoenaed and audits of payrolls are initiated.
- "Notices to Discontinue" are issued for minor violations, such as inadequate posting of required employee notices.
- Although they are not directly named as part of the EEEEC, the Bureau of Automotive Repair (BAR), and Department of Alcoholic Beverage Control (ABC) officers take appropriate enforcement actions against unlicensed operators.
- Wherever possible, employers are requested to make immediate "on-the-spot" payments directly to the employees who are present, for unpaid wages and employee supplied tools. Employers nearly always comply with these requests.

## The Enforcement Team Approach

At the beginning of this report, various scenarios were provided of situations where some or several serious violations were found. Below are examples of how some of these illegal underground economy business operations were addressed through EEEEC cross-jurisdictional enforcement team actions.

- Where it was determined that the employer did not have workers' compensation insurance (Labor Code (LC) §3700), a "Stop Order" was issued. The employees were called together by the inspectors and informed that while they would not be able to continue to work until the legally required insurance was obtained by their employer, the employer was legally required to continue to pay them their full wages until it was secured and they returned to work or for 10 days (LC §3710.1). The employers were then cited in the amount of \$1,000 for each employee up to the maximum of \$100,000.
- Where the employees had not been paid all the straight-time and over-time wages they were due, all the available time records were copied, all the employees were interviewed and their statements were taken setting forth the hours they had worked and what they had been paid. A notice to produce all time and payment records for the prior three years was served on the employer (LC §92), and formal audits were commenced to determine the amount of back wages, taxes, and penalties owed to the workers and the state.
- Where it could be immediately determined from the time and payroll records present at the worksite that individual employees had not been paid minimum wage and/or required overtime for specific days they had worked, minimum wage and/or overtime citations were issued for employees for those specific days (LC §1197 & LC §558). Follow-up audits were also initiated for all other employees and workdays over the past three years. Penalties were also assessed in the amount of \$250 per employee per pay period for failure to provide the employees with required pay statements (LC §226.3).
- Where it was determined there had been under-reporting of employees to EDD, records were copied and tax audits were opened. Where the under-reporting was found to be intentional, and/or appeared to be intended to cause lower workers' compensation insurance premiums to be charged, criminal referrals were made for possible tax and insurance fraud. Assessments were made against the employers with added fraud enhancements where such were found to be appropriate (Unemployment Insurance Code (UIC) §1128(a)).
- Where required safety devices had been removed or disabled on power equipment and/or unsafe equipment was being used, the tools and equipment were "tagged out" and an OPU was issued to prevent their use, and "Serious" DOSH violation citations were issued (LC §6323). Serious citations (such as unguarded power equipment) would be assessed penalties amounting from

## The Enforcement Team Approach

\$4,000 to \$25,000, while non-serious "General" citations (such as unsanitary restroom facilities) would range from \$500 to \$2,000.

- At outside work locations where it was hot and there was inadequate water, shade, emergency procedures, or worker and/or supervisor heat illness prevention training, OPU's for the entire work location were issued and the workers were removed from the unsafe site. These OPU's remained in effect until the employer established it had come into full compliance with the requirements of California's Heat Illness Prevention regulations. While the employer was then allowed to resume operations, all assessments and citations that had been issued continued to be processed with the resulting penalties being collected.
- In all instances where "Stop Orders" were issued, unannounced reinspections were made within two days to ensure the orders were being obeyed. Where employers were found to have employees working in violation of the Stop Orders, all work by the employees was again stopped and criminal referrals were immediately made (LC §3710.2).
- In all appropriate instances, direct contact was made with the local press to publicize the nature and importance of the EEEEC inspections. Press releases were also distributed.
- In many cases, follow-up informational meetings were announced and held for all employers in the local area within a week of the sweep.
- After the sweep was completed, EDD staff reviewed the information gathered to determine whether the employers inspected were properly registered and reporting. Employers who were found to be out of compliance were referred to the tax audit program where their records were thoroughly reviewed and tax assessments were issued as warranted.
- At the conclusion of EEEEC sweeps in which CSLB participated, CSLB determined whether civil or criminal follow up investigations would be conducted based upon the findings of the inspections during the EEEEC sweep. Additional follow up was done to cross reference these employers with local district attorneys to determine past violations. Where appropriate, arrests were made and criminal prosecutions were initiated.

## A Short History to Date of the EEEEC

The program began in 2005 with the establishment of the EEEEC as part of the Governor's Budget for State Fiscal Year (SFY) 2005-2006. The initial EEEEC program development was undertaken in early 2005 by a team of representatives from all of the California partner agencies, as well as the U.S. Department of Labor. Early efforts focused on developing implementation plans and training modules as well as hiring the necessary staff (**See Appendix C for a list of EEEEC positions**). The specialized training focused on the new processes of multi-agency enforcement actions, along with education and outreach activities that allow the EEEEC to comprehensively address the underground economy in the specific targeted industries. Training was regularly held with all EEEEC staff and administrators from throughout California.

In July 2005, the first EEEEC enforcement actions took place with coordinated sweeps in the construction, agriculture, and garment manufacturing industries. After each compliance inspection or sweep, the EEEEC staff held a briefing to discuss the operation. Several days after the conclusion of each EEEEC compliance inspection, a post-inspection public meeting was also held so that affected employers could attend, ask questions and receive guidance on compliance requirements.

Based on our early field experience and the comments we received from all interested parties, seven industries were selected for regular EEEEC sweep activity. These industries included six traditionally low wage industries and the construction industry which, while not "low wage," had a history of underground work by unlicensed and uninsured employers. The initial six low wage targeted industries were 1) Garment, 2) Agriculture, 3) Restaurant, 4) Car Wash, 5) Janitorial, and 6) Horse Race Tracks. After approximately one and one-half years of field operations, it was determined that the janitorial and horse race track industries were not conducive to sweep enforcement. The problem inherent in janitorial was the lack of access to generally small unsupervised crews working in isolated locations. It was determined that with the creation of the new janitorial advisory board and a new dedicated janitorial enforcement operation within the Labor Commissioner's office, it would be more productive to have all enforcement in that industry handled by DLSE's Bureau of Field Enforcement (BOFE). The horse race track industry also proved to be generally inappropriate for EEEEC type operations due to the transitory nature of the workers and their ability to hide from our inspectors once the word got out that we were present at local race tracks. This resulted in an unreasonably low number of citations with the exception of the first enforcement sweep. It was decided that the only effective way to conduct inspections in that industry would be through individualized DLSE targeted surprise inspections based upon tips from these affected workers or their representatives.

In 2007, two more appropriate industries were, therefore, added. These industries were 1) Wooden Pallet Repair and Manufacture, and 2) Auto Body Repair Shops.

## A Short History to Date of the EEEEC

These two industries have proven to be highly productive for EEEEC operations. The vast majority of pallet repair locations have turned out to be wholly operating in the underground economy utilizing unreported employees who are paid in cash, and who are often subjected to very dangerous working conditions. Auto Body Repair shops have presented a whole new field of underground activities including extensive bartering of unreported exchanges for services, unreported employees, and unlicensed employers. The addition of this industry has also allowed EEEEC to include members from the Bureau of Automotive Repair in its teams. These inspectors have added an entirely new set of specialized skills and experience to our other team members. The specific industry focus of EEEEC has allowed staff to become more specialized and in tune with the issues of each targeted industry. **(See Appendix B for a description of target industries.)**

Over the first four years of its operation, EEEEC has improved its surveillance techniques, front-end lead development, and screening processes, all of which are used to identify those employers most likely to be out-of-compliance with the EEEEC participating agencies' laws. This improved method of lead development increases EEEEC's accuracy in targeting non-compliant businesses, thereby increasing inspection efficiency while reducing the level of disruption to law-abiding businesses. Detailed pre-screening and lead development allows field staff to be much more familiar with each selected employer before the on-site inspections. This approach also results in the development and implementation of more effective interviewing techniques. It reduces the disruption to employer work operations, since the employer only has to deal with one worksite inspection by the State, rather than separate inspections from each of the State entities. This benefits both the employer and the employees.

We have also made necessary changes that allow all of our enforcement personnel one week each month to prepare their cases for appeal hearings, and to add "mini-sweeps" by single teams in geographic locations outside the areas of our major multi-team sweeps, thereby allowing us to provide simultaneous sweeps through-out the state. EEEEC presently schedules sweeps during 40 weeks each year. As team members have moved out of EEEEC, we have made efforts to replace them with experienced investigators taking into consideration their home base location. This has resulted in not only having investigators with unique understanding of the local employers and industries, but has also allowed us to reduce the travel costs and inconvenience required for teams to work throughout the state.

In the training area, we have instituted a practice of training all investigators on a cross-jurisdictional basis. This allows investigators from one agency to be aware of, and notice, possible workplace violations that are within the enforcement jurisdiction of the team members from other participating agencies. Such cross-training allows for more efficient enforcement sweeps.

## **A Short History to Date of the EEEEC**

All these changes have been made possible by our centralized matrix approach to operational management. Of course, this approach has only been able to work because of the personal involvement and support of the highest levels of management of the various enforcement agencies that make up EEEEC.

## Education and Outreach

One of EEEEC's goals is to provide ongoing education to both employers and employees. Many businesses that violate the laws do so not out of conscious design, but out of a general lack of understanding of their responsibilities as employers. As part of EEEEC's continuous effort to ensure that employers are educated on how to comply with all state tax, registration, health, safety and labor laws, as well as federal regulations, EEEEC conducts a variety of workshops and presentations that are designed specifically by industry.

Since 2005 EEEEC, has conducted over 70 post inspection outreach events and participated in over 120 additional employer/employee workshops statewide. As of June 30, 2009, these programs have been directly presented to 4,778 interested individuals.

### ***Employers***

After most sweeps, a post inspection workshop for those employers previously inspected is conducted. These workshops provide the employers information on the requirements of each agency and an opportunity to discuss the EEEEC process. EEEEC representatives cover a range of topics including labor law compliance, health and safety violations, part-time workers, vacation pay, family member employees, cash pay, and employer appeal rights. In addition, information that will further assist employers is provided on upcoming departmental seminars, such as the EDD and DLSE joint Labor Law and Payroll Tax Seminars and Cal/OSHA Consultation Service information workshops. Attendees are also provided with written literature pertaining to the specific seminar in various languages as well as the departmental contact information. EEEEC also works closely with many agricultural, garment, construction, and carwash employer groups who sponsor their own educational workshops in which knowledgeable EEEEC representatives participate. Some examples of these employer groups include the California Grape and Fruit Tree League, the Nisei Farmers League, the Korean Garment Association, the National Carwash Association, the Arizona/California Agricultural Employers Association and the Sonoma County Wine Association.

### ***Workers***

EEEC's efforts in educating the workers of California range from conducting educational employee workshops, to participating in frequent TV and monthly Spanish radio talk shows, and attending various outreach events sponsored by public interest groups. EEEEC outreach efforts target those workers who are most vulnerable, such as newly arrived immigrants and their families. Topics covered include minimum labor standards, the payment of the State's minimum wage, payment of overtime, recordkeeping requirements, rest and meal period requirements, wage deduction requirements, and basic safe workplace protections.

In an effort to measure the success of these educational outreach events, beginning in January of 2008, a newly designed presentation improvement

## Education and Outreach

questionnaire was adopted and provided to all attendees at all post inspection and educational employer/employee outreach events. In addition to responding to questions regarding the presentations, the evaluation form also provides a section where the attendees are given the opportunity to include comments and suggestions on ways to improve the outreach events as well as provide their contact information in order to have a personal follow-up session with EEEEC personnel.

The evaluation form consists of specific questions such as:

- How do you rate the presentation content?
- How do you rate the presenters' knowledge of his/her subject?
- How do you rate the handouts and reference material?
- How do you rate the overall workshop?
- How do you rate the convenience of the location?

All evaluations to date have been summarized and the results have been extremely favorable. As a result of the feedback, the EEEEC has implemented several suggestions to further enhance the program such as adding additional resource material in multiple languages, as well as having specialized bi-lingual staff present all events. In fact, a number of outreach presentations have been conducted exclusively in the language of targeted industry participants such as Spanish language agricultural workshops and Korean garment workshops. These presentations have proven to be highly successful often attracting 200 to 400 participants.

Recent participant comments have included:

*"This presentation was so helpful and informative, it reminded me of a few things that I need to improve or update...."*

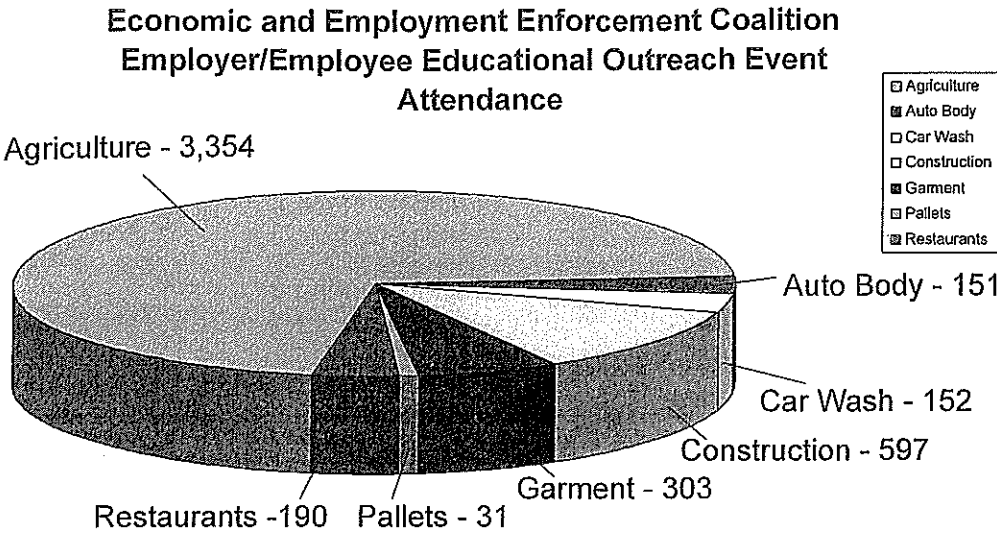
*"Was worth my time to understand the laws on opening my construction corporation."*

*"Something like this should be mandatory for every contractor or business owner."*

The graph on the next page shows the participation levels of the various EEEEC focus industries in the education and outreach events presented.



Education and Outreach



## The Re-inspection Program

Beginning in 2008, it was determined that a sufficient number of inspections had been conducted and processed in the Restaurant, Car Wash, and Garment industries to allow for the implementation of a meaningful re-inspection program designed to assess the effectiveness of the EEEEC's efforts. These three industries were selected because they had been targeted industries from the beginning of the program allowing sufficient time for most of the citations and assessments issued to work their way through the various appeals procedures and become final. These industries also operate in fixed locations that can be re-inspected. In subsequent years the more recently added pallet and auto body repair industries will be included in the re-inspection program.

Our initial statistics, more fully discussed below, have been positive showing that 82 percent of the businesses we initially found to be operating illegally in the underground economy, have either come into compliance (41 percent), gone out of business (31 percent), or have been sold to new owners that are operating legally (10 percent). The protocols utilized in these initial re-inspection efforts have been developed over the past year and one-half so that they reflect, as far as possible, an accurate picture of how our sweep efforts are impacting the underground economy in the selected industries. As was initially noted in the August 1985 Little Hoover Commission Review of programs to control the underground economy, it is difficult to measure how any enforcement efforts result in an increase in the voluntary compliance model that is the basis of most of our State's taxing and regulatory laws. However, we can, through a random re-inspection process, determine whether employers who have been cited in our sweeps continue to engage in activities associated with underground economy operations. This we have attempted to do through a random selection and re-inspection of 10 percent of the employers inspected six months or more prior to our review.

These randomly selected employers are first screened by the EDD to determine their reporting status. This serves as an initial indication of whether they are still in business, have workers' compensation insurance, and/or have appealed or paid any assessments by EDD from the initial inspection. The same list of employers is also provided to DLSE and DOSH to determine the status of any citations and assessments issued by those EEEEC partners.

Once the screening information is received from the partner departments and divisions, EEEEC staff determines how additional re-inspection efforts will take place. These efforts include, but are not limited to, initial drive-by observation to determine if the employer is out of business, surveillance, drop-by visits to confirm any new ownership, actual re-inspection by one or more EEEEC partners, and/or the addition of the site to a normally scheduled sweep.

A final spreadsheet is then prepared by EEEEC staff showing the results of all the selected employers along with a report summary for each re-inspection audit. The major results looked for are the following:

## The Re-inspection Program

- Has the business been closed?
- Is there new ownership, and if there is, is the new owner engaging in activities that are normally associated with underground economy operations, such as no workers' compensation insurance, cash pay to employees without the proper withholding and payment of taxes, failure to pay minimum wages or overtime to employees, or non-minor health and safety violations?
- If the business is still in operation with the same owner, has the owner cleared all the violations previously found, and if so, are there any new violations other than minor ones, that would not normally be associated with underground economy operations?

### Re-inspection Program by Industry

	Car Wash		Restaurant		Garment		Totals	
	#	%	#	%	#	%	#	%
Out of business	3	25%	4	20%	8	47%	15	31%
In Compliance	2	17%	12	60%	6	35%	20	41%
New Ownership – In Compliance	2	17%	2	10%	1	6%	5	10%
In business and Still Out of Compliance	4	33%	2	10%	1	6%	7	14%
New Ownership – Out of Compliance	1	8%	0	0	1	6%	2	4%
<b>Total</b>	<b>12</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>17</b>	<b>100%</b>	<b>49</b>	<b>100%</b>

From the data displayed in the above chart, it appears that the EEEEC program is succeeding in its goal of leveling the playing field and restoring the competitive advantage to law abiding businesses and their employees. However, more needs to be done. With 82 percent of the businesses targeted during EEEEC sweeps being either in compliance (41 percent), under new ownership that is in compliance (10 percent) or out of business entirely (31 percent) upon re-inspection, the local law abiding business no longer face major unfair competition. The businesses that were found continuing to operate in the underground economy face further enforcement actions and possible criminal prosecution.

While these statistics are compelling in themselves, it should be noted that a full one-third of the 18 percent found to continue to be out of compliance had corrected all their prior violations with the exception of having secured the required car wash registration with the DLSE. In addition, all but one business had corrected all the serious safety

## **The Re-inspection Program**

violations found in the original inspections. For detailed information on the Re-inspection results by industry and employer, see **Appendices D, E and F**.

We intend to not only continue to conduct our formal program of re-inspections in the Restaurant, Car Wash and Garment industries, but to add the Wooden Pallet Repair & Manufacturing and Auto Body Repair industries when we have had sufficient initial inspections in those industries as well.

## Why EEEEC Should be Made a Permanent Program

Since established in 2005, EEEEC's goals have been to:

- Collaborate to undertake vigorous and targeted enforcement against unscrupulous businesses; and,
- Help to level the playing field and restore competitive advantage to law abiding businesses and their employees.

EEEC activities throughout the past four years have served to both enforce California's employment and tax laws and educate employers, employees and the public. The program's enforcement and deterrence effectiveness is demonstrated throughout this report. The education and outreach events have both been well attended with participants rating these events as beneficially informative in nearly 100 percent of the evaluations received. EEEEC has proven to be a program well designed and operated to meet its goals.

### *EEEC Works*

On the enforcement side, as of June 30, 2009, the EEEEC targeted enforcement sweeps identified 18,728 violations of provisions of California's Labor, Health and Safety, and Business and Profession Codes (**Appendix G**). These violations represent employers who were using unlawful tactics to achieve an unfair competitive advantage over law abiding employers. The EEEEC has served to level the playing field and get the message out to employers participating in the underground economy that California will not sit by and allow this activity which puts compliant business owners at risk and makes them unable to compete for business. As our re-inspection program shows, we have been highly successful in targeting employers operating in the underground economy. Once identified, we have brought most into compliance, put a good percentage out of business, and brought the owners of the worst before the criminal courts. EEEEC has initiated 823 cases that have been referred to District Attorneys for potential criminal prosecution. Of these, 431 illegal operators have been convicted. As indicated in the previous section of this report, a significant number of those few inspected employers who continued to be out of compliance upon re-inspection had, in fact, come into full compliance with respect to worker safety and wage and hour requirements.

EEEC's activities have also served to help prevent California's lowest wage workers, who are at the greatest risk, from being taken advantage of by unscrupulous businesses who are willing to break the law to gain an unfair advantage and earn greater profits. This we have done through the uniform enforcement of laws ranging from child labor, minimum wage and employment tax issues, to health and safety regulations. CalOSHA citations issued by EEEEC include violations that clearly put workers lives in danger (see **Appendix I** for a more detailed list of EEEEC citations).

# **Why EEEEC Should be Made a Permanent Program**

## ***Minimized Burden and Disruption of Businesses Operations***

The collaborate nature of bringing the various enforcement agencies together to implement targeted education and enforcement sweeps throughout California has proven to be a unique approach that is welcomed by law abiding employers. One coordinated and highly focused inspection by a combined team of several enforcement agencies significantly lessens the burden on the compliant business owners. EEEEC sweeps also serve to let the general public know that California is serious about enforcement and that we are doing what is necessary to level the playing field for the all business owners.

## ***Specialized, Highly Trained and Effective Staff and Supervisors***

From its inception, special efforts have been made to select only the most motivated and experienced investigators and other personnel for assignment to EEEEC. The industry targeted sweeps also allowed these EEEEC staff to gain unique expertise in each of the targeted industries. EEEEC representatives have also been able to develop close professional relationships with employer and worker organizations and representatives in these industries. This allows EEEEC agents to understand the specific issues encountered within each industry. Through the relationships developed, targeted education opportunities have arisen by which EEEEC staff have been able to fill the need for specialized education and outreach events that assist business owners in understanding the requirements placed on them within California.

Permanence will help provide the stability necessary to enhance program planning and continued staff commitment to the operation. Many investigators and other staff members have come to closely identify with EEEEC and wish to remain as long-term members of the operation. However, they are aware of the current temporary nature of the operation's funding and feel they presently have little choice but to consider opportunities outside EEEEC for employment security and advancement purposes.

## ***High Public Exposure at Very Limited Cost***

EEEC operations are statewide, planned in advance, and generate significant press coverage. Whenever possible we have involved legislative staff in our sweep operations, thereby making the Legislative Branch aware of the problems presented by the underground economy and the remedial techniques we are utilizing to combat it. The ability to publicize EEEEC activities to the general public, along with targeted industry events, broadcasts, and other outreach activities, has leveraged the impact the program has made.

EEEC's proven enforcement approach over the four years of its on-the-ground operation clearly establishes the need to make it a permanently funded program for attacking the underground economy in California.

## The Future

Much remains to be done in our efforts to effectively combat the underground economy so that California's law abiding business may be able to effectively compete in today's marketplace. The initial four years of EEEEC's operation have shown how a dedicated enforcement unit, staffed by highly skilled and trained personnel from separate, but functionally related wage, hour, safety, and tax authorities - working together - can make a significant contribution to such efforts. As mentioned previously in this report, any such efforts require not only the ability to effectively coordinate the activities of separate and disparate agencies, but also the good faith support of each agency's management at the highest levels of authority. EEEEC has shown how this can be done when the common goal is shared by all.

EEEC has also shown how any joint agency enforcement program must be able to react quickly to the changing nature of underground business activities. As businesses generally have recently been impacted by downward changes in our national and local economies, the temptation for marginal employers to venture into underground economy operations has grown significantly. Evidence indicates that some new underground economy industries are ones that have not yet been included in EEEEC's targeted operations. As EEEEC has successfully done in the past, consideration is being given to expanding EEEEC's enforcement activities into several of these newly identified industries. These new areas of targeted enforcement include expanding the construction industry to specifically include cabinet fabrication and installation contractors, and the inclusion of general automotive engine repair and rebuild services, along with tire repair shops, into EEEEC's Auto Body Repair industry operations.

EEEC is also considering how best to expand its outreach and education efforts to include these new targeted business operations. Of course, any such expansion of EEEEC underground economy enforcement activities must take into consideration both the resources available for such operations and the prospects for continued future funding of EEEEC as a regular Labor and Workforce Development Agency program.

As our experience in attacking the underground economy grows, EEEEC will continue to review how our presently available laws and regulations that make effective enforcement possible, might be strengthened and/or modified to meet the objectives of our efforts. We anticipate our review will be helpful to each of the participating enforcement and taxing agencies in assisting them in making meaningful legislative and regulatory proposals with respect to each of their areas of responsibility.

## **Appendix A – Description of Member Agencies**

The EEEEC is made up of the agencies that are tasked with enforcing California's labor, health and safety, employment tax, and consumer protection laws. These agencies, each an expert in their own field, have come together to work collaboratively to enhance the education and enforcement activities they pursue.

### **California Labor & Workforce Development Agency (LWDA)**

Within the California Labor & Workforce Development Agency (LWDA), the Director of the EEEEC oversees the implementation, policy, and operations of the EEEEC. The Director reports directly to the Secretary and Undersecretary of LWDA. The Director takes the lead in coordinating both the enforcement and educational components of the EEEEC programs to make certain that employers and workers understand their rights and responsibilities under state and federal law. For additional information on the LWDA, visit: [www.labor.ca.gov](http://www.labor.ca.gov).

### **Department of Industrial Relations (DIR)**

The DIR oversees seven programs and six boards and commissions, including two which participate in the EEEEC:

#### ***Division of Labor Standards Enforcement (DLSE- the Labor Commissioner)***

DLSE is responsible for vigorously enforcing minimum labor standards in order to ensure employees are not working under substandard unlawful conditions. DLSE protects workers and legitimate employers from businesses who attempt to gain competitive advantage by ignoring the law. DLSE enforces:

- California's minimum wage law
- Timely payment of overtime and wages
- Employer record-keeping requirements
- Meal and rest period requirements
- Mandatory workers' compensation insurance coverage
- Child labor laws
- Proper wage deduction statements
- Prevention of workplace retaliation practices

In addition, DLSE licenses or regulates various California employers and underage workers. This includes licensing for:

- Agricultural farm labor contractors
- Car wash operators
- Garment manufacturers
- Other occupations such as talent agents, film studio teachers, and children employed within the entertainment industry



## **Appendix A – Description of Member Agencies**

DLSE investigators conduct onsite workplace inspections to ensure compliance with California's laws. Investigators review payroll records to determine if wages have been paid properly and issue civil citations that carry a civil monetary penalty to employers found in violation of labor laws. For more information on the labor standards enforcement program, go to:  
[www.dir.ca.gov/dlse](http://www.dir.ca.gov/dlse).

### ***Division of Occupational Safety & Health (DOSH or CalOSHA)***

DOSH aims to ensure that California's workers have safe workplaces, and seeks to achieve this goal through effective enforcement of California's workplace safety and health standards, with an emphasis on the rapid abatement of any hazards identified.

DOSH employs industrial hygienists, safety engineers, and investigators to conduct onsite workplace inspections. In addition, the program permits and certifies elevators, amusement rides, pressure vessels, and underground and surface mines.

DOSH investigators within the EEEEC program participate in onsite workplace inspections, looking for violations of health and safety codes. Additionally, DOSH staff are essential participants in EEEEC outreach and education efforts, providing employers and workers with information and research materials regarding workplace safety. For more information on this program, go to:  
[www.dir.ca.gov/dosh](http://www.dir.ca.gov/dosh).

### **Employment Development Department (EDD)**

EDD offers a wide variety of services to millions of California workers and businesses. As one of California's largest tax collection agencies, EDD also is responsible for the audit and collection of payroll taxes and maintains employment records for more than 17 million California workers. Each year, the EDD Tax Branch collects more than \$40 billion in payroll taxes from more than 1 million California employers.

EDD staff within EEEEC participate in onsite inspections, focusing on identifying possible non- or under-reporting of wages and/or workers, which may result in a subsequent tax audit of the employer. EDD staff are also key participants in EEEEC outreach and education seminars.

With fluency in a variety of languages, EDD Workforce Services Branch staff are also critical partners in EEEEC, assisting with interviewing non-English speaking workers as well as providing rapid-response services to those workers who may be displaced when an employer must shut down (for example, due to serious Labor Code violations). These services may include referrals to local employment

## **Appendix A – Description of Member Agencies**

and training resources including One-Stop Career Centers. For additional information on EDD's efforts to combat the underground economy, visit: [www.edd.ca.gov/Payroll\\_Taxes/Underground\\_Economy\\_Operations.htm](http://www.edd.ca.gov/Payroll_Taxes/Underground_Economy_Operations.htm).  
[[www.edd.ca.gov/Payroll\\_Taxes/Underground\\_Economy\\_Operations.htm](http://www.edd.ca.gov/Payroll_Taxes/Underground_Economy_Operations.htm)]

### **California Contractors State License Board (CSLB)**

CSLB is mandated by the California Legislature to license and regulate contractors in 42 licensee classifications within California's construction industry. Contractors are required by law to be licensed and comply with all building, employment, and tax laws. Currently, there are approximately 295,000 licensed contractors regulated by the State.

The CSLB Enforcement Program participates in EEEEC onsite inspections of construction sites, focusing on compliance with licensing laws, with an emphasis on identifying unlicensed (illegal) contractors. Each year, the CSLB Enforcement Program receives more than 20,000 consumer complaints against licensed and unlicensed contractors. The Enforcement Program investigates these complaints (from consumers or legitimate contractors), and participates in EEEEC outreach seminars focused on educating consumers and other public agencies. The CSLB has established a Statewide Investigative Fraud Team (SWIFT) that focuses on the underground economy and on unlicensed contractors. These units conduct stings and sweeps to help curtail illegal contracting by citing those who are not licensed. As a separately funded participant in EEEEC, CSLB also reports yearly on its EEEEC activities. For more information on CSLB, go to: [www.cslb.ca.gov](http://www.cslb.ca.gov).

### **US Department of Labor (USDOL)**

The mission of the USDOL, Wage & Hour Division is to promote and achieve compliance with labor standards to protect and enhance the welfare of the nation's workforce. The Division is responsible for the administration and enforcement of a wide range of federal laws which collectively cover virtually all private and government employment. For additional information on the Wage & Hour Division at the USDOL, visit their Web site at: [www.dol.gov/esa/whd/](http://www.dol.gov/esa/whd/).

### **California Bureau of Automotive Repair (BAR)**

In February of 2008, the Bureau of Automotive Repair (BAR) formally joined in the EEEEC Auto Body Shop sweeps that had begun in late 2007. In that year, BAR participated in approximately twelve (12) sweeps. During these sweeps, BAR inspectors found numerous shops that did not have the proper auto body equipment as required by the California Code of Regulations §3351.5. In addition, they found other violations such as not having a valid Automotive Repair Dealer (ARD) registration to perform compensated auto repairs, not providing proper estimates to customers, and deficiencies in their final invoices. While not officially

## **Appendix A – Description of Member Agencies**

a funded member of the EEEEC, BAR inspectors have participated in all EEEEC auto body repair sweeps since February 2008. BAR has developed a great working relationship with EEEEC and is fully committed to continued involvement in these sweeps.

BAR is a part of the California Department of Consumer Affairs. BAR is mandated by the California Legislature to license and regulate all automotive repair business within California. Currently, there are approximately 5,000 licensed auto body repair businesses regulated by the State. Because the BAR is not a regular member of the EEEEC, its EEEEC sweep related enforcement statistics are not included as part of this report. They are, however, part of the BAR's regular reporting practices and can be found at [www.bar.ca.gov](http://www.bar.ca.gov).

### **California State Board of Equalization (BOE)**

In mid-2008, the California State Board of Equalization (BOE) began a major specially funded enforcement operation directed at the underground economy. Representatives of EEEEC and BOE's new Statewide Compliance and Outreach Program (SCOP) held a series of meetings in which it was agreed that BOE unit members would be incorporated into EEEEC sweep teams in retail and service industries for the purpose of training and sharing expertise and information directed at underground business operations. Although they are not directly named as an EEEEC member agency, their continued assistance and partnership in underground economy enforcement sweeps has proven to have a substantial impact on the efficiency with which EEEEC conducts its sweeps in the garment and retail industries.

BOE's SCOP focuses on identifying and registering businesses who are actively selling tangible personal property in California without a seller's permit. In general, the purpose of SCOP is to advise business owners about when they need a seller's permit and how to report and remit their taxes and fees due.

SCOP monitors the ongoing compliance of newly registered businesses, reduces the number of businesses operating without a valid seller's permit, and enhances the awareness of businesses on the consequences of tax evasion.

If SCOP specialists find that a business is reporting its taxes incorrectly, they advise the business to file amended returns or, if the business has overpaid taxes, file a Claim for Refund. In some instances, the business may be referred for an audit. As mentioned above for the BAR, BOE's statistics are not noted in this EEEEC report, but can be found at [www.boe.ca.gov](http://www.boe.ca.gov).

## **Appendix A – Description of Member Agencies**

### **Alcoholic Beverage Control (ABC)**

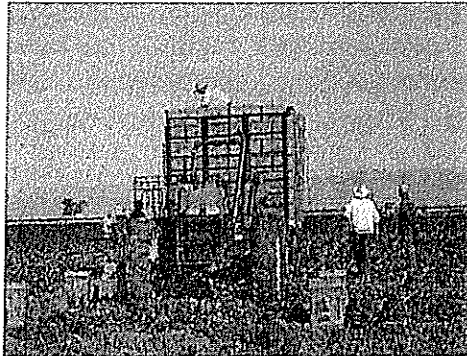
The restaurant industry is one of the target industries of the EEEEC. California's ABC, the licensing agency for the sale of alcoholic beverages, has participated on multiple restaurant sweeps. The advantage of ABC's participation in EEEEC is that, for restaurant establishments that serve alcohol, proper maintenance of the required licenses and compliance with the laws enforced by ABC are essential in the legal operation of these establishments. Again, while ABC is not a regularly funded member of EEEEC, its assistance as needed, has been highly effective in enhancing EEEEC enforcement operations. Similar to the BAR and BOE, statistics regarding ABC's sweeps can be found on their website, [www.abc.ca.gov](http://www.abc.ca.gov).

## Appendix B – The Industries

### Current EEEEC Industries

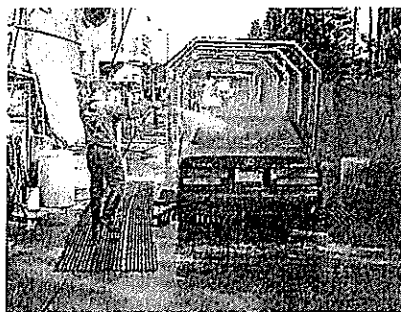
The following are the seven industries in which EEEEC currently conducts its underground economy sweeps:

#### **Agriculture**



Agriculture is a large and diverse industry throughout California. All farm labor contractors operating in California are required by law to be licensed annually by DLSE. This licensing requirement involves extensive annual education and testing provisions. Workers are often subject to labor and safety violations from farm labor contractors, farmers, ranchers, and food processors. This industry typically employs seasonal workers who earn low wages and may be exposed to extreme heat in the summer, inadequate housing and sanitation facilities, pesticides, and dangerous farm equipment. Workers encounter issues involving child labor violations, minimum wage, non-payment of wages, meal and rest period violations, workers being required to furnish their own tools, and overtime law violations. Through conducting on-site EEEEC field inspections with its partners, labor and safety violators are identified and are brought into compliance. Unlicensed farm labor contractors are also brought into compliance or have their illegal operations shut down.

#### **Car Wash**

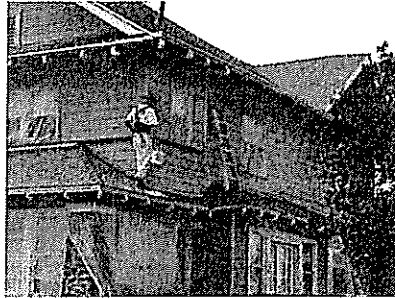


The car wash industry typically employs workers who work less than full-time and earn low wages. The workers are exposed to potentially dangerous chemicals,

## Appendix B – The Industries

slippery floors, and unsafe “tunnels” where cars are washed and dried. Inspectors often encounter issues involving violations of labor laws pertaining to child labor, payment of minimum wage, non-payment of wages, non-reporting of tips, meal and rest periods, and overtime laws. Since the formation of EEEEC, car wash operators have become subject to new statutory licensing requirements under the jurisdiction of DLSE. These requirements not only regulate their operations, but also provide significant bonding requirements for all employers. Unlicensed operators are now subject to fines of \$100 per day, up to \$10,000. In the past two years, a large number of unlicensed car wash operations have been fined the full \$10,000 for their violation of the registration requirements. Car wash industry associations are continuing to work with EEEEC in helping to educate their member employers and to identify non-compliant businesses throughout the State.

### Construction

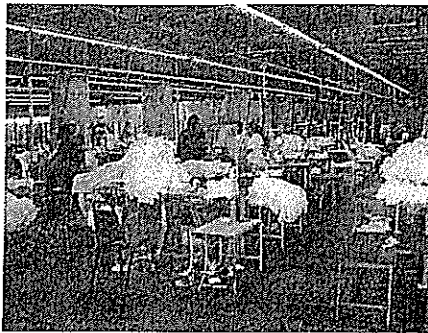


The construction industry was included in EEEEC's target group due to the high number of known violations including unlicensed contractors, unsafe working conditions, failure to maintain workers' compensation insurance and unreported cash wages. Working with the separately funded CSLB's underground economy enforcement unit, EEEEC has been successful in not only issuing citation assessments against underground contractors, but also securing criminal prosecution of many contractors who were doing business illegally.

With the California infrastructure bond projects getting underway, it is extremely important that we continue our mission to ensure that the public is protected from unscrupulous contractors willing to cut corners to gain an unfair competitive advantage over legitimate licensed contractors.

## Appendix B – The Industries

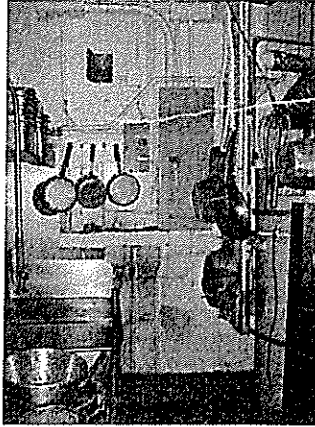
### Garment Manufacturing



The garment industry has a well-documented history of violating the most basic labor laws, including those centering on child labor, minimum wage, and overtime pay. Many garment contractors are willing to cut corners to improve their profit margins by ignoring or intentionally disregarding the health and safety, licensing, and tax laws. Garment workers have often reported horrible working conditions, sub-minimum wages, improper payment of wages, non-payment of wages, forced unpaid overtime, meal and rest period violations, and illegal firings. Garment operators can easily control their workers as many of the workers are unaware of their rights while performing services in California. All garment industry employers are subject to extensive registration and regulation requirements. It is, therefore, important that unlicensed employers do not gain an economic advantage over those many garment businesses that do comply with these legal requirements. To enhance our enforcement within this industry, EEEEC has developed a close working relationship with the Los Angeles County Health Department to identify non-compliant garment manufacturers. Over the past four years, EEEEC has been very successful in forging good educational working relationships with the garment industry associations. The Labor Commissioner also works directly with representatives of both the manufacturers and the workers' representatives through the Garment Advisory Board that meets regularly in Southern California. Additionally, when EEEEC inspectors determine that garments have been produced by employers operating within the underground economy, those garments are confiscated by EEEEC staff. These seized garments are donated to non-profit charitable organizations.

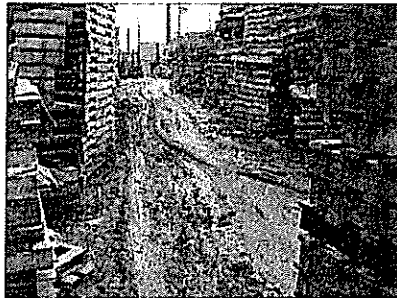
## Appendix B – The Industries

### Restaurant



Businesses in the restaurant industry typically employ workers who work less than full-time and earn low wages. These workers are regularly exposed to sharp implements, slippery floors, ungrounded electrical outlets, and other unsafe working conditions. Investigators encounter issues involving child labor, failure to pay minimum wage and/or overtime wages, non-payment of wages, non-reporting of tips, and meal and rest period violations. Labor, tax, and safety violations are identified and laws are enforced by EEEEC staff conducting on-site inspections. EEEEC works with the direct participation of the California Department of Alcoholic Beverage Control in sweeps within the restaurant industry.

### Wooden Pallet Repair & Manufacture



The wooden pallet repair and manufacturing industry was incorporated into EEEEC sweep operations in 2007. It is an industry that requires little capital investment to set up and operate, is conducive to the use of generally unskilled labor, works well on a cash purchase and sale model, and presents a number of safety and health hazards to employees. These operations are often found on vacant lots without any connections to public utilities. We have found pallet repair facilities in almost all industrial and agricultural areas of the state. They range in size from only a few employees to some with over 10 full-time employees who have worked for the same underground employer for years. Almost all the employees work up to 10 hours per day and are paid on either a piece-rate or per-day rate with almost all receiving none of their required overtime pay.



## Appendix B – The Industries

### Auto Body Repair



The auto body repair business in California is one that is subject to statutory control by the Bureau of Automotive Repair which is a part of the California Department of Consumer Affairs. This industry was added to the EEEEC in 2007. While all these repair businesses are required to be licensed, many employers choose to operate illegally in the underground economy. These operations range from small crews in unventilated and otherwise dangerous rented facilities, to large "chop-shops" in which stolen vehicles are reconstructed, repainted and prepared for sale in the underground economy. Many employees of these operations are unreported as employees, paid on a cash basis, required to work in unsafe and unhealthful conditions, and generally denied the normal protections provided by California's labor and safety laws. In addition to the lack of employment tax reporting, sales and use taxes due to the state are often not reported or paid. The lack of required workers' compensation insurance, taken in conjunction with the hazardous nature of the work, also impacts the state's uninsured workers' fund as well as local hospitals which must treat these uninsured workers for work related injuries. Since Early 2008 all EEEEC operations in this industry have included the active participation of Bureau of Automotive Repair inspectors.

### Prior EEEEC Industries

The following are two industries which were initially part of EEEEC sweep operations. They have since been replaced as EEEEC targeted industries.

#### **Janitorial**

The janitorial industry is one in which the Labor Commissioner has, since 2005, made special enforcement efforts through DLSE's Bureau of Field Enforcement (BOFE) operations. Janitorial was removed from the EEEEC scope in 2007 after our experience confirmed that unannounced enforcement sweeps directed at this industry are not as efficient as dedicated BOFE target operations conducted with the assistance of legally operating industry members and representatives of joint industry/labor organization associates. The basic problem with EEEEC sweep

## **Appendix B – The Industries**

coverage is that janitorial services are generally performed at night and behind locked doors by small groups of unsupervised workers. To address this industry, in 2007, the Labor Commissioner established the Bureau of Field Enforcement Janitorial Unit.

### **Horse Race Tracks**

The horse race track industry is an old, established industry in California. The horse owners and trainers are a very close-knit group. This industry typically employs workers who work irregular hours and earn low wages for exercising and feeding race horses. The workers are generally employees of either the owners or the trainers, usually paid a daily fee per horse, and take care of three to four horses per day. They work seasonally during the race season and follow the racing circuit throughout the state and nation. Most of the workers are paid as independent contractors even though they should be reported as employees under California law. The EEEEC has encountered issues involving child labor violations, poor record keeping, minimum wage violations, failure to maintain workers' compensation insurance, unregistered employers, and payment of cash wages. This industry was removed from EEEEC sweep enforcement activities in 2007 due to the number of unique factors that clearly indicated enforcement would be more efficient by the Labor Commissioner's Bureau of Field Enforcement (BOFE), utilizing individual enforcement actions based on specific leads.

## Appendix C – Member Agency Staffing

<b>Classifications</b>	<b>Authorized Positions</b>
Director EEEEC (LWDA)	1.0
Industrial Relations Counsel III (DLSE)	1.0
Deputy Labor Commissioner I (DLSE)	11.0
Office Technician (DLSE)	2.0
Accounting Technician (DLSE)	1.0
Payroll Auditor (DLSE)	1.0
Senior Safety Engineer (DOSH)	1.0
Associate Safety Engineer (DOSH)	9.0
Accountant I (DOSH)	1.0
Associate Industrial Hygienist (DOSH)	1.0
Office Technician (DOSH)	1.0
Staff Counsel (EDD)	1.0
Tax Administrator I (EDD)	2.0
Criminal Investigator (EDD)	1.0
Tax Auditor III (EDD)	13.0
Tax Auditor IV (EDD)	2.0
Senior Tax Compliance Representative (Specialist) EDD	1.0
Employment Program Representative (EDD)	3.0
Program Technician II (EDD)	2.0
Enforcement Representative I (CSLB)	11.0
<b>TOTAL POSITIONS</b>	<b>66.0</b>

Note: Some positions were reclassified as needed for recruitment purposes and to reflect actual needs of the EEEEC.

# Appendix D – EEEEC Car Wash Re-inspection Program Results

<b>Car Wash Re-inspections</b>			
<b>Employer</b>	<b>Re-inspection Result</b>	<b>Prior Violation(s) Status</b>	<b>Underground Economy Violations Found Upon Re-inspection</b>
1	In Business	DLSE-Cleared DOSH-Abated EDD-No Referral	No
2	New Ownership	N/A	No
3	New Ownership	N/A	No
4	In Business	DLSE-Cleared DOSH-Abated EDD-No Referral	No
5	In Business	DLSE-Cleared DOSH-Collection Pending EDD-Audit Completed	Workers' Comp, Registration, and Cash Pay
6	In Business	DLSE-Cleared DOSH-Abated EDD-Reporting	Car Wash Registration
7	In Business	DLSE-Cleared DOSH-Collection Pending EDD-Not Reporting	Car Wash Registration
8	In Business	DLSE-Collection Pending DOSH-Collection Pending EDD-Reporting	Car Wash Registration
9	Out of Business	N/A	N/A
10	Out of Business	N/A	N/A
11	Out of Business	N/A	N/A
12	New Ownership	N/A	Worker's Comp.

# Appendix E – EEEEC Restaurant Re-inspection Program Results

<b>Restaurant Re-inspections</b>			
<b>Employer</b>	<b>Re-inspection Result</b>	<b>Prior Violation(s) Status</b>	<b>Underground Economy Violations Found Upon Re-inspection</b>
1	In Business	DLSE-Cleared DOSH-Collection Pending EDD-No Referral	Workers' Comp
2	In Business	DLSE- Collection Pending DOSH-Collection Pending EDD-Audit Complete-Active Collection Case	No
3	In Business	DLSE- Collection Pending DOSH-Collection Pending EDD-Reporting	No
4	In Business	DLSE- Collection Pending DOSH-Abated EDD-Audit Referral	No
5	In Business	DLSE-Cleared DOSH-Abated EDD-Reporting	No
6	Out of Business	N/A	N/A
7	Out of Business	N/A	N/A
8	In Business	DLSE- Cleared DOSH-Abated EDD-Reporting	No
9	Out of Business	N/A	N/A
10	In Business	DLSE- Cleared DOSH-Collection Pending EDD-Reporting	No
11	In Business	DLSE- Cleared DOSH- Collection Pending EDD-Audit Completed	No

# Appendix E – EEEEC Restaurant Re-inspection Program Results

<i>Restaurant Re-inspections - Continued</i>			
<i>Employer</i>	<i>Re-inspection Result</i>	<i>Prior Violation(s) Status</i>	<i>Underground Economy Violations Found Upon Re-inspection</i>
12	New Ownership	N/A	No
13	New Ownership	N/A	No
14	In Business	DLSE- Collection Pending DOSH-Abated EDD-Audit Completed	No
15	In Business	DLSE- Cleared DOSH-Abated EDD-Reporting	No
16	In Business	DLSE- Cleared DOSH-Abated EDD-Reporting	No
17	In Business	DLSE – Cleared DOSH – Abated EDD – Reporting	No
18	In Business	DLSE- Collection Pending DOSH-Abated EDD-Liability Outstanding	Cash Pay
19	Out of Business	N/A	N/A
20	In Business	DLSE- Collection Pending DOSH-Abated EDD-Liability Outstanding	No

# Appendix F – Garment Re-inspection Program Results

Garment Re-inspections			
Employer	Re-inspection Result	Prior Violation(s) Status 38 DLSE- Collection Pending DOSH-Abated EDD-Audit Completed	Underground Economy Violations Found Upon Re-inspection
1	In Business		No
2	Out of Business	N/A	N/A
3	New Ownership	N/A	Cash Pay, Records
4	Out of Business	N/A	N/A
5	Out of Business	N/A	N/A
6	Out of Business	N/A	N/A
7	In Business	DLSE-Cleared DOSH-Abated EDD-Reporting	No
8	In Business	DLSE-Cleared DOSH-Abated EDD-Reporting	No
9	Out of Business	N/A	N/A
10	In Business	DLSE-Cleared DOSH-Abated EDD-Reporting	No
11	In Business	DLSE-Cleared DOSH-Abated EDD-Reporting	Repeat Serious DOSH Violations

# Appendix F –Garment Re-inspection Program Results

Garment Re-inspections - Continued				
Employer	Re-inspection Result	Prior Violation(s) Status	Underground Economy Violations Found Upon Re-inspection	
12	In Business	DLSE-Cleared DOSH-Collection Pending EDD-Reporting	No	
13	In Business	DLSE-Cleared DOSH-Abated EDD-Reporting	No	
14	Out of Business	N/A	N/A	
15	Out of Business	N/A	N/A	
16	New Ownership	N/A	No	
17	Out of Business	N/A	N/A	



# Appendix G – EEEEC Accomplishments

## Economic and Employment Enforcement Coalition Summary of EEEEC Accomplishments

Result	SFY 2005-2006	SFY 2006-2007	SFY 2007-2008	SFY 2008-2009	Total
Compliance inspections conducted	1,663	1,353	1,189	1,341	5,546
Labor, Health & Safety and Business & Professional Code Citations & Violations	4,697	4,674	4,850	4,507	18,728
Labor, Health & Safety and Business & Professional Code Citation Assessments & Current Penalties	\$8,954,005	\$11,418,767	\$8,939,854	\$9,467,455	\$38,780,081**
Previously Unreported Employees	1,206	4,432	5,585	3,829	15,052
Previously Unreported wages identified	\$17,487,200	\$92,370,364	\$107,268,624	\$80,257,205	\$297,383,393
Tax Audit Referrals	154	239	321	231	945
Employment Tax Audits Completed (closed)	38	262	303	286	889
Tax Liability Assessed	\$3,025,126	\$14,079,917	\$15,535,274	\$13,714,700	\$46,355,017
EDD Fraud Penalty Assessments	11	62	66	64	203
New Employers Registered	83	54	101	113	351
Cases referred to District Attorneys' offices for criminal prosecution	105	53	328	337	823
Cases resulting in criminal conviction	36	22	149	224	431

\*\*Listing of citations by category noted in Appendix I

# Appendix H – EEEEC Program Statistics July 1, 2005 through June 30, 2009

## Economic and Employment Enforcement Coalition Program Results July 1, 2005 through June 30, 2009

	Agriculture	Auto Body	Car Wash	Construction	Garment	Horse Racing	Janitorial	Pallets	Restaurant	Total
Number of Inspections	1,237	303	453	1,520	825	16	72	126	994	5,546
Number of Citations & Violations	2,105	1,885	2,015	4,243	4,497	14	124	503	3,342	18,728
Citations Assessments & Current Penalties	\$3,702,665	\$2,764,965	\$4,521,410	\$6,890,185	\$10,953,756	\$35,180	\$521,980	\$1,496,465	\$7,893,475	\$38,780,081**
Audits for Wages, Tools, & Uniform	279	65	277	247	235	7	50	8	608	1,776
Tax Audit Referrals	26	89	79	89	302	6	25	30	299	945
Tax Audits Completed	25	63	78	75	264	4	7	27	346	889
Tax Liabilities Assessed	\$2,154,178	\$1,931,155	\$3,026,101	\$6,500,648	\$19,965,362	\$51,878	\$490,925	\$1,225,215	\$11,009,555	\$46,355,017
Fraud Charges	6	7	21	11	74	-	-	8	76	203
Previously Unreported Wages	\$16,609,775	\$12,195,072	\$27,068,127	\$51,114,499	\$110,563,147	\$754,510	\$6,798,297	\$8,455,602	\$63,364	\$297,383,393
Employer Self-Audits	2	32	23	38	19	2	1	7	50	174
Employer Liability-Self Assessed	\$1,597	\$47,108	\$20,540	\$96,680	\$29,957	\$2,516	\$4,178	\$12,281	\$61,704	\$276,561
Employer Liabilities Collected	\$1,597	\$3,584	\$6,036	\$26,762	\$12,371	\$2,217	\$4,091	\$4,091	\$39,179	\$100,015
Employer Self-Audited Reported Wages	\$127,746	\$825,199	\$469,854	\$1,175,954	\$600,146	\$49,458	\$146,599	\$176,150	\$1,861,061	\$5,432,167
Employer Self-Reported Employees	6	89	54	96	118	7	37	12	231	650

\*\* Listing of citations by category noted in Appendix I

## **Appendix H1 – Clarification of Terms**

### ***Number of Inspections***

Number of site inspections conducted by DLSE. Depending on the circumstances, all partners do not participate on all inspections. For example, if there are no employees on site, DOSH and EDD would not be required to participate, only DLSE would conduct the inspection.

### ***Number of Citations and Violations***

Number of citations and violations issued by DLSE, CSLB and DOSH.

### ***Citation Assessments and Current Penalties***

Citation assessments issued at the time of inspection by DLSE & CSLB. Current Penalties are those penalties issued by DOSH that have been settled through pre-appeal settlements or reductions.

### ***Audits for Wages, Tools and Uniform***

Audit request issued by DLSE at the time of inspection for the employer to conduct a self-audit. If the employer is unable to conduct a self-audit, one will be conducted by DLSE.

### ***Tax Audits Referrals***

Referrals prepared by EDD's EEEEC agents to the local Tax audit offices for follow-up investigations where there is unreported wages and workers. Only those inspections where there were 5 or more workers and the business has been operating 4 or more quarters, meet the criteria for a Tax Audit referral.

### ***Tax Audits Completed***

The number of tax audits completed by the local EDD Tax office auditor.

### ***Tax Liabilities Assessed***

The total liability assessed from a completed tax audit. This would include Unemployment Insurance, Employment Training Tax, Disability Insurance, Personal Income Tax, penalty, and interest.

### ***EDD Fraud Charges***

The total number of cases where fraud was charged on an EEEEC tax audit follow-up. Fraud may only be charged when it is determined during a tax audit that the employer has committed intentional disregard or intent to evade as defined by various court cases.

## Appendix H1 – Clarification of Terms

### ***Previously Unreported Employees***

Workers who were not previously reported to EDD as an employee on the quarterly reporting form by that employer.

### ***Previously Unreported Wages***

Wages employer failed to report to EDD on the quarterly reporting form.

### ***Employer Self-Audits***

Investigations completed by EDD EEEEC staff when there are unreported wages and workers and the case does not meet the criteria of a Tax Audit Referral. When there are fewer than 5 workers or the business has operated less than 4 calendar quarters, the criteria for initiating a Tax Audit Referral is not met. When there are unreported workers and wages, the Department must do some type of follow-up action to protect the integrity of the UI and general fund. The employer is provided an opportunity to self-report by completing and sending reporting forms and making a full payment including penalties and interest. In many instances, EEEEC staff also provides education to the employer on reporting requirements through the Self-Audit process.

### ***Employer Liability-Self Assessed***

The total liability amount that is owed by the employer as determined through the Self-Audit process.

### ***Employer Liabilities Collected***

The total amount of wages collected as the result of the Self-Audit process.

### ***Employer Self-Audited Wages***

The total amount of wages previously not reported to EDD as determined through the Self Audit process.

### ***Employer Self-Reported Employees***

The total number of employees previously not reported to EDD as determined through the Self-Audit process.

### ***Number of Licenses Checked***

The number of required construction contractor licenses checked through CSLB's state database.

### ***Cases Referred to District Attorney's offices for criminal prosecution***

Cases referred by DLSE and CSLB to District Attorney Offices.

### ***Cases resulting in criminal conviction***

Cases referred by DLSE and CSLB to local District Attorney Offices that have resulted in criminal convictions.

# Appendix I – EEEEC Citations Issued

## Economic and Employment Enforcement Coalition Summary of EEEEC Citations Issued

	2005-2006			2006-2007			2007-2008			2008-2009			Total
	Number of Citations	Citation Assessments	Number of Citations	Citation Assessments	Number of Citations	Citation Assessments	Number of Citations	Citation Assessments	Number of Citations	Citation Assessments	Number of Citations	Citation Assessments	
Failure to have Workers' Compensation*	461	\$3,751,750	346	\$3,074,000	329	\$1,796,000	387	\$2,041,150	1,523	\$10,662,900			
Failure to provide itemization of wage statements/cash pay	274	\$2,667,500	285	\$4,881,400	276	\$3,654,700	293	\$4,396,600	1,128	\$15,600,200			
Failure to pay overtime	31	\$77,750	33	\$153,400	38	\$103,650	22	\$45,950	124	\$380,750			
Failure to pay minimum wage	17	\$36,000	21	\$183,800	38	\$180,750	34	\$92,550	110	\$493,100			
Employment of minors	79	\$98,000	74	\$74,500	55	\$56,500	31	\$18,700	239	\$247,700			
Failure to provide garment records	121	\$173,700	92	\$143,900	85	\$111,150	31	\$41,100	329	\$469,850			
Failure to provide proof of garment registration	91	\$150,650	57	\$84,600	54	\$77,900	35	\$31,800	237	\$344,950			
Garment Confiscations & Notice of Joint Liability	55	N/A	27	N/A	40	N/A	33	N/A	155	N/A			
Failure to provide proof of car wash registration	N/A	N/A	58	\$537,200	36	\$313,900	42	\$381,300	136	\$1,232,400			
Failure to have required Contractors License (Construction & Farm Labor)	119	\$319,500	62	\$348,300	17	\$64,550	21	\$89,300	219	\$821,650			
Unlawful advertisement	28	\$13,050	9	\$4,700	139	\$1,750	130	\$11,500	306	\$31,000			
Health & Safety Violations & Current Penalties	3,395	\$1,583,027	3,548	\$1,863,267	3,602	\$1,840,104	3,302	\$1,775,905	13,847	\$7,062,303			
Other (CSLB & DOL)	26	\$83,078	62	\$69,700	141	\$738,900	146	\$541,600	375	\$1,433,278			
<b>Total</b>	<b>4,697</b>	<b>\$8,954,005</b>	<b>4,674</b>	<b>\$11,418,767</b>	<b>4,850</b>	<b>\$8,939,854</b>	<b>4,507</b>	<b>\$9,467,455</b>	<b>16,728</b>	<b>\$38,780,081</b>			

\*Failure to have workers compensation insurance also results in Stop Orders that prohibit the use of any employee labor until proof of valid insurance is provided. The employers are obligated to continue to pay all employees their normal wages until the "Stop Order" is removed or for 10 days, whichever is first (Labor Code Section 3710.1).



801 K Street, Suite 2101  
Sacramento, CA 95814  
(916) 327-9064

**Arnold Schwarzenegger**  
Governor

**Acting Secretary Doug Hoffner**  
California Labor & Workforce Development Agency

**Director, David Dorame**  
Economic & Employment Enforcement Coalition

**James Miller, Chair**  
Contractors' State License Board

**John Duncan, Director**  
California Department of Industrial Relations

**Patrick Henning, Director**  
California Employment Development Department

The State of California Labor & Workforce Development Agency is an equal opportunity employer/program. Auxiliary aids and services for individuals with disabilities are available upon request. Requests for services, aids, and/or alternate formats should be made by calling (916) 327-9064 (voice) or TTY (800) 547-9565.

## Memoranda of Understanding

CSLB has been a party to memoranda of understanding (MOUs) for the purpose of sharing enforcement information with Employment Development Department (EDD), the Division of Occupational Health and Safety (DOSH), the Division of Labor Standards Enforcement (DLSE), the Division of Apprenticeship Standards (DAS), the Department of Transportation (CALTRANS), the Franchise Tax Board (FTB), and the Department of Industrial Relations' (DIR) Office of Director – Legal (ODL). During 2009, CSLB worked with each agency to further enhance the existing MOUs, thus strengthening enforcement of labor, tax, and licensing laws.

Realizing that other agencies also possess important enforcement information, a system was developed and implemented to allow other regulatory agencies to notify CSLB of violations committed by licensed or unlicensed contractors.

Following are summaries of the MOUs and achievements:

### **Employment Development Department (EDD)**

Under the terms of the previous MOU, CSLB's ERs and EDD agents conduct monthly field inspections as part of a joint Employment Enforcement Task Force (EETF); however, pursuant to the new MOU, those field inspections increased to a minimum of two per month.

CSLB sends statistical information to EDD on a quarterly basis, and EDD agrees to investigate underground economy complaints that are not suitable for SWIFT or EETF on-site inspections that are against unlicensed contractors who have six or more employees and are suspected of operating in the underground economy.

In addition, CSLB will provide EDD query access to CSLB's Licensing System, including licensing data, pending application data, and the CSLB backlog table pursuant to agreed security provisions.

EDD continues to refer unresolved final tax liability cases to CSLB, which result in the automatic suspension of those licenses until the outstanding liabilities are satisfied.

2009 EDD OUTSTANDING LIABILITY REFERRALS
584 licenses were suspended by CSLB
363 licenses subsequently reinstated for compliance with EDD
\$13,206,385 in outstanding liabilities were resolved

### **Franchise Tax Board (FTB)**

In 2009 CSLB and FTB agreed that FTB would refer its final actions to CSLB pursuant to Business and Professions Codes section 7145.5 which authorizes CSLB to assist in collecting taxes owed by a licensed contractor where the FTB action is final.

CSLB has begun enforcing this agreement in the last four months of 2009. Pursuant to the agreement, CSLB has sent four contractors initial letters, totaling over \$1,119,000, and has sent suspension letters to two of those contractors for failure to resolve outstanding final liabilities, totaling over \$465,000. One of these contractors have successfully complied and paid the FTB in full. It is anticipated that CSLB will see a substantial increase in FTB referrals for 2010.

2009 FTB OUTSTANDING LIABILITY REFERRALS
2 contractors licenses were suspended for outstanding liabilities
\$ 21, 890 was collected in full by FTB as a result of the suspensions

### **Department of Industrial Relations (DIR)**

The Department of Industrial Relations (DIR) is responsible for promoting the welfare and working conditions of the wage earners of California. DIR has several divisions including DLSE, DOSH, DAS and the Office of the Director-Legal which are each responsible for protecting the wages and safety of California workers. CSLB has entered into MOUs with each of these divisions designed, in part, to assist them in collecting their final administrative and judicial actions against both licensed and unlicensed contractors who violate provisions of the Labor Code. In addition, the MOUs are also designed to enable CSLB to take appropriate administrative or court action against contractors who violate provisions of the Contractors' State License Law. The following chart indicates the results of referrals made in 2009 pursuant to the aforementioned MOUs

2009 DIR OUTSTANDING LIABILITY REFERRALS
236 licenses were suspended for outstanding liabilities owed to DIR
84 licenses were subsequently reinstated for compliance with DIR
\$597,185 in outstanding liabilities were resolved



- **Division of Occupational Safety and Health**

Under the revised agreement, DOSH refers reports of contractors found in violation of safe workplace provisions of the Health and Safety (H&S) Code that have resulted in a serious workplace injury or fatality for appropriate CSLB action against the license.

Further, when any investigation of a construction industry employer is being conducted and DOSH determines that the employer has acted willfully or with gross negligence to violate an occupational safety or health standard, and the same act also constitutes an obvious violation of standards to which CSLB requires licensed contractors to adhere, DOSH will make an early referral to CSLB's SWIFT Program Manager. CSLB anticipates an increase in early referrals from DOSH in 2010.

DOSH also will assist CSLB in achieving judicial revocation of licenses in DOSH-initiated criminal proceedings.

CSLB provides DOSH with the final disposition on all referrals, as well as a summary of administrative disciplinary action taken against a licensee as a result of a DOSH referral.

Finally, DOSH is responsible for issuing permits for specified construction activities that are predicated upon the applicant employer having an appropriate contractor's license; therefore, CSLB notifies DOSH of the revocation of any contractor's license on a monthly basis.

2009 INVESTIGATED DOSH HEALTH & SAFETY CODE VIOLATION REFERRALS
62 referrals received from DOSH for serious H&S Code violations
104 complaint investigations were completed by CSLB*
63 DOSH referrals resulted in formal warnings to the licensees
15 formal administrative disciplinary actions were taken

\* This number includes DOSH referrals from 2008

- **Division of Labor Standards Enforcement**

The MOU provides that DLSE forward documentation of Labor Code (LC) violations that result in a civil or criminal case and/or violations that result in a judgment for unpaid wages or penalties. CSLB has authority to obtain judicial suspension or revocation of the license when notified of DLSE cases referred for criminal prosecution.

The enhanced MOU, signed in November 2008, provides for DLSE to forward to CSLB copies of all final findings by the Labor Commissioner of a willful or deliberate violation of any provision of the LC by a licensed contractor, so that CSLB can initiate disciplinary action as required by B&P Code Section 7110.5.

<b>2009 INVESTIGATED DLSE LABOR CODE VIOLATION REFERRALS</b>
28 referrals received from DLSE for labor code violations
39 complaint investigations were completed by CSLB
7 DLSE referrals resulted in formal warnings to the licensees
2 formal administrative disciplinary actions were taken
14 non licensees were identified and referred to the SWIFT unit

In late 2009, DLSE and CSLB entered into a pilot project entitled "Sacramento Test Project" which will focus on CSLB investigations of DLSE final actions involving violations of labor code sections 3700 (Workers' Compensation), 226 (Cash Pay), 1021 (unlicensed contractor) and 1021.5 (licensed contractor hiring unlicensed contractor).

#### **Division of Apprenticeship Standards**

On June 29, 2009 CSLB and DAS entered into an MOU to implement the provisions of SB1362 and AB3048 effective January 1, 2009 mandating that DAS refer cases to CSLB upon determining that a violation of electrician certification requirements under Labor Code Section 3099.2 has likely occurred so that CSLB can appropriately discipline its C-10 Licensees who have violated the law.

<b>2009 DAS REFERRALS</b>
30 referrals received from DAS reporting uncertified electrician activity
12 DAS referrals resulted in formal warnings to the licensees
2 formal administrative disciplinary actions were taken

- **Office of the Director Legal Unit**

A first ever MOU between the DIR's ODL and the CSLB was signed on August 6, 2008. ODL administers the Uninsured Employers Benefits Trust Fund (UEBTF) as well as investigates uninsured employers and their lack of WC insurance. Under this agreement, ODL refers suspected unlawful activity by licensed or unlicensed contractors to CSLB, and CSLB, in turn, provides ODL with the final disposition results on all referrals. In addition, ODL is provided access to the CSLB Licensing and Information System database.

- **California Department of Transportation**

An MOU was finalized between CSLB and the Department of Transportation (Caltrans) on September 19, 2008. Caltrans administers contracts for \$16 billion in funds for improvements to California highways, which are public works projects subject to Public Contract Code Sections 4100–4100, the Subletting and Subcontracting Fair Practices Act (Act). Under the MOU, Caltrans refer serious or willful violations of the Act and WC violations to CSLB for investigation. CSLB will conduct investigations into violations of the Act and WC and notify Caltrans of the investigations' results. Each agency will share information, to the extent allowed by law, to assist each other in any investigations for violations of the Act, unlicensed contractor activity, or violation of WC requirements.

[Send to printer](#)   [Close window](#)

# Hawaii's Underground Economy

## Unreported cash-only deals add up to \$1 billion a year in unpaid taxes

SHARA ENAY

One billion dollars a year. That's the estimated taxes in Hawaii that don't get paid by contractors and waiters, accountants and attorneys, hairdressers and everyone else who hides all or part of their cash income.

Just about everyone contributes knowingly or unknowingly to Hawaii's underground economy. Maybe your mechanic cuts you a deal if you pay cash, or you buy produce from a vendor at the farmers' market who doesn't have a general excise tax license. There's nothing wrong with paying cash or operating a cash-only business, provided the business reports all of its taxable income. Anyone who is caught evading taxes could end up in jail.

"If you turn yourself in now, you might get off easier," warns Kurt Kawafuchi, state director of taxation.

the chances of getting caught are slim since cash deals are hard to track, and many who do get caught only suffer minor penalties. So the cheating continues.

If everyone paid his or her fair share of taxes, the state might not have struggled so much over this year's \$1.2 billion budget deficit, reduced public services and Furlough Fridays. But you can look at it another way: Hawaii's cash economy also keeps thousands of hardworking people out of the unemployment lines and current on their mortgages. And overall economic activity would decline if everyone did pay all their taxes because some businesses would not be able to survive and people would have less money to spend. Lowell Kalapa, executive director of the Tax Foundation of Hawaii, argues that the state's gray economy is just a symptom of a bigger problem: overly high taxes.

Nobody likes to pay taxes, but most people are honest and do it anyway, says Stephen Hironaka, a former IRS agent who now supervises the state's team of criminal tax investigators. The federal tax compliance rate was 86 percent in 2001, according to the IRS National Research Program. That includes late payments and recoveries from enforcement, but still leaves 14 percent unpaid.

### Legitimate vs. cheating

Businesses that cheat on their taxes have an unfair advantage over those that follow the law. Kyle Chock, executive director of the Pacific Resource Partnership, an alliance between unions and the construction industry, says unlicensed contractors and tradespeople who take on off the books also drive down wages for the entire industry.

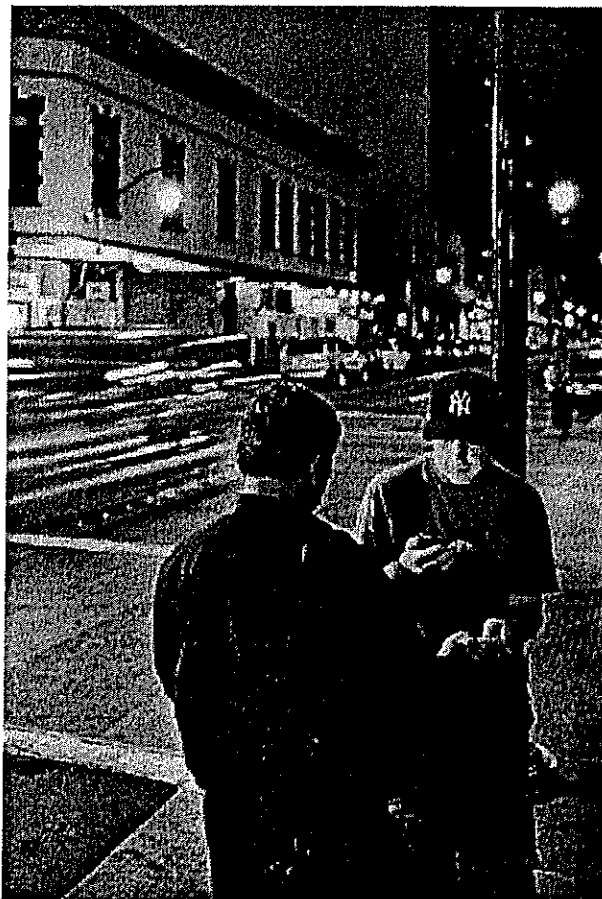


Photo: Olivier Koning

"To stay in business, the honest companies have to pay their workers less to compete with the guys who are cheating and that's bad for everyone," Chock says. In 2008, Pacific Resource Partnership launched the Play Fair in Hawaii campaign to encourage developers to adhere to the rules governing the state's construction industry.

One of the people Chock is fighting against is someone we'll call the Contractor, who asked that his name not be used because he is breaking the law. The Contractor started his construction business eight years ago by doing cash jobs on weekends. "We were getting paid anywhere from \$150 to \$300 per day," he recalls. "I was making more money on the weekend than my weekly paycheck." By the time he was 25, he was earning \$120,000 a year while most of his friends were making \$30,000 or less. In 2006, he had his best year, grossing \$800,000 and reporting only half for taxes. Today, he works year-round even while much of the construction industry is at a standstill.

"I give (cash) customers three options. Option 1 is to do the job completely on the books." About 20 percent will choose this option. Option 2 is to do the work half on the books and half off. "My name will not appear on any of the project-related paperwork, but the price of the job will be reduced by about half, and I'm not responsible for the structure or any liability once the job is over." He still gets all the required permits and buys the materials at his discounted contractor's rate, which will go on the books. But only half of the labor will be documented to save both parties money.

Half of his cash customers choose Option 3, which is 100 percent off the books. The customer buys all the materials and the Contractor charges \$200 per worker per day — about \$100 a day less than the legitimate price for labor. The customer pays cash and all the workers are paid \$1,000 cash each Friday for a 40-hour week. A homeowner would save \$4,000 on a renovation that takes two workers four weeks to finish.

Chock warns consumers about hunting for bargains. "Say you hire an electrician to install a ceiling fan and pay him cash," he says. "In two weeks, if something goes wrong with the fan, you may not be able to get it repaired if you don't have a receipt and there's no warranty. It's a buyer-beware scenario."

Ron Taketa, financial secretary and business representative for the Hawaii Carpenters Union, encourages the state to target contractors and employers who exploit workers by paying them cash and not paying state-mandated insurance for workers' compensation, disability, unemployment and health care. "They cheat the state labor department, their workers and the state tax office at a time when we should be focused on increasing our state revenues," Taketa says. "You can't catch every unemployed guy running around with a pickup truck and a cell phone, but I certainly think clamping down on contractors who are part of the systematic problem would be the answer."

### Why cheating occurs

It seems inevitable that when the economy is down and unemployment is up, tax evasion increases. But tax investigator Hironaka isn't sure that's the case. "Whether the economy is up or down, people are still going to cheat," he says.

Honolulu criminal defense attorney Myles Breiner disagrees and suspects that in a down economy, when competition for work is stiffer, more people will underreport their tax liabilities or won't file at all. "I think we're going to see more and more tax evasion cases in the years to come," he says. "People are very resentful of the taxes they pay so they are going to be more creative at evading them."

Resentful or not, you should pay what the law requires, says Hironaka. "As a resident of this state, you can't take advantage of the services government offers and not be willing to fork over what you owe to pay for those services."



● Tax Foundation's Kalapa agrees that, by not paying their share, delinquent taxpayers shift the burden to the rest of us, but he says Legislators must share some of the blame. "If the tax burden wasn't so heavy, then I think more people would abide by the laws," he says. "We have some of the highest tax rates in the nation, so don't you think people will try to evade having to pay such a heavy burden?" **Photo Courtesy of Myles Breiner**

In 2006, the U.S. Treasury recommended that tax laws be reformed and simplified to reduce opportunities for intentional evasion and make it easier for the IRS to enforce tax laws. Attorney Breiner describes the tax code as a labyrinth of exceptions and subexceptions. "People get CPAs because it's full of archaic rules and it's not hard to be confused by them."

Breiner says it's a tough pill to swallow when a tree trimmer with a modest income gets slammed with heavy taxes while a CEO making millions hires a hotshot accountant to find loopholes to hide income. "It's sad because it's the people at the bottom end of the scale that are getting taxed to death."

But Chock isn't accepting that as an excuse to cheat. "Sure, we're in a tough situation and everybody's hurting right now. But high taxes are not an excuse for bad or illegal behavior. It doesn't give people permission to go out and cheat and start gaming the whole system."

### Who's doing it?

"As a former prosecutor, defense attorney and, simply, as a member of the business community, it seems to me that everyone at some level participates in the gray economy," Breiner says. "The thought that we have sort of a gray economy is a misnomer. The economy in Hawaii is gray. Period."

● Hironaka says most tax evaders are educated people, and that the problem is not simply in blue-collar fields such as construction, landscaping and plumbing. Doctors and CEOs are also guilty.

Businesses often prefer cash because checks can bounce and credit-card transactions cost money. But false income reporting is easier in industries where cash is often tendered, such as restaurants, bars or stores. "There is a temptation to not report when only cash is involved because who would know?" Hironaka says. "But then again, you can't assume wrongdoing just because a business only takes cash."

Since opening in 1962, Buzz's Steak House in Kailua on Oahu has accepted only cash and checks. Manager Mani Schneider, daughter of founders Buzz and Bobby Lou Schneider, says, "When my parents applied to get a credit-card-processing system, the bank turned them down because their credit wasn't good enough."

Decades later, Buzz's payment policy has remained unchanged. "It's just the principle with my mom," Mani Schneider says. "People always assume that we're scamming here, but every transaction goes through Digital Dining (point-of-sale software that tracks restaurant transactions) so it's all registered."

Hironaka says unreported rental income is a huge problem for the state. "Let's say a room is rented for \$600 a month, times 12, that's \$7,200, times 4 percent, that's about \$300 a year," he says. "Who's going to check on paying GET on \$300? But multiply that by the tens of thousands of people who are doing it and that \$300 is not \$300 anymore – it's \$3 million."

In the past 15 years, the state Tax Department has won more than 360 criminal tax convictions, 80 percent of which were for failing to file GET returns. Those who get investigated are often those who file inaccurately or inconsistently, or who pay their income taxes but not their GET.

● "The problem today is that there's no shame anymore," Hironaka says. "Tax avoidance or tax cheating is an acceptable method these days. How often do people inflate their numbers by just a little? To a lot of people, it's perfectly fine to cheat a little on their tax returns."

### It's all about trust

The Contractor says he approaches new customers carefully. "There's a level of trust that needs to be there because the last thing I need is for them to turn me in," he says. He'll first make a legitimate bid. That often elicits a response along the lines of, "Ooooh, that's more than I wanted to spend. Can we do anything to bring down the price?" Only if he feels comfortable with the customer will he then offer his cash-only discounts.

The Contractor knows he could be caught for tax evasion, but has decided the risks are worth it. "When I started off, I was broke, so I did what I had to do to survive. But, after a while, you get used to the money and the lifestyle and it kind of just grows from there," he says. "I don't tell people how to pay me. They approach me and the way I see it, I'm helping them and they're helping me."

Despite hiding much of his income, the Contractor has paid up to \$30,000 a year in state and federal taxes. "Believe me, the government is getting a lot of my money," he says. "I'm probably contributing a lot more than most people and at least I'm working. I could be sitting at home collecting unemployment and welfare checks but I'm not. Trust me, everybody is doing it. The guys that do everything by the books, they're the ones not working right now."

## Reinforcement

he state's criminal tax conviction rate has been 94 percent over the past 15 years, but Hironaka says most tax-evasion cases never go to trial. Over the past decade, Breiner says, he's defended only a handful of cases, not because tax evasion is rare, but because violators usually settle out of court.

An investigation normally starts with a notice in the mail or a knock at the door from a government agent. Typically, the IRS comes to collect first, then the state investigates by subpoenaing your business records and conducting interviews. If the state decides to press charges, a guilty plea will result in a fine and/or jail time. Plead not guilty and the case goes to trial – but that's only happened five times in the past 15 years.

Although TV ads often say, "We can settle your tax debt with the IRS for pennies on the dollar," Breiner says that's rare and cautions people not to expect any sympathy from the federal or state governments.

Hironaka has mixed feelings about punishment. He believes the penalties are stiff enough but that judges aren't consistent in their sentencing. For example, he's seen assault cases end in probation while white-collar criminals get jail sentences. But an attorney who didn't pay his GET for five years was only ordered to pay \$2,500. For that attorney, Hironaka says, the small fine was just part of the cost of doing business. "There aren't enough deterrents, from our perspective, for people not to cheat on their tax returns, because, if they get caught, they just have to pay a small fine and move on. The (potential) penalties are appropriate but the enforcement is the challenge."

tax investigations are often prompted by public complaints when, for example, a contractor does shoddy work and refuses to fix it. Hironaka says disgruntled former employees, competing businesses and ex-spouses also frequently file complaints about tax evaders.

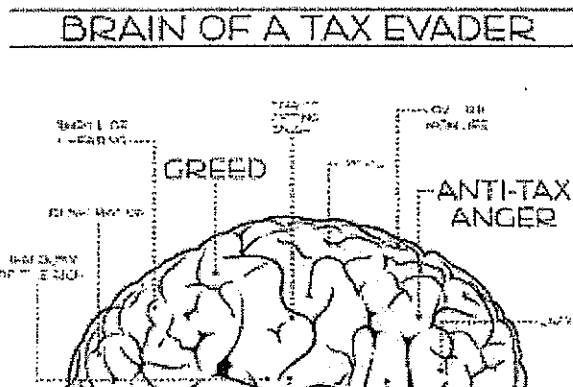
"People also get into trouble when they brag about things," Hironaka says. "So if you cheat on your returns, it might be a good idea to keep it to yourself."

The state also relies on computer matching to detect false reporting and filing errors, and to ensure people who are required to do so file both their income and GET returns. In 2005, the state prosecuted 15 real estate agents for underreporting or failing to pay GET.

One of the biggest cases ever investigated in Hawaii started when a tax agent saw a man driving a luxury vehicle and decided to research the driver. "The agent ran the car's plates and found out the guy was driving a \$100,000-plus car and was only claiming a percentage of that for income so the numbers didn't match up," Hironaka says. "The point of the story is that we're ever-vigilant."

Hironaka and his team of criminal tax investigators might be ever-vigilant, but they're also under-funded. Four people handle all criminal tax investigations for the state and prosecute 30 to 40 tax cases a year. From 1996 to 2009, the courts have assessed \$2.3 million in fines and are in the process of collecting \$25 million in delinquent taxes.

A new law last year gave the state Tax Department more resources and tools to investigate suspected violations, but the original plan for nine positions was reduced to three by budget cuts. Ronald Randall, state taxation compliance administrator, says the new unit has focused on cash-based businesses that have underreported their tax liabilities. So far, the group has combed through





Fort Street Mall, Aloha Tower, Chinatown and other areas.

Illustration: istock.com

randall says the unit receives about 10 complaints a day from the public and has investigated about 200 cases, from auto repair shops to beauty salons, and has assessed about \$4 million in underreported taxes.

"People who cheat are most likely going to do so until they're caught," he says. "Our goal is to be vigilant and put out as many deterrents as possible to motivate people to comply with the rules."

Due to limited resources, the tax department rarely investigates illegal activities such as prostitution, gambling and drug sales because the cases are much harder to prove. "We don't have the resources, manpower or time to do undercover investigations, although we wish we could," Hironaka says. "Besides, there are so many legal businesses not paying their fair share that we don't have time to go into the illegal sector."

### The Tax Gap

State tax director Kurt Kawafuchi says the national tax gap – the amount of owed taxes that go unpaid – has been estimated to be about \$400 billion.

"As a rule of thumb, we usually use one-half of 1 percent to calculate Hawaii's portion of the tax gap. Experts have said the cash economy is about half of the tax gap so you do the math."

That means Hawaii's tax gap is \$2 billion a year, and half of that is attributed to the cash economy, \$1 billion.



Photo Courtesy of Department of Taxation

### The Main Reason People Cheat

People cheat on their taxes for a variety of reasons: Some actually don't have the money, others just don't want to part with it and many do it because they believe they won't get caught. David Callahan, author of "The Cheating Culture: Why More Americans Are Doing Wrong to Get Ahead," says many people assume that the most common gripes are that taxes are too high or complicated, but, actually, the biggest complaint is that the rich don't pay their fair share. Callahan separates people into two main groups: the winning class and the anxious class. The winning class is made up of the wealthy and the anxious class consists of people who struggle financially.

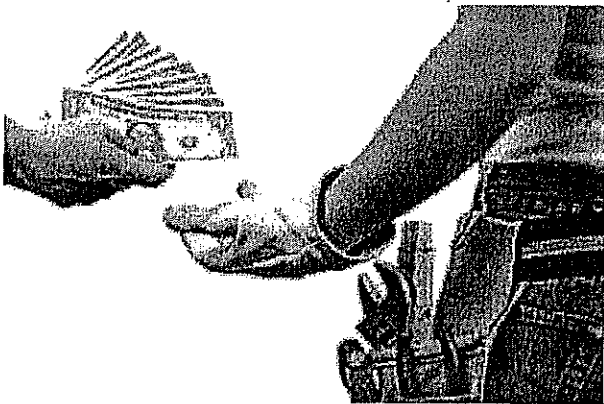


Photo: istock.com

Some people in both groups cheat, he says, but members of the anxious class do it mainly because they believe the rich have the tools to evade taxes and aren't paying their fair share.

### Mr. Contract Hire

"My previous employer is the king of hiring contract workers," says a former



stant at a small manufacturing company, who asked not to be named. "The  
 thing is, most of them aren't contract hires; they're full-time employees  
 just being paid under the table." Photo: istock.com

Mr. Contract Hire's company employs about 10 full-time employees, half of them paid in cash. They all work at least 40 hours a week on-site, which disqualifies them from being independent contractors. "I worked for him for four years and he did this the whole time to get out of paying payroll taxes, workers' comp and medical," the former assistant says.

Mr. Contract Hire's jobs pay minimum wage, so many candidates are uneducated and many receive government assistance. He normally offers these prospective employees two options:

- They can get paid \$7.25 an hour and receive full medical coverage, but he emphasizes that the government will take one-third of their income for taxes; or
- If they don't need medical benefits, they get paid \$8 an hour cash, tax free.

"He knows that a lot of the workers are covered by Quest medical insurance, and so are their kids," the assistant says. "If Quest finds out the person is employed full time and being offered medical benefits, it would jeopardize their chances for receiving coverage."

By choosing the second option, the employee takes home more pay while still qualifying for government assistance, while Mr. Contract Hire saves on taxes and insurance. The company has been audited several times and, although the auditor discovered that Mr. Contract Hire was lying about his workers, he received nothing more than a slap on the wrist.

## Penalties for Evasion

For each year that you evade your state taxes, the penalty is up to a **\$100,000** fine and **five years** in jail. The government could also seize property and liquidate your assets.

## The \$10,000 Tell

Veterans of the underground economy know that lots of cash raises red flags at banks. By law, U.S. financial institutions must file a Currency Transaction Report for each deposit, withdrawal, currency exchange or other transaction of \$10,000 or more.

Most bank systems automatically create a CTR electronically and bank employees can note if they believe the transaction is suspicious or fraudulent. Customers are not told about the \$10,000 threshold unless they ask, and once the transaction begins, they cannot reduce the amount to prevent a CTR. In fact, an attempt to "structure" their transaction to an amount near, but not over, \$10,000 is punishable by federal law and may prompt bank personnel to closely monitor their account.

## Taxpayers Beware

Criminal tax investigator Stephen Hironaka says the state knows that many tax preparers file false returns on behalf of their clients. "You hear about it all the time," he says. "A friend will tell you, 'Go to this person and you'll get a big return.'"

If caught, that preparer will be penalized and the taxpayer will have to pay the correct tax. Hironaka says the longest jail term ever secured by the state was 10 years on a tax preparer who filed false returns for an entire family.

Hironaka's advice: If someone else prepares your taxes, be sure to check the return for anything that seems suspicious. If your refund is significantly higher or lower than the previous year and your employment situation hasn't changed, be wary.

**Report Violators:** Call the state Tax Department's hotline at 587-1456 to report suspected violators. Tips can remain anonymous.

## Month of Forgiveness

Last year, from May 27 to June 26, the state let eligible taxpayers pay back taxes while avoiding penalties, with 50 percent less interest and the potential to avoid criminal prosecution. Here's what the Tax Fresh Start Program accomplished:

**\$14.4 million collected;**

**\$4.2 million in GET;**

**\$3.9 million in income tax;**

**870 taxpayers participated, with an average of three tax years forgiveness each.**

## Hawaii's Ignored Tax

The use tax is one of the least understood taxes even though everyone who purchases goods outside of Hawaii – through mail-order or online, for example – may be subject to this tax. Because sellers in Hawaii pay GET on their gross incomes, they are at a price disadvantage with out-of-state businesses that don't pay the tax. Therefore, the use tax equalizes the tax on transactions by requiring those purchasing goods from out-of-state sellers to pay a 4 percent tax, or half of 1 percent for wholesalers.

"Technically, you're even required by law to pay a use tax on things you buy on amazon.com," Hironaka says. "But if you buy two DVDs a month, are you going to file a use-tax return and pay 4 percent of \$25? All Internet sales are subject to a use tax, but nobody does it."

Hironaka says the use tax is geared more toward people and businesses that make large purchases, such as machinery or manufacturing equipment, from out-of-state sellers. But even he admits hardly anybody files a use-tax return and, unless it's a big-ticket item, the state will probably never know about it or investigate the case.

State of Hawaii  
Department of Labor and Industrial Relations  
**DISABILITY COMPENSATION DIVISION**  
P. O. Box 3769  
Honolulu, Hawaii 96812-3769

Form DC-1  
(Rev. 1/00)

**DIGEST OF CHAPTERS 386, 392 and 393  
HAWAII WORKERS' COMPENSATION, TEMPORARY DISABILITY  
INSURANCE, AND PREPAID HEALTH CARE LAWS**

**TO THE EMPLOYER:** The Disability Compensation Division (DCD) of the Department of Labor and Industrial Relations administers three important labor laws which directly concern all employers with one or more employees, working part-time or full-time. We have prepared this digest to inform you of some of the highlights of the Workers' Compensation (WC), Temporary Disability Insurance (TDI), and Prepaid Health Care (PHC) Laws (Chapters 386, 392 and 393 of the Hawaii Revised Statutes), and to assist you in complying with the requirements of the three laws. For details or answers to specific questions, please refer to the three laws or contact the nearest Disability Compensation Office.

The three laws require you to provide for your employee(s):

- **WC** — Wage replacement benefits and medical/hospital care for work-related illness or injury by purchasing insurance from a Hawaii-licensed insurance carrier or adopting an approved self-insured plan.
- **TDI** — Wage replacement benefits for nonwork-related disabling illness or injury by the same methods listed above or by negotiating a collective bargaining agreement which provides sick leave benefits as favorable as required by this chapter.
- **PHC** — Medical and hospital care for nonwork-related illness or injury by: (1) purchasing an approved health care plan from a health care contractor such as Kaiser, HMSA, or a Hawaii-licensed insurance carrier, (2) by adopting an approved self-insured health care plan, or (3) negotiating a collective bargaining agreement which provides health care benefits at least equivalent to that mandated by this chapter.

**Workers Excluded from Coverage.** Except for those specifically excluded from coverage, almost everyone hired to work is covered by one, two or all of the three laws. Refer to the three laws for a complete list of services excluded from WC, TDI, or PHC coverage. Listed below are the more familiar services which are excluded:

- **WC** — Federal government workers; certain domestic workers earning less than \$225 a calendar quarter; domestic workers of public welfare recipients; unpaid or volunteer workers for a religious, charitable or non-profitable organization; students working for a school or university in return for board, lodging or tuition; duly ordained or licensed ministers or rabbis; certain twenty-five percent stockholders; all fifty percent stockholders; real estate salespersons and brokers paid solely on a commission basis.
- **TDI** — In addition to some of the above exemptions, insurance agents, vacuum cleaner or real estate salespersons remunerated solely by way of commission; individuals under 18 years of age in the delivery or distribution of newspapers; individuals working for son, daughter or spouse; children under age 21 working for father or mother.
- **PHC** — Federal, State and County workers; workers employed for less than 20 hours a week; agricultural seasonal workers; insurance and real estate salespersons paid solely by way of commission; individuals working for son, daughter or spouse; children under age 21 working for father or mother; workers covered as dependents under a qualified health care plan; workers covered by State-governed medical assistance; workers receiving public assistance.

**Eligibility Requirements**

- **WC** — The only requirement is that the worker is in covered employment and the injury or illness is work-connected.
- **TDI** — Worker must have been in covered employment with any Hawaii employer for at least 14 weeks with remuneration of 20 or more hours in each week, and earned wages of at least \$400 during the 52 weeks immediately preceding the first day of disability.
- **PHC** — Worker in covered employment must have worked four consecutive weeks of 20 or more hours a week and earned monthly wages of at least 86.67 times the Hawaii minimum hourly wage, rounded off to the next higher dollar. Coverage must be provided at the earliest enrollment date of the health care contractor selected pursuant to this chapter.

**Filing a Claim**

- **WC** — You should complete Form WC-1 "Employer's Report of Industrial Injury" as soon as you have knowledge of disability.
- **TDI** — Your employee obtains claim form (TDI-45) from employer and completes **Part A—Claimant's Statement**. Employer completes **Part B—Employer's Statement**. Worker must then have **Part C—Doctor's Statement** certified by a licensed doctor, dentist, chiropractor, osteopath or naturopath. Completed claim form must be filed with insurer within 90 days of disability date.

**Benefit Provisions**

- **WC** — For work-related injury or illness — all required medical, surgical and hospital services and supplies including drugs, weekly benefits from the fourth day of disability to replace wage loss, representing 66-2/3% of the worker's average weekly wage but not more than the maximum weekly benefit amount annually set by the DCD; additional benefits if injury results in permanent disability or disfigurement; vocational rehabilitation if eligible; funeral and burial expenses if work injury results in death; and additional weekly benefits to surviving widow and other dependents.
- **TDI** — For nonwork-related injury or illness — wage replacement benefits representing 58% of the worker's average weekly wage rounded off to the next higher dollar with the maximum amount correlated with the State unemployment insurance maximum, and payable from the eighth day of disability for a maximum duration of 26 weeks in a benefit year. A plan providing benefits deviating from the above must be reviewed and adjudged equivalent by the DCD.
- **PHC** — For nonwork-related injury or illness the following benefits: hospital (including in-patient care for at least 120 days of confinement in each calendar year), surgical, medical, diagnostic laboratory services and maternity. For more information, see Section 393-7 of the law. **All health care plans must be approved by DCD.**

**Premium Costs**

- **WC** — The employer pays the entire premium cost; sharing it with workers is prohibited.
- **TDI** — The employer may pay the entire premium cost or share it with the workers. You can deduct one-half of the cost but not more than .5% of the worker's weekly taxable wages up to the maximum set annually by the Division. You pay the remaining portion exceeding the prescribed limitation. If a worker does not meet the eligibility requirements, you cannot withhold any deductions until such time the worker meets the eligibility requirements. No premium payments required for employees who are not eligible for benefits.
- **PHC** — The employer may pay the entire premium cost or share it with the workers. You can deduct one-half of the cost but not more than 1.5% of the worker's monthly wages. You pay the remaining portion exceeding the prescribed limitation.

**Appeals**

- **WC** — You (your carrier) or your worker have the right to file an appeal with the Labor and Industrial Relations Appeals Board against any decision rendered by the DCD. The appeal must be filed within 20 days after the decision has been sent by the division.
- **TDI** — When denying TDI benefits to a worker, you (or your insurer) should send the Notice of Denial (Form TDI-46) to the DCD for review. If no communication is received from the division within ten days, send three copies of the denial to the worker. The worker has 20 days in which to appeal the denial with the division.
- **PHC** — When denying health care benefits to your worker, you or your health care contractor shall promptly mail a notice of denial to your worker, who then has 20 days in which to request a review by the DCD. If the affected parties are not satisfied with the division's findings, the case will be referred to the Prepaid Health Care Appeals Referee. The referee's decision is final, but may be appealed to the circuit courts.

**Special Funds**

- **WC** — Self-insured employers and insurance carriers are subject to special assessment whenever the Special Compensation Fund dips below a prescribed fund balance deemed insufficient to meet payment requirements. Among other legal stipulations, the fund is used to pay benefits to a worker whose employer defaulted in providing workers' compensation coverage. Benefits paid from the fund shall be recovered from the defaulting employers.
- **TDI** — The TDI Special Disability Fund is established by special assessment and is used to pay benefits to disabled workers of bankrupt and noncomplying employers, and to the disabled unemployed claimants who have been held ineligible for further unemployment benefits. Benefits paid from the fund shall be recovered from defaulting employers.
- **PHC** — The PHC Premium Supplementation Fund is established by general fund appropriation and is used to defray the cost of providing health care benefits for employers with less than 8 workers entitled to and covered under this Chapter. To qualify for premium supplementation, you must meet the criteria set forth in Section 393-45, and be determined a "hardship" case by the division. The fund may also reimburse health care expenses to workers of bankrupt and noncomplying employers. Benefits paid from the fund shall be recovered from defaulting employers.

**Penalty Provisions**

- **WC** — Imposes on an employer who fails to provide the required coverage a penalty of not less than \$250, or \$10 for each worker for every day during which such failure continues, whichever sum is greater.
- **TDI** — Imposes on an employer who fails to provide the required coverage a penalty of not less than \$25, or \$1 for each worker for every day during which such failure continues, whichever sum is greater.
- **PHC** — Imposes on an employer who fails to provide the required coverage a penalty of not less than \$25, or \$1 for each worker for every day during which such failure continues, whichever sum is greater.

For all three laws, if such default extends for 30 days the employer's business may be closed for as long as the default continues. The three laws also impose penalties for other violations. For further information, contact your nearest district office:

**Chapter 92, Hawaii Revised Statutes:  
Public Agency Meetings and Records**

This is an unofficial copy of part I of chapter 92, Hawaii Revised Statutes. It contains all amendments enacted through the Legislature's 2009 regular and special sessions.

[Link to the 2009 Hawaii Revised Statutes, chapter 92](#), on the Hawaii State Legislature website (the 2009 HRS has been updated for all Acts passed in the 2009 Legislative session).

Hawaii Revised Statutes

**CHAPTER 92  
PUBLIC AGENCY MEETINGS AND RECORDS****PART I. MEETINGS****SECTION****92-1 DECLARATION OF POLICY AND INTENT****92-1.5 ADMINISTRATION OF THIS PART****92-2 DEFINITIONS****92-2.5 PERMITTED INTERACTIONS OF MEMBERS****92-3 OPEN MEETINGS****92-3.1 LIMITED MEETINGS****92-3.5 MEETING BY VIDEOCONFERENCE; NOTICE; QUORUM****92-4 EXECUTIVE MEETINGS****92-5 EXCEPTIONS****92-6 JUDICIAL BRANCH, QUASI-JUDICIAL BOARDS AND INVESTIGATORY FUNCTIONS; APPLICABILITY****92-7 NOTICE****92-8 EMERGENCY MEETINGS****92-9 MINUTES****92-10 LEGISLATIVE BRANCH; APPLICABILITY****92-11 VOIDABILITY****92-12 ENFORCEMENT****92-13 PENALTIES****PART I. MEETINGS**

**§92-1 Declaration of policy and intent.** In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. 1975, c 166, pt of §1]

**§92-1.5 Administration of this part.** The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session. [L 1998, c 137, §2]

**§92-2 Definitions.** As used in this part:

- (1) "Board" means any agency, board, commission, authority, or committee of the State or its political

subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions.

(2) "Chance meeting" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

(3) "Meeting," means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1]

**§92-2.5 Permitted interactions of members.** (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.

(d) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.

(e) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

(f) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1]

**§92-3 Open meetings.** Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of §1; am L 1985, c 278, §1]

**§92-3.1 Limited meetings.** (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:

(1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies the reasons for its determination that the location is dangerous to health or safety

or that the on-site inspection is necessary and public attendance is impracticable;

(2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and

(3) Notice of the limited meeting is provided in accordance with section 92-7.

(b) At all limited meetings, the board shall:

(1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;

(2) Make the videotape available at the next regular meeting; and

(3) Make no decisions at the meeting. (L 1995, c 212, §1; am L 2008, c20, §1]

**§92-3.5 Meeting by videoconference; notice; quorum.** (a) A board may hold a meeting by videoconference; provided that the videoconference system used by the board shall allow both audio and visual interaction between all members of the board participating in the meeting and the public attending the meeting, at any videoconference location. The notice required by section 92-7 shall specify all locations at which board members will be physically present during a videoconference meeting. The notice shall also specify that the public may attend the meeting at any of the specified locations.

(b) Any board member participating in a meeting by videoconference shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.

(c) A meeting held by videoconference shall be terminated if, after the meeting convenes, both the audio and video communication cannot be maintained with all locations where the meeting is being held, even if a quorum of the board is physically present in one location; provided that a meeting may be continued by audio communication alone, if:

1. All visual aids required by, or brought to the meeting by board members or members of the public have already been provided to all videoconference locations where the meeting is held; or

2. Participants are able to readily transmit visual aids by some other means (e.g., fax copies), to all other meeting participants at all other videoconference locations where the meeting is held. If copies of visual aids are not available to all meeting participants at all videoconference location where the meeting is held, those agenda items related to the visual aids shall be deferred until the next meeting; and

3. No more than fifteen minutes shall elapse in implementing the requirements listed in paragraph (2). [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1]

**§92-4 Executive meetings.** A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. (L 1975, c 166, pt of §1; am L 1985, c 278, §2]

**§92-5 Exceptions.** (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

(1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;

(2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;

(3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;

(4) To consult with the board's attorney on questions and issues pertaining to the board's powers,



or that the on-site inspection is necessary and public attendance is impracticable;

(2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and

(3) Notice of the limited meeting is provided in accordance with section 92-7.

(b) At all limited meetings, the board shall:

(1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;

(2) Make the videotape available at the next regular meeting; and

(3) Make no decisions at the meeting. (L 1995, c 212, §1; am L 2008, c20, §1]

**§92-3.5 Meeting by videoconference; notice; quorum.** (a) A board may hold a meeting by videoconference; provided that the videoconference system used by the board shall allow both audio and visual interaction between all members of the board participating in the meeting and the public attending the meeting, at any videoconference location. The notice required by section 92-7 shall specify all locations at which board members will be physically present during a videoconference meeting. The notice shall also specify that the public may attend the meeting at any of the specified locations.

(b) Any board member participating in a meeting by videoconference shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.

(c) A meeting held by videoconference shall be terminated if, after the meeting convenes, both the audio and video communication cannot be maintained with all locations where the meeting is being held, even if a quorum of the board is physically present in one location; provided that a meeting may be continued by audio communication alone, if:

1. All visual aids required by, or brought to the meeting by board members or members of the public have already been provided to all videoconference locations where the meeting is held; or

2. Participants are able to readily transmit visual aids by some other means (e.g., fax copies), to all other meeting participants at all other videoconference locations where the meeting is held. If copies of visual aids are not available to all meeting participants at all videoconference location where the meeting is held, those agenda items related to the visual aids shall be deferred until the next meeting; and

3. No more than fifteen minutes shall elapse in implementing the requirements listed in paragraph (2). [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1]

**§92-4 Executive meetings.** A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. (L 1975, c 166, pt of §1; am L 1985, c 278, §2]

**§92-5 Exceptions.** (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

(1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;

(2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;

(3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;

(4) To consult with the board's attorney on questions and issues pertaining to the board's powers,

vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

(e) The board shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4; am L 1995, c 13, §2]

**§92-8 Emergency meetings.** (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:

- (1) The board states in writing the reasons for its findings;
- (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
- (3) An emergency agenda and the findings are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office; and
- (4) Persons requesting notification on a regular basis are contacted by mail or telephone as soon as practicable.

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

- (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
- (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
- (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office;
- (4) Persons requesting notification on a regular basis are contacted by mail or telephone as soon as practicable; and
- (5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.

(c) For purposes of this part, an "unanticipated event" means:

- (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
- (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
- (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action. [L 1975, c 166, pt of §1; am L 1996, c 267, §4]

**§92-9 Minutes.** (a) The board shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

- (1) The date, time and place of the meeting;

- (2) The members of the board recorded as either present or absent;
  - (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
  - (4) Any other information that any member of the board requests be included or reflected in the minutes.
- (b) The minutes shall be public records and shall be available within thirty days after the meeting, except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.
- (c) All or any part of a meeting, of a board may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1]

**§92-10 Legislative branch; applicability.** Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §11]

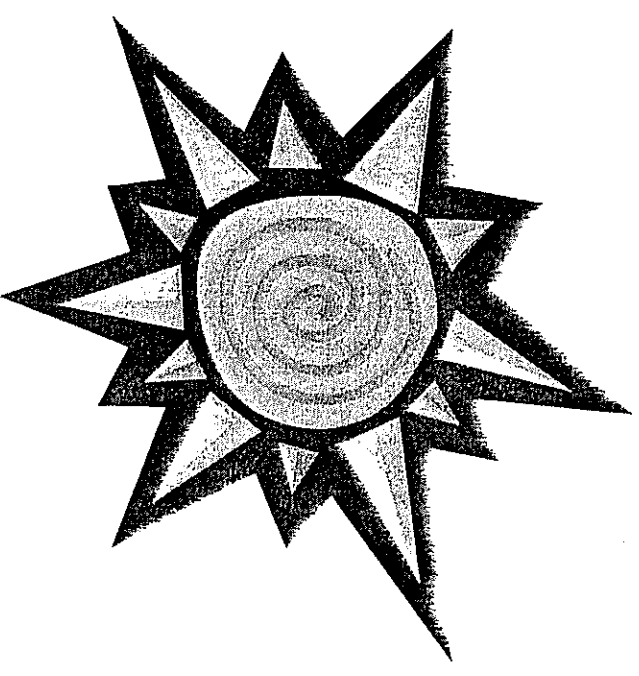
**§92-11 Voidability.** Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1; am L 2005, c 84, §2]

**§92-12 Enforcement.**

- (a) The attorney general and the prosecuting attorney shall enforce this part.
- (b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.
- (c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney fees and costs to the prevailing party in a suit brought under this section.
- (d) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:
  - (1) There is likelihood that the party bringing the action will prevail on the merits;
  - (2) Irreparable damage will result if a stay is not ordered;
  - (3) No irreparable damage to the public will result from the stay order; and
  - (4) Public interest will be served by the stay order. [L 1975, c 166, pt of §1; am L 1985, c 278, §5]

**§92-13 Penalties.** Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]

# **The Sunshine Law**



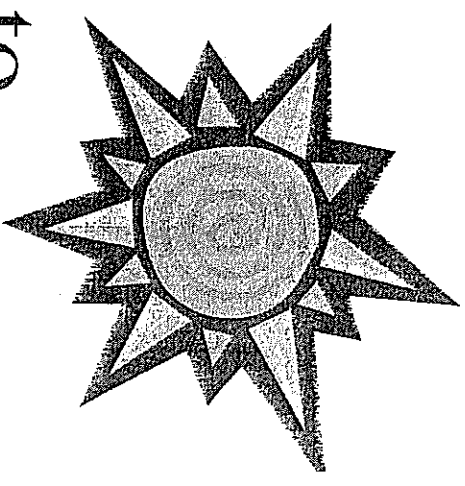
July 2010

Chapter 92, HRS

Office of Information Practices 586-1400

[www.state.hi.us/oip](http://www.state.hi.us/oip)

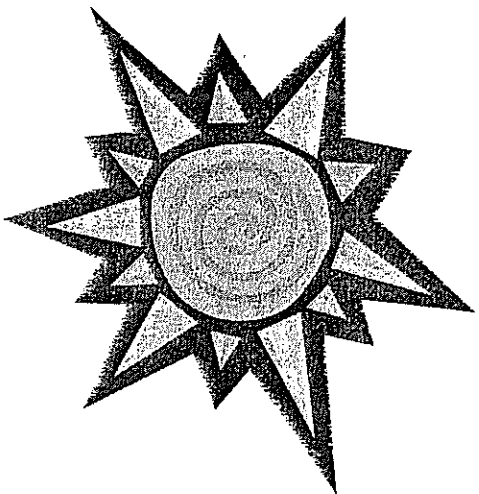
# The purpose?



- Open government processes to public scrutiny and participation to protect public interest
- Transparency
- People's right to know

# **The Sunshine Law can be split into three areas**

- **What is required**
- **What is prohibited**
- **What is allowed**



## **“Board Business”**

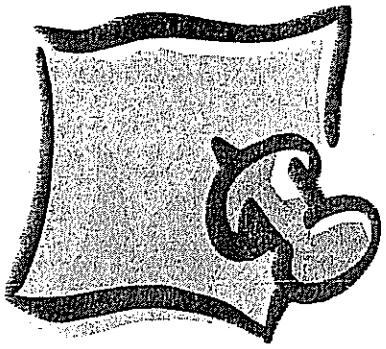
- Within the board’s authority
- On current or future agenda

HRS § 92-2

# **1. What is required**

- Discussions, deliberations, and decisions must be conducted at a meeting
- Every meeting must be open unless executive session is allowed
- Boards must provide notice of meeting
- Boards must accept testimony
- Boards must keep minutes

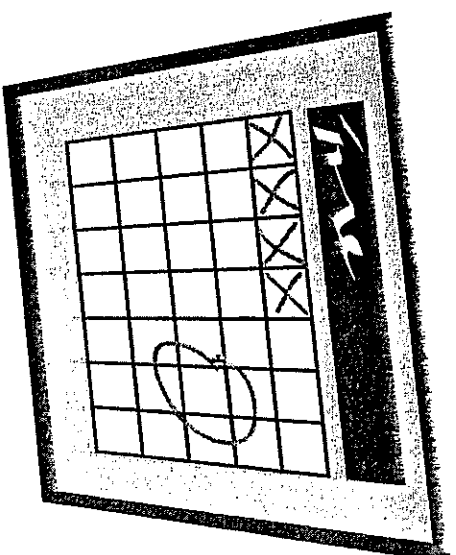




# Notice Requirements

- Written notice
- Includes date, time and place
- Provides agenda
- If there will be an executive meeting, must state its purpose and cite statutory basis





- Filed with the County Clerk's office and at the board's office (posted at meeting site when feasible)
- 6 calendar days prior to meeting
- Copy mailed to anyone so requesting

HRS § 92-7

# Meeting Agenda

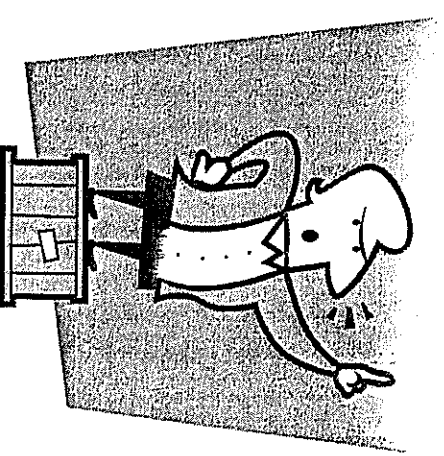
- All items the board intends to consider
- To inform the public of the matters the board intends to consider so that the public can decide whether to participate in the meeting



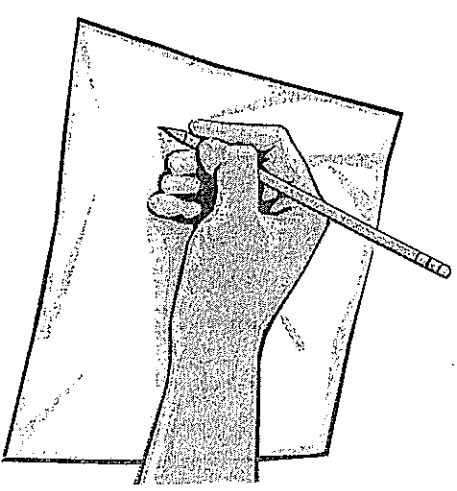
# Testimony

- All interested persons may submit written testimony on *any agenda item*.
- All interested persons may present oral testimony on *any agenda item*.

HRS § 92-3



# Minutes

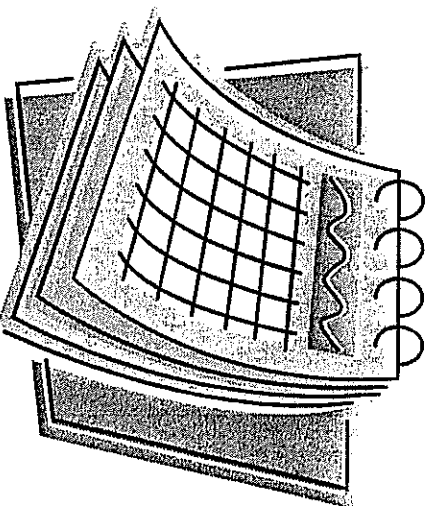


- Written minutes required
- “True reflection” of matters discussed and views of participants
- Date, time, and place of meeting
- Members present or absent
- Substance of all matters proposed, discussed or decided
- Record, by member, of any vote taken
- Other information that a board member requests be included or reflected at the time of the meeting



# Minutes, continued...

- Shall be available within 30 calendar days

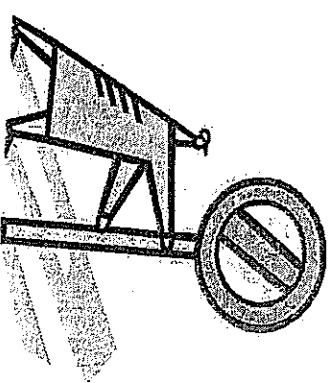


- Executive meeting minutes may be withheld for only so long as “publication would defeat the lawful purpose of the executive meeting”

## 2. What is Prohibited

Board Members may not . . .

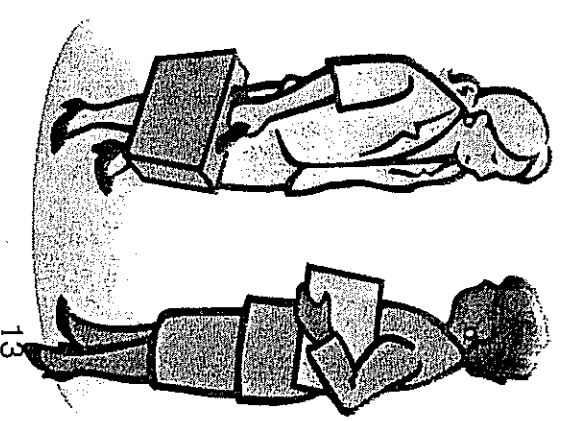
- Caucus with one another,
- Poll one another,
- Talk by telephone,
- Send e-mails, nor
- Send memos on board business, unless it is a . . .



### 3.a. What is allowed ...

2 Members *only* may,

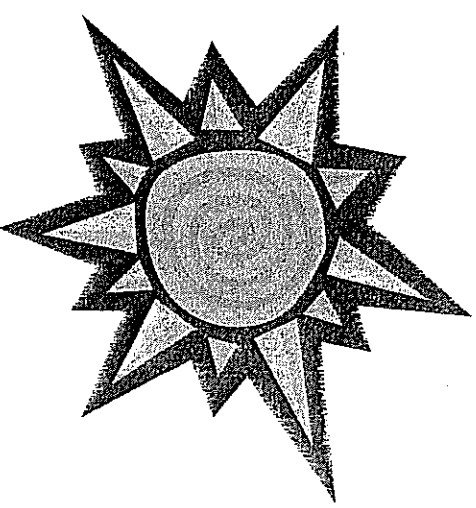
- Communicate privately
- Cannot commit to vote
- Cannot use serially





### 3.b. ‘Permitted’ Interactions

- 2 members, but less than a quorum:
  - a) Investigate; or present, discuss or negotiate
  - b) Selection of officers
- Meet with Gov., not on board business
- Meet with Department head



# **Permitted Interaction Group (PIG) can investigate if ...**

- Two to less than a quorum
- Scope of investigation & member's authority defined at 1st meeting
- Findings and recommendations presented at 2<sup>nd</sup> meeting
- Deliberate and decide at 3<sup>rd</sup> meeting

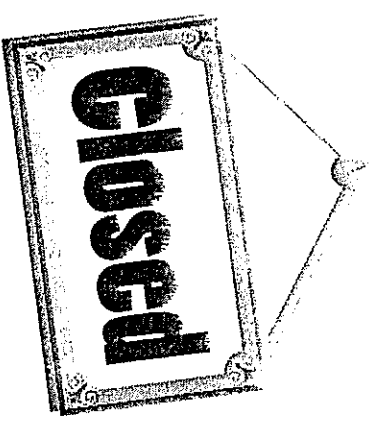
HRS § 92-2.5(b)

# Examples of ‘PIG’ activities

- Confidential interviews
- Site inspections and product demonstrations
- Receipt and consideration of confidential information



# Executive Meetings



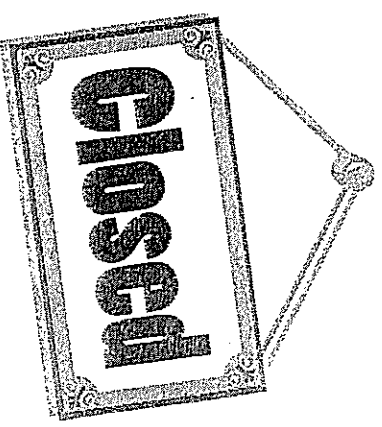
- Requires 2/3 vote of board members present to enter into closed meeting
- Must announce reason(s) for meeting
- Vote recorded & into minutes
- Minutes required of Exec meeting

HRS §§ 92-4 & -5



# Executive Meeting Purposes

- Professional or vocational license applicants;
- Personnel matters;
- Authority of labor negotiator or person designated to negotiate purchase of land;
- Legal matters with board's attorney;
- Criminal misconduct;
- Sensitive matters relating to public safety;
- Private donations; and,
- Matters confidential by law or court order



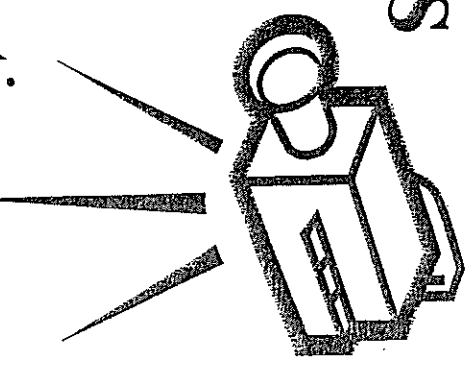
# Limited Meetings

- Dangerous location or public attendance impracticable
- OIP concurrence (forms available)
- Requires 2/3 Vote
- Show video next time
- No decisions made

HRS § 92-3.1



# Videoconference Meetings

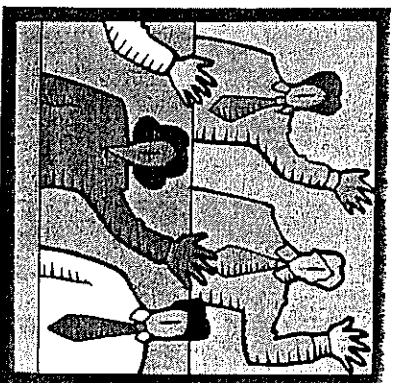


- Audio and visual interaction at all locations
- Notice where board members will be
- Public can attend at any location
- Meeting ends if audio interaction not maintained at all locations

HRS § 92-3.5

# Amending the Agenda

- Only with 2/3 vote of all members
- Cannot add item if:
  - of reasonably major importance, and
  - will affect a significant number of people

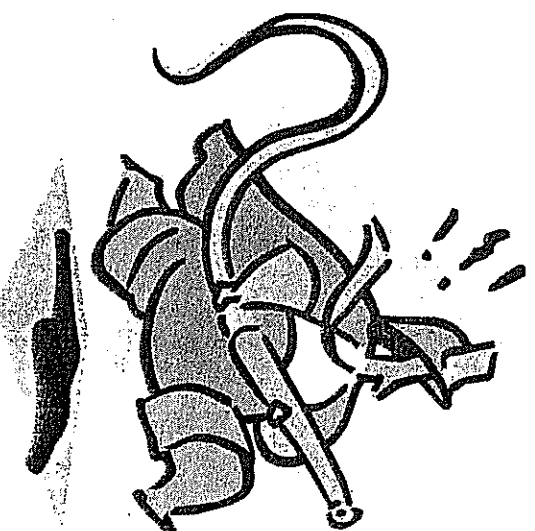




# Emergency Meetings

- Imminent peril to public health, safety and welfare or,
- Unanticipated event; and
- Requires meeting in less than 6 calendar days

HRS § 92-8



# Penalties

- Final actions may be voided if in violation of open meeting and notice requirements
- Suit may be commenced within 90 days of action taken
- Willful violation is a misdemeanor, and upon conviction, member may be summarily removed from the board
- Enforced by Attorney General, prosecuting attorney, & public

HRS §§ 92-11 to -13

# Need Help?

- Attorney of the day -- 586-1400



- E-mail: [oiip@hawaii.gov](mailto:oiip@hawaii.gov)
- OIP Website: [www.hawaii.gov/oiip](http://www.hawaii.gov/oiip)



DEPARTMENT OF TAXATION

**News Release**

**LINDA LINGLE**  
GOVERNOR

---

KURT KAWAFUCHI, DIRECTOR  
Phone: (808) 587-1510  
Fax: (808) 587-1560

---

For Immediate Release: September 14, 2009

**REPEAT TAX OFFENDER CHARGED  
WITH MULTIPLE VIOLATIONS**

HONOLULU — A criminal complaint was filed against Tevita Ungounga (aka Terita and David Ungounga), for multiple tax violations and unlicensed contracting activities. Ungounga was arraigned on September 3, 2009 before District Court Judge Colette Garibaldi and entered pleas of not guilty to all charges. The judge also issued a cease and desist order to Ungounga which prevents him from performing any type of contracting work since he does not have a valid contractor's license. His trial is set for the week of November 2, 2009 before Circuit Court Judge Richard Pollack.

Ungounga was charged with four counts of attempt to evade or defeat tax; three counts of filing false and fraudulent statements, and four counts of willful failure to file his general excise and net income returns for tax years 2004 through 2007. He was also charged with four counts of Civil and Criminal Sanctions for Unlicensed Activity for performing masonry work without a valid license.

Attempt to evade or defeat tax and filing a false and fraudulent statement are both class C felonies that carry a fine up to \$100,000. Upon conviction, a person could serve a

(more)

period of incarceration up to five years for tax evasion and three years for filing a false statement or be placed on probation. Willfull failure to file a return is a misdemeanor violation that carries a fine up to \$25,000 per count, a period of incarceration not to exceed one year or probation.

Ungounga was previously charged in 2004 for failing to file his general excise returns and for doing masonry work without a valid license. He pled guilty to the misdemeanor charges and his sentence included a 60 day jail term, probation for one year, a fine of \$2,000 and restitution payable to the Department of Taxation in the amount of \$38,896.

###

For more information contact:  
Stephen Hironaka  
Criminal Tax Investigator  
Phone: (808) 587-1795  
Email: Stephen.T.Hironaka@hawaii.gov

§ 7028. Engaging in business without license; Fine and punishment; Statute of limitations

- (a) It is a misdemeanor for a person to engage in the business or act in the capacity of a contractor within this state without having a license therefor, unless the person is particularly exempted from the provisions of this chapter.
- (b) A first conviction for the offense described in this section is punishable by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.
- (c) If a person has been previously convicted of the offense described in this section, unless the provisions of subdivision (d) are applicable, the court shall impose a fine of 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed contractor, or five thousand dollars (\$5,000), whichever is greater, and, unless the sentence prescribed in subdivision (d) is imposed, the person shall be confined in a county jail for not less than 90 days, except in an unusual case where the interests of justice would be served by imposition of a lesser sentence or a fine. If the court imposes only a fine or a jail sentence of less than 90 days for second or subsequent convictions under this section, the court shall state the reasons for its sentencing choice on the record.
- (d) A third or subsequent conviction for the offense described in this section is punishable by a fine of not less than five thousand dollars (\$5,000) nor more than the greater amount of ten thousand dollars (\$10,000) or 20 percent of the contract price, or 20 percent of the aggregate payments made to, or at the direction of, the unlicensed contractor, and by imprisonment in a county jail for not more than one year or less than 90 days. The penalty provided by this subdivision is cumulative to the penalties available under all other laws of this state.
- (e) A person who violates this section is subject to the penalties prescribed in subdivision (d) if the person was named on a license that was previously revoked and, either in fact or under law, was held responsible for any act or omission resulting in the revocation.
- (f) If the person engaging in the business of or acting in the capacity of an unlicensed contractor has agreed to furnish materials and labor on an hourly basis, "the contract price" for the purposes of this section means the aggregate sum of the cost of materials and labor furnished, and the cost of completing the work to be performed.
- (g) Notwithstanding any other provision of law, an indictment for any violation of this section by the unlicensed contractor shall be found on an information or complaint filed within four years from the date of the contract proposal, contract, completion, or abandonment of the work, whichever occurs last.
- (h) For any conviction under this section, a person who utilized the services of the unlicensed contractor is a victim of crime and is eligible, pursuant to subdivision (f) of Section 1202.4 of the Penal Code, for restitution for economic losses, regardless of whether that person had knowledge that the contractor was unlicensed.

Added Stats 1939 ch 37 § 1. Amended Stats 1963 ch 1883 § 1; Stats 1969 ch 1583 § 4; Stats 1972 ch 125 § 1; Stats 1982 ch 607 § 1; Stats 1989 ch 366 § 1; Stats 1995 ch 467 § 1 (SB 1061); Stats 1996 ch 145 § 1 (AB 2958); Stats 2003 ch 706 § 1 (SB 443); Stats 2004 ch 183 § 11 (AB 3082); Stats 2005 ch 205 § 1 (SB 488), effective January 1, 2006; Stats 2008 ch 33 § 13 (SB 797), effective June 23, 2008; Stats. 2009, Ch. 319 (AB 370).

**Permitted Interaction Group Report and Recommendations**  
Construction Site Inspection Task Force  
Monday, August 9, 2010

I. Introduction

At the July 27, 2010 meeting of the Construction Site Inspection Task Force ("CSITF"), a Permitted Interaction Group was assigned to study joint enforcement issues, compile information, and report its recommendations to the CSITF.

The Permitted Interaction Group submits the following information and preliminary recommendations based upon its discussion:

II. Focus on underground business operations

The group discussed the importance of correlating proposed initiatives with CSITF's stated goal of dealing with issues related to Hawaii's underground economy, and focused on enforcement strategies with the potential to curb and prevent problematic "underground economy" violators, without unduly impacting legitimate businesses.

III. Collaborative Models

A. Information sharing among participating agencies (Active and Passive)

1. Building permit data. The City and County of Honolulu's Department of Planning and Permitting ("Honolulu DPP") indicated it currently provides specialized reports upon request to the State's Department of Taxation ("DoTAX") and specialized access to its database to the State's Department of Health ("DOH"). Immediate access to information allows DOH engineers to check the status of individual wastewater projects with the Honolulu DPP quickly, avoiding numerous phone calls. Honolulu DPP indicated that its website provides basic public information but that to the extent its building permit information may contain data that would be useful to law enforcement agencies such as RICO, the agency would be amenable to discussing possible programming enhancements that would make relevant data more readily available to other agencies. Any enhancements would be paid for by the recipient agency.

2. Employer/employee status. The Regulated Industries Complaints Office ("RICO") explained that for purposes of determining whether an individual is engaged in unlicensed activity, it is important to determine whether the individual is an employee or an independent contractor. Both the State's Department of Labor and Industrial Relations-Disability Compensation Division ("DLIR-DCD") and Unemployment Insurance Division ("UID") indicated individuals and businesses are often designated as employees and employers consistent with their agencies requirements. RICO and DLIR agreed to discuss individual "employee" determinations as they may arise in enforcement investigations by either RICO or DLIR.

3. Compliance tools. The group noted that there are a number of compliance tools in place at the present time, including the automatic suspension of a contractor's license when workers compensation coverage lapses; the automatic suspension of a professional or vocational license upon non-payment of child support; and requirements related to clearance certificates. The group noted most of these tools are aimed at compliance by legitimate, registered and/or licensed businesses, and not at cash-based individuals. While the focus of this group is on the underground economy, the group discussed two areas that may facilitate licensee compliance with DLIR and DoTAX requirements: the extent to which compliance certificates are integrated into the licensing process, both at the initial application stage and during the renewal process, and the extent to which professional and vocational licensees are required to be current on the payment of state tax.

#### B. Coordination of activities among participating agencies

1. Site Inspection. The Board had previously viewed a video provided by the State of California's Economic and Employment Enforcement Coalition. The group noted more information is needed on the nuts and bolts of California's combined site inspections. UID and DCD noted that many of their inspections are document-based and not always amenable to on-the-spot inspections. The group also noted that it appeared that different state agencies could be involved, depending on the background information available prior to an inspection.

2. Collaboration and communication. The group discussed the desirability of a cohesive and strategic approach to offenders that may be operating in violation of multiple laws involving multiple agencies. The group favored an informal ad hoc approach that would allow information sharing and collaboration on a case by case basis. The group noted joint interviews in appropriate cases could be helpful, noting subjects may tailor their statements depending on the regulatory agency and its purposes. The group favored the establishment of, at minimum, a shared contact list.

3. Budget and Staffing Implications. The group noted that current staffing and budget restrictions will be a significant factor in any initiative that would require additional staff time or resources.

#### IV. Recommendations.

The group recognizes the need for immediate information sharing and discussion of strategic responses when reports of possible multi-agency violations surface, and recommends creation of a contact list that would be reviewed and updated on a regular basis.

The group recommends that agencies with an interest in specific building permit information initiate discussions with Honolulu DPP on possible database enhancements to facilitate receipt of this information. Until database enhancements can be



implemented, the group recommends continued discussions with the appropriate county departments with responsibility for building permits to obtain information as needed.

Lastly, the group recommends continued discussions with the State of California's Economic and Employment Enforcement Coalition to obtain more detailed information about site inspections conducted by that agency.

JoAnn Uchida, Chairperson  
Tim Hiu, Acting Chief, DPP-Hnl  
Keith Kim – Labor – DLIR-DCD  
Wendy Maher – DLIR-UID  
Daria Loy-Goto – DCCA-RICO