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STATE OF TENNESSEE
DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT

**EMPLOYEE MISCLASSIFICATION ADVISORY
TASK FORCE MEETING**

July 11, 2013



STONE & GEORGE COURT REPORTING
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APPEARANCES

Voting Members:

Kim Jefferson, Chair Designee

Mike Shinnick, Co-Chair Designee

Ex Officio Members:

Nathan Burton

Lynn Ivanick, Parliamentarian

James Milam

Dan Bailey

Abbie Hudgens

Martha Campbell

William Canak

Jason Locke

Randy Thomas

P R O C E E D I N G S

1
2 MS. JEFFERSON: The meeting is now
3 called to order. Good afternoon, and welcome to the
4 July 11, 2013, Employee Misclassification Advisory
5 Task Force meeting. Since our last meeting in October
6 2012, we have conducted subcommittee meetings. We've
7 prepared the 2013 annual report, submitted the annual
8 report to the legislative committees, the House
9 Consumer, Employee Affairs Committee, the Senate,
10 Commerce, Labor & Agriculture Committee, and testified
11 at a number of legislative committee hearings.

12 As a result of our efforts, as a result of
13 you all's efforts, as a result of legislators who
14 listened to our concerns, new legislation was passed
15 in regard to the employee misclassification issue.
16 And this year, we hope to focus on education. We hope
17 to focus on enforcement, research. And we'll be
18 looking to those various committees to prepare
19 recommendations so that we can submit the
20 recommendations to the legislature in the 2014 annual
21 report.

22 Ms. Ivanick, are you ready for the roll
23 call?

24 MS. IVANICK: I am, except I forgot
25 my gavel. I apologize.

1 Kim Jefferson.

2 MS. JEFFERSON: Here.

3 MS. IVANICK: Carolyn Lazenby.

4 Mike Shinnick.

5 MR. SHINNICK: Here.

6 MS. IVANICK: Dan Bailey.

7 MR. BAILEY: Here.

8 MS. IVANICK: Nathan Burton.

9 MR. BURTON: Here.

10 MS. IVANICK: Martha Campbell.

11 MS. CAMPBELL: Here.

12 MS. IVANICK: Dr. Canak.

13 DR. CANAK: Here.

14 MS. IVANICK: Jason Locke.

15 MR. LOCKE: Here.

16 MS. IVANICK: Abbie Hudgens.

17 Myself.

18 James Milam.

19 Randy Thomas.

20 MR. THOMAS: Here.

21 MS. IVANICK: You have nine of 12 for

22 a quorum, and two of three voting members, Madam

23 Chairman.

24 MS. JEFFERSON: Thank you, Ms.

25 Ivanick.

1 And next on the agenda is the adoption of
2 the meeting minutes. October 25th, 2012, was the last
3 time we convened. And for your convenience, all of
4 the meeting minutes are transcribed. They're all
5 placed on the Task Force website, so you should review
6 those prior to each meeting. They're pretty lengthy,
7 and we used to provide those for you all -- for you
8 all on the table -- back table. Because of the --
9 because they're so lengthy, we decided to -- not to do
10 that and for you all to review those prior to each
11 meeting.

12 Is there a motion to adopt?

13 MR. SHINNICK: I motion that we adopt
14 the meeting minutes of October 25th, 2012.

15 MS. IVANICK: Second.

16 MS. JEFFERSON: I'll second. Okay.
17 It has been moved and properly seconded that we adopt
18 the October 25th, 2012, transcript as the official
19 meeting minutes. Is there any discussion, as far as
20 that's concerned? If not, those in favor, say "I."

21 MR. SHINNICK: I.

22 MS. JEFFERSON: I.

23 And those opposed?

24 MS. IVANICK: The motion carries.

25 MS. JEFFERSON: Great.

1 MR. BAILEY: Madam Chair, can we let
2 the record reflect that Jim Milam came in after the
3 roll was called.

4 MS. JEFFERSON: Yes. Thank you very
5 much.

6 The next item on the agenda is the sunset
7 hearing that was conducted on May the 22nd, 2013. And
8 at that meeting, members were -- actually, members
9 provided testimony as to whether the Task Force should
10 sunset or not. We testified that the statutory
11 requirements had been met, but left it up to the
12 legislative committee -- subcommittee to make its
13 recommendation to the legislature.

14 The joint government -- Government
15 Operation Subcommittee of Commerce, Labor,
16 Transportation, Agriculture voted to make a
17 recommendation to the legislature to allow the Task
18 Force to sunset. And I was informed this morning that
19 the legislation will be drafted in December 2013,
20 proposing that the Task Force cease to exist on June
21 the 30th, 2014. That's pursuant to the statute. That
22 information is already in the statute. It's in the
23 compilers notes. And that will be without a one-year
24 wind-down period.

25 Now, if the Task Force terminates -- we

1 don't know if that's going to happen. But if the Task
2 Force terminates, the Department will continue to
3 communicate with the member agencies, like, we're
4 doing now. It will just be an unofficial body,
5 whereas right now, we have a formal body. We'll
6 continue to communicate with the stakeholders who have
7 been very involved with this process throughout the
8 duration.

9 And upon the request by the legislature,
10 the Department will continue to submit annual reports.
11 So we'll continue to do that. And that's basically
12 it, as far as the sunset hearing is concerned. Do you
13 all have any questions about the sunset hearing or
14 about the process? Okay.

15 If not, we'll go to the next item on the
16 agenda, which is the new legislation. And we all know
17 that in the 2013 Task Force annual report, there were
18 four recommendations. There was a recommendation,
19 number one, for the funding of increased personnel;
20 number two, administrative penalties for
21 noncompliance; number three, stop-work orders; and
22 number four, funding for fraud detection software. Of
23 four recommendations, three were considered in the new
24 legislation.

25 The new legislation is Public Chapter 424,

1 which was sponsored by Senator Ketron and
2 Representatives Curtiss and Eldridge. And in the
3 legislation -- which you all have copies of that. If
4 you don't have a copy, it's on the back table. But
5 all the members should have a copy of that in your
6 package, and it's actually pretty short. It's a page
7 and -- actually, it's not even a page-and-a-half. But
8 it's in your package.

9 And what the legislation outlines is the
10 violations. It is a violation to misclassify
11 employees to avoid premium -- proper premium. It's a
12 violation to conceal information pertinent to the
13 computation and application of an experienced rating.

14 And I'm sorry. I'd just like to
15 acknowledge Abbie Hudgens. She just came in.

16 And it is a violation to materially
17 understate or conceal the amount of payroll and the
18 number of employees. So misclassifying employees,
19 misrepresenting the type of work that's being
20 performed, understating the amount of payroll, and
21 understating the number of employees. All four of
22 those items were addressed in the new legislation.
23 The new legislation will give the Department the
24 ability to assess and collect monetary penalties for
25 employee misclassification.

1 Now, the penalty is also addressed in the
2 law. And you can take a look -- let's see here. It's
3 in Section 2. Actually, that's A2. And it tells us
4 how to calculate the penalty. The penalty is the
5 greater of 1,000 or one-and-a-half times the average
6 yearly workers' compensation premium, minus the
7 premium dollars paid on the policy. And that's how
8 it's stated there in the legislation.

9 The legislation also addresses referrals.
10 Referrals will be made to the Tennessee Bureau of
11 Investigation and the appropriate District Attorney's
12 office. And we plan to provide quarterly reports to
13 the TBI, as well as the DA's office. And the question
14 is what those reports will include because the
15 legislation didn't dictate that. So that's pretty
16 much up to us to determine. We'll work with you all
17 to make sure that we're including all the information
18 that you need in order for you all to proceed to
19 handle those type cases.

20 And Adrienne Fazio will be the person who
21 will be coordinating that effort. Adrienne, if you
22 could stand up. She's an attorney with the program,
23 Employee Misclassification Program or Compliance
24 Program. And so she'll be working with Jason Locke.
25 Jason, if you can raise your hand, please, as well as

1 James Milam. And she'll be providing that information
2 on a quarterly basis. The first report will be
3 referred to you all at the end of December of this
4 year. And then afterwards, we'll submit a quarterly
5 report in March, June, October, December, going forth.

6 And the last item that the legislation
7 addresses is the fraud detection software, which will
8 be purchased by the Department. And the legislation
9 addresses Tennessee Code Annotated Section
10 50-6-919(b). And it states that the Fund balance will
11 be used for Employee Misclassification Education and
12 Enforcement purposes. That was the original intent.
13 But with the new legislation, it amended that section
14 to provide for the purchase of computer software and
15 hardware designed to identify potential employee
16 misclassification activity for the hiring of
17 additional employees, to investigate potential
18 employee misclassification activity. So it actually
19 provides for those two items.

20 Do you all have any questions about the
21 legislation?

22 MR. MILAM: I just have a question
23 about the quarterly reports. If they're being sent to
24 the TBI and the District Attorneys, for the DAs, it
25 might be best to send it to the conference, the

1 headquarters in Nashville, and then they can
2 distribute it wherever it needs to go. But I didn't
3 know if since, you know, TBI only has one office, but
4 there's 31 different DAs around the state.

5 MS. JEFFERSON: Right. That's an
6 excellent point, and Adrienne will make note of that.

7 Anymore questions?

8 MR. LOCKE: How many positions did
9 you get for employees?

10 MS. JEFFERSON: Well, actually, the
11 Department will be hiring six employees at some point
12 in the future. We had requested 12, but I think the
13 budgeting allows us six. And if Ms. Hudgens could
14 speak more on that.

15 MS. HUDGENS: Yes. Unless we save a
16 ton on the software.

17 MS. JEFFERSON: But six is really
18 good, and that's why sometimes it's good to aim high
19 because we never know what we'll be able to fund.

20 MS. HUDGENS: The legislative intent
21 was they thought the software was the important thing
22 to do.

23 MS. JEFFERSON: Anymore questions?
24 Okay. We'll move on to -- the next item on the agenda
25 is the Employee Misclassification Education and

1 Enforcement Fund. That's what EMEEF stands for.
2 Financial activities and department implementations.
3 And now, we're going to talk about the hiring of the
4 investigators and purchasing of the software.

5 When we -- actually, when legislation was
6 being proposed, the balance in the Fund was,
7 approximately, \$2.9 million. Now, we know that that
8 comes from exemption fees collected by the Secretary
9 of State's office. That's how the Fund is currently
10 budgeted, funded. However, going forth, we'll be
11 collecting penalties. So we'll have monetary
12 penalties in addition to the moneys collected by the
13 Secretary of State's office.

14 I contacted our financial person today.
15 Unfortunately, I was unable to get the most accurate
16 amount in the Fund, as of today. But 2.9 was the
17 amount that we used previously, and that was the
18 proper amount back in, I'll say, May or so.

19 Now, as far as employees are concerned, we
20 recently posted an advertisement on Indeed.com, and we
21 received over 110 resumes for potential applicants.
22 In the upcoming months, the Department will interview
23 the qualified applicants so that we can hire
24 additional employees. But at this time, that's pretty
25 much all that we have to report. The Department will

1 be handling that aspect.

2 As far as the fraud detection software is
3 concerned, the Department will prepare an RFP, the
4 request for purchase, outlining the requirements for
5 the software and what we need in order to identify
6 suspects pursuant to the statute. And once that's
7 written and approved, the RFP will be submitted for
8 bids. That's the process. The bids are scored and
9 evaluated. The selected vendor is not selected solely
10 on the basis of a low bid. That's one thing that I
11 wanted to stress, but it -- the selected vendor must
12 satisfy the requirements of RFP.

13 Now, the procurement process is very
14 detailed, and it requires the Department to write
15 specifics -- write the specifications and identify
16 what the Division will be charged. It is extremely
17 important that the specifications are very detailed.
18 Procurement will put a requisition into Edison, which
19 is the -- if you're State Government, you know about
20 the Edison Program that we use for, virtually,
21 everything that we do.

22 But if you're not a state employee, just
23 know that vendors will put their bids on Edison. That
24 was explained to me. And the Chief Procurement
25 Officer will score the bids, and that's why it's very

1 important that the specifications be very detailed.
2 And it's just an ongoing process. It's a process that
3 has to take place in order for us to begin the bidding
4 process. A lot of work has to be done prior to doing
5 that.

6 And I just wanted to explain the process
7 because we're not there yet. We haven't began to
8 explore that process. What we have done, as a Task
9 Force, is interview potential vendors. But the
10 vendors who are interested will have to go through the
11 RFP process.

12 Do you have anything else?

13 MS. HUDGENS: Well, just to say that
14 the Division is in the process of doing a rewrite on
15 all of our software. And in that process, we've been
16 very fortunate to have a new division over there,
17 which is Business Solutions Delivery, to help us. And
18 they're very competent. And they are going to assist
19 us in developing the RFP.

20 Let me just -- I think it may be just a
21 touch different in that it will be a request for
22 proposals. It will not be a request for purchase.

23 MS. JEFFERSON: Purchase. Okay.

24 MS. HUDGENS: And so we will analyze
25 the proposals. I believe, procurement will look at

1 the financial part, and the Division will have an
2 evaluation of what will actually be provided. So we
3 will start soon with that, and we really do have some
4 good assistance from our own IT to go forth on that
5 project.

6 So I think we've got a good way to
7 approach it. I expect we will -- it will be of
8 interest to us for someone from this Task Force to
9 participate in the evaluation and looking at the
10 proposals. That may require a certain amount of time,
11 but it would be an interesting project, I think, to
12 look and see what may be available. It's really
13 important to make sure that we have somebody.

14 All these systems, those pamphlets that
15 look and talk to these, they're very expensive. So we
16 need to make sure we end up with someone who can
17 provide us good value.

18 MS. JEFFERSON: Do you have any
19 questions or other comments?

20 DR. CANAK: Just a reminder, our
21 expectation is that while it may be expensive, it will
22 pay for itself.

23 MS. HUDGENS: If we select the right
24 vendor --

25 DR. CANAK: If we select the right

1 one. Right.

2 MS. HUDGENS: That's my point.

3 DR. CANAK: Yeah.

4 MS. HUDGENS: If we don't, we would
5 have just made somebody's bottom line better.

6 DR. CANAK: We're hoping it's an
7 investment, not an expense. Right.

8 MS. HUDGENS: Yes.

9 MS. JEFFERSON: All right. Do y'all
10 have anymore questions? We'll move on with the
11 agenda.

12 And the next item on the agenda is the
13 preparation of the 2014 annual report. The first item
14 is topics -- well, actually, the first item is the
15 public awareness portion in which we don't want to
16 spend a lot of time on these items. I basically
17 wanted to outline some of the issues relevant to the
18 2014 annual report to give us an idea of how we want
19 to proceed. If you all want to add items to this
20 list, please feel free to provide additional
21 suggestions.

22 As far as the first one is concerned, I
23 have spoken with Lynn Ivanick, and I've asked her to
24 just provide a brief overview of those various items.

25 MS. IVANICK: In our meeting, we got

1 a little detailed, and it was so detailed, I knew I
2 couldn't talk about it all here today. So we put it
3 down in paper, and that's the three pages that were
4 handed out to you. Should be in your stack, and
5 they're over -- available there. We talked about
6 improvements to the website, and I think everybody's
7 in agreement that we need to have it translated into
8 Spanish, as early as possible.

9 Same thing with the brochure. The
10 brochure has been put together. It does need specific
11 contact people, names, e-mail addresses for the
12 different departments added to it. So we need to get
13 that from the respective departments, who they want to
14 name. So then that brochure will be done. Jeff has
15 it, and it's ready to go.

16 MS. JEFFERSON: And I have a copy --
17 is that the brochure that you're --

18 MS. IVANICK: Yeah. The -- it's in
19 here.

20 MS. JEFFERSON: Right. The copy is
21 in your package. And if you didn't get it -- it looks
22 like this. It's on the back table, if you didn't get
23 that. This is what Lynn is referring to.

24 MS. IVANICK: It's a tri-fold. It's
25 in color in the PDF form. We have it on -- well, we

1 have a generic form of it online. But our hope is
2 that it will be online, and we don't just have to
3 print it and distribute it but that it would be
4 available for whomever wants to download it and print
5 it and distribute it to have. So that just needs a
6 little tweaking, as far as exactly who we want named
7 on each department.

8 The tip form has been of great interest.
9 The tip form is on the webpage, and it is kind of
10 lengthy. And it's been spoken about, that it might be
11 a little intimidating. Mike had a really great
12 suggestion for some introductory language that said,
13 if you don't know all of the answers to all of these,
14 please fill out as much as you can because we can do
15 the best we can with the more information that you
16 give us.

17 Also suggested was some information at the
18 end, talking about how it's illegal to provide
19 inaccurate information on the form because we've had
20 some come in that were, obviously, the result of some
21 sort of domestic dispute or something that was not
22 really appropriate. Someone's brother terminated
23 them, and there you go. A complaint that really
24 wasn't valid. And we don't need our investigators to
25 be wasting their time.

1 So both of those were suggested. There's
2 some suggestive language in here for those. We went
3 through the tip form itself and deleted some of the
4 questions, combined a couple of them. Do you want me
5 to go through that, or --

6 MS. JEFFERSON: Well, a copy of the
7 tip form information --

8 MS. IVANICK: Yes.

9 MS. JEFFERSON: -- you should have a
10 copy of that. It's on the back table, as well. And
11 it's in your package, the numbers package.

12 MS. IVANICK: But it was pointed out,
13 things, like, DBA. Most people don't know what that
14 means, doing business as, and wouldn't have an idea
15 how to respond to that. So we've combined a couple of
16 them. And in addition, the first question, why do you
17 suspect misclassification, was just an empty box. And
18 a lot of people have difficulty, just starting out,
19 talking. And so we thought if we would put some
20 bullet points in there, the same things; the employee
21 versus independent contractor. I think I'm an
22 employee because X, Y, Z, that they can just click on
23 them. It might help them. Then have a section for
24 them to fill in details.

25 As far as the company name, a lot of them

1 have no idea what the company name is. So we combined
2 company name, owner name, asked them if they happen to
3 have an iPhone, take a picture of the logo on the side
4 of the truck. You know, if you had the availability
5 to attach it to an e-mail, to send in. And then
6 someone at our working committee mentioned the license
7 plate, which we thought was incredibly helpful.
8 Dr. Canak. And so that, too, was listed where we
9 asked for the address where the company business
10 address is going to be number three.

11 And we say, if you don't have an address,
12 take a picture of the side of the truck, take a
13 picture of the license plate. Whatever information
14 you can give us is going to be beneficial to you, if
15 you fall off the roof and nobody is taking care of
16 you.

17 So the rest of them, six on, as they are
18 already in this, we left alone. We added some bullet
19 points to a couple of them, again, to help the people
20 so they're just not facing a blank box. A lot of
21 times, it's just easier for people to click on them.
22 So we're hoping that that will be a little better
23 information. So that was -- it's kind of outlined on
24 page one and on the top of two.

25 And then of course, we all know that we

1 decided, as a group, that the commercial campaigns
2 were too expensive, and the legislature didn't do that
3 anyway. So we're trying to look at minimal cost,
4 internally-handled outreach programs. I hesitate to
5 call it campaign because that's what -- but I'm going
6 to call it a campaign anyway. And that would include
7 YouTube videos. The State is capable of preparing
8 those.

9 Dr. Canak, who I already apologized for
10 misspelling his name, mentioned that his college
11 students could do a project for a grade. We think
12 that's a great idea, get a video together that we can
13 use; editorials, cross-agency education and training.
14 We've spoken about this before, but we've actually
15 listed some of the places that we need to contact.
16 There's a couple groups who have their own basic
17 dissemination, ready, willing, and able to disseminate
18 the big population of their people, whether it be
19 Kurdish people or Hispanic people, or whomever.

20 If we can just get them the information,
21 we don't really have to do anything. They distribute
22 it. You know, so that's just -- they're listed at the
23 bottom there, and it's just an excellent resource for
24 us.

25 MS. JEFFERSON: And also, some of our

1 stakeholders, if they would be willing to provide that
2 information to their members, then that would be
3 wonderful, as well.

4 MS. IVANICK: Right. The
5 underwriters have expressed an interest in getting
6 information out to their agents. And I think if we
7 could just hand them something that they could
8 distribute, that would be great.

9 Also, the tip form -- I'm sorry to back
10 up, but I forgot to mention that the tip form needs a
11 direct link on some other department sites. And we
12 listed our recommendations as to which sites those
13 should be, and also, maybe just ask trade
14 organizations of all sorts if they would be willing to
15 put the fraud tip form as a link on their pages. And
16 I don't see why they would hesitate to do that. And I
17 think we'd get a lot more information that way.

18 We went on to discuss public service
19 announcements. I know some people were questioning
20 whether they were of any use any longer because we're
21 thinking about the ones, maybe, that go on TV late at
22 night at 2:00 in the morning. But we do have an
23 indication that some of the Hispanic radio stations,
24 anyway, would be willing to have, maybe, a five-minute
25 interview with someone who speaks fluent Spanish, who

1 can explain what the employee misclassification is all
2 about. And so I'm thinking that's still a viable
3 option for us.

4 The public service announcements would be
5 brief. They wouldn't necessarily be taped and handed
6 over to a radio station, just asking them to play them
7 when they could; although, we could do that, too. And
8 we just don't know how much use that would be.

9 We talked about social media, and I have
10 to admit, I'm not the person to ask about that. So I
11 had to rely on the rest of my committee, and they have
12 informed me that they think Facebook is virtually
13 worthless for this purpose and that Twitter is
14 something that you have to feed on a constant basis,
15 and there's no one to do that. There's not that much
16 information to put on it.

17 But I was told that the career centers
18 through the Department have several Twitter accounts
19 or sites or whatever you call them, that we can put
20 our information on those, and they would be seen, more
21 than likely, there than having someone follow just the
22 employee misclassification. So our suggestion there
23 would be to jump onto those when we want to, not have
24 something individually.

25 MS. JEFFERSON: Okay. And the other

1 social media that you have previously mentioned,
2 YouTube.

3 MS. IVANICK: Oh, yes.

4 MS. JEFFERSON: And I would say for
5 everyone to just take a look at everything that we
6 have out here. We have the brochure -- a copy of the
7 brochure here, and it's going to be updated. So I
8 take it that you will update this, and then forward it
9 to the Task Force members, so we can take a look at
10 it, and I can present it to my staff because they like
11 to take a look at all the things that we do, as well.
12 And then we can come back at the next Task Force
13 meeting to see how we updated this, to see how we
14 progressed.

15 Because what we want to do is improve this
16 over time. This is going to be our focus this year on
17 education, to improve the brochure so we can put it in
18 the hands of the people in the communications office
19 for the Department.

20 MS. IVANICK: And someone had
21 mentioned that the phone number was missing. I didn't
22 realize that, but we have Xs right now for phone
23 numbers for individual people. But yeah. We need the
24 toll-free number.

25 MS. JEFFERSON: All right. And I

1 would say for everything for the tip form, for the
2 brochure, for the website -- you have copies of all of
3 these in the packet. But all of these things, I would
4 say that we probably want to be consistent in
5 identifying the issues, as they're stated in the
6 statute, or somehow close to it, specifically
7 indicating what misclassification is in the system
8 throughout all the forms, and identifying the various
9 violations, specifically in each one of those items.

10 And once they are improved, then we will
11 get together. If you'll send those to us again by
12 e-mail, send to all the Task Force members. And then
13 I'll present it to my staff, and I'll talk with the
14 department representatives, and then we can present an
15 improved copy of each one at the next Task Force
16 meeting.

17 MS. IVANICK: And if anyone here has
18 the name of the specific person that they want listed
19 under their department, let me know who that is.

20 MS. JEFFERSON: And I'm going to take
21 a look at the -- we did a construction web posting,
22 and it has contact information already on it. We
23 didn't identify specific names. We identified the
24 agency and the address and the telephone number,
25 website, I believe, but we didn't put a specific name

1 on that.

2 MS. HUDGENS: Just my past experience
3 with communication pieces, it's always better to have
4 a live person to contact, rather than a generic. That
5 may not be possible in all cases, but if it is
6 possible, certainly, you're more than likely to have
7 someone use this, if there's someone they can ask for.

8 MS. JEFFERSON: If that's the case,
9 then we'll give you that information. We'll give you
10 the contacts that we have. And if there are other
11 agencies who want to include names -- specific names,
12 agency, addresses, telephone numbers, websites, e-mail
13 addresses, just let Lynn know. She'll be handling
14 that.

15 MS. IVANICK: That's our report.
16 It's more detailed in the handout, but I didn't want
17 to go through each and every item.

18 MS. JEFFERSON: And the other item,
19 news releases, I'm not sure if Jeff Hentschel --

20 MS. IVANICK: He's here.

21 MS. JEFFERSON: Jeff Hentschel, is
22 that a possibility? I know we had talked about
23 preparing new tools for the Task Force at one point.

24 MR. HENTSCHEL: Absolutely. We
25 talked about that. I think you have to target

1 opportunities. When you send out generic information,
2 it's not as newsworthy. So we have to identify what's
3 timely or interesting to the media. But there are all
4 kinds of opportunities where every month or two, we
5 could put out the release. We also have an employer
6 newsletter that reaches 25,000 employers that we can
7 have news articles, as well.

8 MS. JEFFERSON: Okay. Great. And
9 what I'd like to do is to have Blake Alford. Blake,
10 if you can stand up, please. He's an attorney for the
11 Compliance Program, as well. If you can work with us.
12 We have a meeting scheduled with Jeff Hentschel,
13 Melinda Williams, as well as Ron Hammontree next week.
14 And I'd like you to attend with me so we can provide
15 the information that he needs. And we will send that
16 out to the Task Force for you all's approval,
17 comments, and suggestions, and we will go from there.

18 Do you all have any comments, as far as
19 the first item? Actually, it's the first and the
20 third item because I think we covered the tip form, as
21 well. If you don't have any questions, then we'll
22 move on to metrics for measuring the effectiveness of
23 the EMEEF Program.

24 Okay. In looking at metrics for measuring
25 the effectiveness of our program, we're looking at

1 what we hope to achieve, as we go forth.

2 And the items that I came up with are the
3 number of investigations performed in each one of the
4 grand divisions, the number of employees that have
5 coverage, as a result of our efforts, the number of
6 noncompliant employers, number of compliant employers,
7 the number of employers who misclassify their workers,
8 the number of employers who misrepresent type of work
9 that's being performed, understated payroll or
10 underreported the number of employees, the number of
11 employers who -- let's see here.

12 The number of penalties assessed, rather,
13 the number of penalties collected, the amount of
14 penalties assessed, the amount of penalties collected,
15 the number of request for investigations, the number
16 of tip forms, information that we receive back from
17 tip forms, the number of inquiries that our
18 investigators find out there in the field when they're
19 doing work, the number of referrals to the DA's
20 office, to the TBI, to Employment Security, Commerce &
21 Insurance, Board for Licensing Contractors, Secretary
22 of State, the number of construction cases, the number
23 of nonconstruction cases. Because we will, at some
24 point, come across employers who are not engaged in
25 construction.

1 I know that's our focus, and we can't
2 penalize employers who are not engaged in
3 construction. However, we will run across those type
4 of employers, and I think for purposes of statistics,
5 it's probably a good idea to keep up with the
6 percentage of employers in construction versus the
7 number that are in nonconstruction.

8 Can you all think of additional items that
9 can be helpful to the program, to measure?

10 MR. BAILEY: I think -- in the way I
11 look at this, is what kind of data do we want to keep
12 track of. You know, through that data, we'd be able
13 to determine how effective or ineffective certain
14 things are. But if there's a way, also, to track the
15 amount of insurance premiums that are collected, as a
16 result of a noncompliant employer becoming compliant,
17 as well as the tax -- the amount of tax, new taxes
18 collected, as a result of the noncompliant employer
19 becoming compliant. Because they have to now buy the
20 insurance. I think that would be something, also,
21 worth keeping track of.

22 MS. JEFFERSON: The number of
23 insurance premiums collected.

24 MR. SHINNICK: Would that be the
25 penalty, Dan?

1 MR. BAILEY: No, no. This -- if a
2 noncompliant employer that gets on our radar and we
3 penalize them, and now, they become compliant. Okay.
4 These are my employees; they're not my independent
5 contractors. Now, I go buy a workers' comp policy.
6 That's premium money that would have not been
7 collected that is now being collected. And a 4
8 percent tax. So I think keeping track of that would
9 be helpful, as well, because it would put numbers --
10 monetary numbers into what we're doing.

11 DR. CANAK: And I agree completely.
12 And for some of these, we have current data. On some
13 of the things you were listing will be new. But for
14 some of these things where we have existing data, we
15 can look at change numbers, and it's those change
16 numbers, which will give us an idea of the
17 effectiveness of the program, as opposed to just
18 looking at an absolute number. So what we want to do
19 is be sure we build into the database existing.

20 I'm not sure how long is appropriate to go
21 back on these, but -- so we can, as it's implemented,
22 look at -- try to calculate the impact of these
23 changes on the law and enforcement.

24 MS. JEFFERSON: Okay. Sounds good.
25 Anything, Martha?

1 MS. CAMPBELL: No.

2 MS. JEFFERSON: Randy, anything to
3 add?

4 MR. THOMAS: Not right now.

5 MS. JEFFERSON: Okay.

6 MR. PITTS: Chairman.

7 MS. JEFFERSON: Yes.

8 MR. PITTS: I want to make some
9 comments on a number of things before you all adjourn,
10 if y'all run out of time.

11 MS. JEFFERSON: Okay.

12 MR. PITTS: And I'm going to hold my
13 comments on this subject until then because it all
14 fits together.

15 MS. JEFFERSON: Okay. Actually, we
16 have a public comments section, unless you want to
17 make a comment now.

18 MR. PITTS: Well, it's going to touch
19 things that you either already covered or may come
20 later. It's your call.

21 MS. JEFFERSON: Okay. We'll just
22 wait until the public comment section, then. We'll go
23 ahead and go through the agenda.

24 Did you all have any other suggestions for
25 the metrics and how we measure effectiveness of the

1 program? If not, we'll move on to increasing -- let's
2 see. Other agencies to include on the Task Force.

3 Previously, during our planning meeting,
4 we talked about adding other agencies, including
5 General Services, Department of Revenue, Department of
6 Safety and Homeland Security, Transportation, building
7 commissions, and financial institutions to the Task
8 Force. We can still do that. We can contact
9 representatives from those various agencies and have
10 them to participate in future Task Force meetings.

11 So that's pretty much -- we just have to
12 contact those various agencies and ask them, request
13 that they send a representative to participate in our
14 meetings and our subcommittee meetings.

15 MR. BAILEY: If there's going to be
16 legislation proposed to do away with the Task Force, I
17 guess, I kind of question why you add them.

18 MS. JEFFERSON: Well, they can help
19 during the time that we're in existence. We still
20 have to prepare a 2014 report, so we still have to
21 work up until that time. So if they want to come and
22 provide suggestions, ideas, and work with us until the
23 Task Force terminates, then --

24 MR. BAILEY: Right. But I think
25 there's going to be an educational curve here for them

1 to get up to where their knowledge -- up to the
2 knowledge that this Task Force has of this problem.
3 And I mean, I can see them being part of some informal
4 working group after the Task Force has been disband,
5 but I don't know that they're going to be -- you know,
6 how many more Task Force meetings we might have, how
7 effective they're going to be in helping us during
8 that timeframe. But that's just an observation.

9 MS. JEFFERSON: Okay. Do you have
10 anything, Dr. Canak?

11 DR. CANAK: I agree. I think their
12 knowledge might be limited with our experience with
13 the Task Force. That said, I think that it's not a
14 high-cost item, and we might learn something that we
15 didn't expect. And they might become better informed
16 about the effectiveness of this, so -- and carry it
17 forward with their agencies.

18 So while I agree with Dan, I wouldn't
19 oppose doing this because I don't see that it costs us
20 anything. Having them have standing on the Task
21 Force, to the same extent as the rest of those who
22 have been involved for three years, might be
23 inappropriate, and I agree with that.

24 MS. JEFFERSON: Not being official
25 members of the Task Force, but --

1 DR. CANAK: But to be here in an
2 observatory capacity, I think, makes sense.

3 MS. JEFFERSON: Right. I agree with
4 that.

5 Do you all have any other comments on
6 that?

7 MR. BURTON: I think to the extent
8 that you can identify for each of those departments
9 where you see them adding value. For example, if the
10 reason you want the Department of Revenue and the
11 Department of Financial Institutions involved in the
12 conversation is to address esteem similar to what
13 you've seen in Florida, then tailor that to whichever
14 committee is looking at that. If it's enforcement,
15 then plug them in at that point.

16 You can invite them to the Task Force
17 meetings, but I think to help get them up that
18 learning curve, a lot of times, if you provide people
19 with some context. Here's the broad category of what
20 we're trying to address; here's the piece that we
21 would like to see and how we think this affects you.
22 And then allow them to ask some questions. But plug
23 them in on those working committees to allow them to
24 get something so that if as a part of your 2014 report
25 you do have some legislative recommendations, they are

1 involved in that process.

2 So you're not waiting until after you
3 propose the legislation, and then you try to bring
4 them to the table as the process proceeds to the
5 legislature. I think would be more productive.

6 MS. JEFFERSON: I agree with that.
7 Right.

8 Since there's a question as to whether the
9 Task Force will terminate -- because we're not really
10 sure if it's going to terminate or not. That was just
11 a recommendation. These other agencies not being
12 official members, that's probably out of the question,
13 but they could probably add value in the number of
14 other ways.

15 And when the working committees meet,
16 maybe the working committees should reach out to these
17 particular agencies, the ones that will assist your
18 particular committee so that you can decide, and you
19 can bring those parties in to see if they can add
20 value to what you're doing. As far as enforcement,
21 the enforcement committee or maybe legal was the one
22 that talked about the Florida scheme and the
23 check-cashing scheme.

24 So if you can take a look at the list that
25 we have here, General Services, Department of Revenue,

1 Department of Safety and Homeland Security,
2 Transportation, building commissions, and financial
3 institutions. And if those agencies can assist your
4 committee, then you can contact representative and
5 have them to come out. That's probably a better way
6 to approach that. Anything else? Anyone else have
7 any other comments?

8 Okay. If not, we'll talk about benefits
9 of working relationships with law enforcement
10 officials. And I've asked James Milam and Jason Locke
11 to talk on that subject.

12 MR. MILAM: This one is, as they say,
13 the road will sort of meet the road. I know that
14 there's been some concern in previous meetings
15 expressed about what action would be taken beyond
16 maybe administrative penalties. The opportunity here
17 will result from what I hear is, basically, a doubling
18 of the current number of investigators statewide.
19 There's six, and adding six more, there will be 12.
20 So that's a --

21 MS. JEFFERSON: Actually, we have
22 seven positions -- seven Fund positions.

23 MR. MILAM: Seven positions going to
24 13. So that's a very healthy increase that would give
25 the opportunity to broaden the coverage over the

1 state. The -- I think the learning curve here is
2 going to be significant for the District Attorneys.
3 And I'm talking about the elected District Attorneys
4 because of the fact that this is an area that they're
5 not used to dealing with. They haven't had anything
6 like this really come up before.

7 For the benefit of those who may not know,
8 there's only been two cases in the whole state that
9 we've been able to determine have been brought for
10 misclassification of which resulted in workers'
11 compensation fraud and unemployment insurance fraud.
12 And one of those was in Shelby County, the Nobles case
13 where there's a report at the end from the commercial
14 appeal. That one actually reached a judgment with the
15 defendant receiving a ten-year sentence, probation,
16 and very heavy restitution payments.

17 The second one is pending in Nashville in
18 Davidson County, and it's been in court about three
19 years. It's set for trial next month, and we'll see
20 how that goes. But other than those, there really
21 haven't been any cases brought. So the District
22 Attorneys, realizing there's 31 different DAs, and
23 so -- and they represent every kind of jurisdiction
24 from Memphis in Shelby County, which is its own
25 district, to some of the rural districts in and around

1 the state, whether -- like, three counties that --
2 Hawkins, Hancock, and Hamblen, and Greene Counties up
3 in East Tennessee, as an example. They're just -- you
4 know, these rural areas where the DAs never run into
5 this.

6 But anyway. If the investigators are
7 going to be finding cases, it might be something to
8 think about, is to make some sort of presentation to
9 the DAs or their executive committee between now and
10 the end of the year because they do have regular
11 meetings, and that can be done through contacting the
12 director, whose name is Wally Kirby, and just ask to
13 be on a program at one of the monthly meetings to
14 present what this change in the law would mean for
15 them.

16 The reason I say that is, they're going to
17 have to decide -- if a referral is made to them and
18 the law -- the new law says that the Department and
19 its investigators shall make referrals, there's no
20 real discretion there. So when a referral is made to
21 them, they're going to be particularly interested in
22 things, such as, has the target of the investigation
23 made any statements; is there any -- are there any
24 documents that prove misreporting of payroll and
25 underpayment of premiums. You know, those kind of

1 things.

2 They're going to really want to know, you
3 know, what's there already. And before they decide --
4 because if there's a lot more investigation to be
5 done, they're going to be calling on the TBI, if they
6 decide to, you know, push the thing. So those are
7 things that it would be good to sort of get in front
8 of them in an executive committee meeting or one of
9 their monthly meetings between now and the end of the
10 year.

11 And then as far as working with the TBI,
12 we work with the TBI all the time, and that's a very
13 good relationship all across the board. But I know
14 their concern is going to be they don't want to assign
15 agents on something that's not going to end up being
16 prosecuted. And so the DAs will need to have a fairly
17 high level of confidence that there's been a crime
18 committed before they're going to want to bring in the
19 TBI to do some additional workload.

20 And I know you had some questions about
21 other states, and I'll kind of stop for right now and
22 see if anyone has any questions.

23 MR. BAILEY: I do, Jim. I mean,
24 under this statute, I guess, the Department needs to
25 decide, as they're investigating an employer, whether

1 or not this rises to a level that we want to request a
2 District Attorney to take action versus just issuing
3 an administrative penalty. I mean, if we issue an
4 administrative penalty and they come and say they
5 contest that and have an administrative hearing, and
6 then we refer them to your office for prosecution, I
7 mean, isn't there some constitutional issues there? I
8 mean --

9 MR. MILAM: Well, they're different.
10 They're really different proceedings, administrative
11 penalty versus any sort of criminal investigation or
12 criminal proceeding. But what it -- it becomes
13 important in terms of how the investigation is
14 conducted. And so I would say that just as a general
15 matter, the Department's investigators should zero in
16 on the most egregious cases or the ones that -- when I
17 say "the most egregious" ones, I'm talking about both
18 in dollar amount of premiums avoided, the -- you know,
19 the totality of the payroll that was not reported.
20 That's a big thing.

21 And then the number of employees on the
22 job site who are being misclassified. You know, is it
23 two or three, or is it 40 or 50? That's a huge issue.
24 And so -- and then one other thing is, how much
25 benefit is the misclassifier getting from this

1 conduct. You know, are they -- are they making tens
2 of thousands of dollars on this particular contract,
3 or are they profiting over \$100,000 because they are
4 cheating under the law. Are they profiting, you know,
5 \$35,000, \$85,000.

6 You know, the amount of cheating going on
7 is a pretty good indicator of how it should be
8 approached. Anything under \$10,000 is not going to be
9 a huge deal, criminally speaking. But you know, I
10 know there's a lot of cases out there that are way
11 over \$10,000 in premium avoidance. And over \$10,000
12 in unpaid unemployment taxes.

13 So back to your question, I think, which
14 is, what should the Department's investigators do.
15 Yes. When they come upon evidence that there appears
16 to be a very broad scheme to save tens of thousands of
17 dollars by breaking the law, they need to think about,
18 you know, maybe this is one we need to refer
19 criminally. And if they think that it will be, then
20 the sooner they make the referral, the better the case
21 will be.

22 MR. BAILEY: And also, if it's a case
23 that is involving, say, over a couple hundred thousand
24 dollars of fraud and a decision is made to take it to
25 the District Attorney's office, we probably shouldn't

1 issue an administrative penalty in that case, I would
2 think, because if we do, then they have a right to
3 contest. And if there's a hearing, they should be --
4 they would have to be advised, I guess, of their
5 right. Say, look, we may seek criminal prosecution of
6 you, so you may not want to testify.

7 MR. MILAM: I think -- generally
8 speaking, I think that's correct. I think the deeper
9 you go down the administrative penalty pathway, the
10 more difficult it's going to be to make a criminal
11 case out of it.

12 MR. LOCKE: And the timeliness of the
13 referral over to law enforcement investigation is very
14 crucial. And you have a major point there. When you
15 put a target of an investigation on notice that
16 there's an investigation, you have already breaking --
17 hampered a criminal investigation tremendously. So in
18 an area where TBI might become involved in a criminal
19 investigation, we would prefer that the target not
20 even be aware that they're being looked at in the
21 point that we become involved.

22 MR. MILAM: And that's something to
23 remember. When the fraud detection software comes
24 online and is available -- because things may pop up
25 there that will give you a way to separate out the

1 most serious cases.

2 MR. BAILEY: Right.

3 DR. CANAK: And the way we're
4 discussing this cause, or really, what I would call,
5 in my own terms, direct cost in terms of lost premiums
6 and et cetera. But there are also indirect costs,
7 which are substantial, which are the loss of business
8 of law-abiding contractors who have lost the
9 opportunity to engage in a project, et cetera.

10 And so the actual cost may be much higher.
11 It's just not directly to the State in terms of these.
12 But there are costs in the economy to contractors who
13 have not been able to get business because people are
14 engaging in these illegal practices.

15 MR. MILAM: And what you just said is
16 true, but from the criminal prosecution standpoint,
17 those are issues that are only relevant at sentencing
18 and are not relevant at the point of determining
19 whether a person has actually broken a law. The
20 incidental or the ancillary costs, they do become a
21 factor at sentencing, if there's a conviction.

22 MR. BROWN: Can I ask a question?

23 MS. JEFFERSON: Sure.

24 MR. BROWN: Can you all survey the 31
25 DAs and find out where their individual level of

1 interest is? Because Shelby County may be at one
2 level, and Tipton or Polk County may be at another
3 where they might invest resources and time.

4 MR. MILAM: That really would
5 probably be counter-productive. What would be more
6 positive would be to just make a presentation to all
7 of them, and then at that particular forum, the
8 questions would arise from them because you,
9 obviously, perceive -- maybe you have some DAs in very
10 small districts. They may be in districts where there
11 are very few large employers, but --

12 MR. BROWN: I asked the question
13 because in the past in Cookeville, for instance, there
14 was a very large case that they walked away from. So
15 knowing that, you tailor your plan to knowing where
16 your hot spots are and maybe get some momentum for the
17 program where you're actually having some efficacy and
18 not wasting your time for the shotgun, but a rifle.
19 So it seems that there are some DAs that may have some
20 interest. And just asking that question on the front
21 end and then tailoring your program might seem to make
22 sense to each individual DA.

23 MS. JEFFERSON: Can you state your
24 name for the record?

25 MR. BROWN: Jim Brown with NFIB.

1 MS. JEFFERSON: Okay. Do we have
2 another suggestion? Yes? Can you state your name for
3 the record?

4 MS. DEWBERRY: Dana Dewberry for Dunn
5 Insurance. I'm also on the local Homeowners Board for
6 Clarksville, Montgomery County.

7 Is the ACORD application going to be used
8 in the process that we use for workers' compensation,
9 and is the fraud statement clause on there strong
10 enough, or do we need to elaborate a little bit more
11 about the penalties for misclassification on a
12 supplemental application? I'm afraid that we'll get
13 all the way down to the end with the DAs and they'll
14 say, we don't have anything strong enough that they've
15 signed, that they've actually signed, saying that they
16 knowingly did something wrong. And that's what I'm
17 wondering.

18 MR. MILAM: I guess, I wouldn't
19 venture to answer that without being familiar with the
20 form you're talking about because I've never seen what
21 you're talking about. But obviously, when the
22 Department is thinking about these things, and they
23 want to make sure that the form is completely clear on
24 what the applicant's obligations are under the law.

25 MS. JEFFERSON: And Dana, you work

1 with Dunn Insurance; is that right?

2 MS. DEWBERRY: Right.

3 MS. JEFFERSON: And which form are
4 you referring to specifically? Are you referring to
5 the application, or --

6 MS. DEWBERRY: Well, you have the
7 ACORD 130 and the ACORD 135, I believe, is workers'
8 compensation and application. And both of those are
9 very general fraud clause on it. It's not specific to
10 misclassification.

11 MR. MILAM: Well, it might be a good
12 idea to specifically mention it, just because any good
13 defense attorney is going to try to convince a judge
14 or jury that his client didn't know what he did was,
15 you know, illegal or wrong, improper. I mean, clarity
16 is always a good thing on these forms.

17 MR. SHINNICK: You know, I would
18 think that the Insurance Committee could take up that
19 item and research and decide whether there needs to be
20 more teeth to the 130 and the 133 and go from there.

21 MS. JEFFERSON: And Dana, I know this
22 is your first meeting. I'm sorry. I know this is
23 your first meeting. Mike Shinnick is the Insurance
24 Committee Chair. So after the meeting or during the
25 break, please talk with him. That way, he can get the

1 information he needs so that the committee can do the
2 research. And you may want to be a part of that
3 committee.

4 Yes, Randy?

5 MR. THOMAS: The State of Florida has
6 a form that, like, when I was an auditor, meet with an
7 insured and go over the records and all that kind of
8 stuff. When we're done, they have to sign these forms
9 with a photo ID and all this. That form says, when
10 they put their signature, that they're made aware that
11 it's a felony, if they've misrepresented anything to
12 me, as the auditor. Maybe we could do something like
13 that.

14 MS. JEFFERSON: And you're on the
15 Insurance Committee, as well?

16 MR. THOMAS: Right.

17 MR. BAILEY: Going back to what
18 Mr. Brown said about surveying the DAs. I mean, I
19 think that's a good idea, but I do think it's a good
20 idea to first make sure they're educated, which is
21 your point. Maybe doing a slideshow or whatever for
22 them, and then ask that question to see, you know, now
23 that they understand the problem, is there any real
24 interest in it. Because if there isn't -- I mean, if
25 there isn't, it's best to know that on the front end

1 so we're not wasting our time.

2 MS. JEFFERSON: That's a good point.

3 MR. LOCKE: Well, I think that
4 interest also could be gauged on a case-by-case basis.

5 MR. BAILEY: True.

6 MR. LOCKE: You know, it may not
7 necessarily be the DA. It may be the case that he has
8 in front of them and viability of that case in a
9 court, based on the evidence that's been given to him.
10 So the question would become, you know, is the DA
11 going to walk away from a case because he has no
12 interest in prosecuting this type of crime, or is he
13 going to walk away from the case because he sees that
14 there's not enough evidence in that investigation to
15 prove the case in court. There's a big difference --

16 MR. BAILEY: Right.

17 MR. LOCKE: -- in between the two.

18 MS. JEFFERSON: Did you all want to
19 finish up this issue, James and Jason, before we take
20 a break?

21 MR. MILAM: Well, I just wanted to
22 ask you. You had mentioned to me before the meeting
23 about neighboring states. That sort of presents an ad
24 hoc situation because all states around us have
25 different -- you know, different laws and different

1 agencies that are -- I can just say that if there were
2 a case, say, in my county where I prosecute and the
3 target had its home office in another state, like,
4 maybe Georgia, and I had to get evidence from that
5 state, it would be a -- it would be up to the
6 individual prosecutor to figure out who in Georgia
7 they needed to go to for help.

8 You know, was it the State of Georgia, or
9 was it the local Atlanta DA, or you know, exactly who
10 handles those issues in that state. And so there's
11 really -- I call it ad hoc because I don't think you
12 can really make any sort of general rules, if you're
13 going to apply all the states around us. But the
14 states that we run into, as far as home bases of some
15 of these operations are mainly, like, Georgia, North
16 Carolina.

17 MS. JEFFERSON: Kentucky.

18 MR. MILAM: Florida, Kentucky. Yeah.
19 So they're imminent. You know, they're in the area,
20 but still, they have different laws. And we would
21 have to develop new relationships with those agencies
22 and those states.

23 MS. JEFFERSON: And mainly, the
24 situation where the employer is located in Alabama.
25 Okay? The company comes to Tennessee to do business,

1 to do a construction project, and the employer is
2 noncompliant with the workers' comp law in Tennessee
3 for all these different issues for different reasons.
4 The employer leaves Tennessee without us conducting a
5 full investigation or without us completing our
6 litigation process.

7 So the question is, what do we do at that
8 point, how do we develop relationships with those
9 neighboring states so that we can somehow still work,
10 continue to handle that case. Because generally, when
11 something like that happens, we don't have
12 jurisdiction. When they go back to their home state,
13 we don't have jurisdiction to proceed, as far as the
14 investigation is concerned because they're in another
15 state and our investigators don't leave Tennessee.
16 And we don't have the jurisdiction to litigate those
17 type of cases. We can try to obtain jurisdiction, but
18 it's very difficult in those type of situations.

19 So the question is, what do we do in a
20 situation like that. And we can pick up that question
21 when we return. Let's take a ten-minute break. Let's
22 come back at, say, 3:20 -- 2:20.

23 (Whereupon, a recess was taken.)

24 MS. JEFFERSON: So we'd like to pick
25 up with where we left off prior to the break. And

1 James Milam and Jason Locke were just finishing up
2 that issue. We were talking about an employer located
3 in another state, like, Alabama, Georgia, Kentucky,
4 comes to Tennessee to do construction work. Employer
5 is only in Tennessee for a short period of time. The
6 employer leaves Tennessee, returns to the home state
7 before a full investigation is performed, before the
8 litigation process is done.

9 What type of issues do we need to
10 consider, and how can other agencies and neighboring
11 states help us resolve those type of issues?

12 MR. MILAM: Well, if a situation,
13 like you just described, presented itself and a
14 referral was made to the District Attorney's office
15 where the contractor who apparently had broken the law
16 had pulled up states and left and gone back home, the
17 first thing we would do is to contact the sister
18 agency in that state and find out, what was this
19 person's history; do they have a history in their home
20 state. Are they under investigation in their home
21 state; are they under any sort of sanctions in their
22 home state. So try to, basically, find out what's
23 happened already in that jurisdiction.

24 And if it turned out that, like, sometimes
25 happens, if they have their own investigation going

1 on, then we would try to team up and maybe help them
2 with theirs and see if they would help us with ours.
3 If they had no investigation and couldn't give us any
4 information about that outfit, then we would have to
5 make a determination whether we could independently do
6 an investigation because it just simply might not be
7 feasible. So that's the way we would approach it.

8 But like we were just saying beforehand,
9 it would be a -- kind of a build-it-as-you-go
10 situation, as far as creating relationships with the
11 out-of-state law enforcement agencies because until
12 you work with them, you don't have a relationship with
13 them. You have to build it by working with them. And
14 once you've worked with them on one case, then you can
15 go back. If you have a second case, then you already
16 have an established relationship.

17 MS. JEFFERSON: Would you like to add
18 anything, Jason?

19 MR. LOCKE: I think, just going down
20 the line with what Jim's saying, if you identify that
21 situation, number one, if the Department's
22 investigators could, before that event happened, have
23 already identified their counterparts in neighboring
24 states in Alabama and Georgia and attempted to
25 establish those types of relationships, just like, you

1 know, our agents regularly have quarterly meetings
2 with investigators from the sheriff's offices and the
3 police departments and the DA's office investigators
4 district by district, just to enhance those
5 relationships so that when something happens within
6 that area, they already have a contact and know who to
7 pick up the phone and call.

8 I think the same would be very crucial for
9 your Department's investigators who are working within
10 Tennessee to know the TBI agents in whatever territory
11 or areas that they're working in so that they have
12 that contact and can reach out because sometimes,
13 especially, with agency with investigative numbers of
14 your size, they're not going to have that one-on-one
15 relationship with the District Attorney, like, the
16 agent that the TBI might have.

17 So if they have a relationship with the
18 agent in that area, like, Washington County or
19 wherever it may be, they can present what they have to
20 that agent. And that agent may have more of an
21 influence to have that DA pick that case up.

22 MS. JEFFERSON: Sounds good. Martha,
23 I know you work with the Attorney General's office.
24 Do you have anything that you'd like to add?

25 MS. CAMPBELL: Well, the only thing I

1 would add is -- we don't do this type of enforcement
2 action. But I did speak with Jim a moment ago. I
3 told him I would be willing to go with him and speak
4 with the District Attorney when they have their
5 meetings about employee misclassification, to kind of
6 educate them with him to get the DA started on
7 learning about it, just so they're aware of it.

8 MS. JEFFERSON: Okay. Great. All
9 right. Does anyone else have anything else to add to
10 this particular issue? If not, we're going to move on
11 to the next. Yes, Mr. Hale?

12 MR. HALE: Kevin Hale, Hale Insurance
13 Agency here in Nashville. Part of this problem, I
14 believe, relates back to the fact that in Tennessee,
15 we can't identify -- currently aren't able to identify
16 these temporary workers. I have brought up some
17 issues. I know for a fact we've got folks coming from
18 Georgia into Chattanooga that are trade contractors
19 that are working all the time and that are on file
20 that have their insurance company.

21 For example, Georgia Mutual. I just made
22 that up. Okay? Georgia Mutual. And they are
23 licensed in our state. However, Georgia Mutual, for
24 example, is not even recognized as an admitted carrier
25 in the State of Tennessee. If their insurance company

1 is not even admitted, I'll assure you they're not
2 compliant with our construction laws, and we're not
3 even identifying that.

4 It goes to -- and I'm getting really geeky
5 here, but it's a 3A/3C coverage on the work comp
6 policy. And I think there's a lot of things that this
7 state needs to be doing to make sure that anybody
8 coming over here, temporarily or otherwise, Madam
9 Chairman, is required to have Tennessee listed as a
10 covered state on their policy. This is what Florida
11 requires.

12 Not only do you know that they're being
13 covered, but that state and Tennessee would be able to
14 collect premium tax off of those workers in the state.
15 Currently, that's not at all the issue or not the
16 case, and --

17 MS. JEFFERSON: Are you referring to
18 3A?

19 MR. HALE: Yes, ma'am. It's the
20 3A/3C coverage on a workers' compensation policy.

21 MS. JEFFERSON: Okay. And Kevin,
22 before we move on, do you have any suggestions? I
23 know that they talked about, you know, various
24 suggestions. Based on what you just told us, what
25 suggestions do you have, if any, as to how the

1 Department can tackle those type of situations?

2 MR. HALE: I believe, that some of
3 them will be able to be addressed with the fraud
4 detection software. For example, I know that there
5 are certificates or proofs of coverage in Carolyn
6 Lazenby's -- in the Contractors Board that she has
7 insured from other states that they look like they're
8 insured. But they don't comply with our laws because
9 they're not legal in our state. So I believe, that
10 fraud detection will address some of those issues.

11 MS. JEFFERSON: Okay. Thank you.
12 All right. We're going to move on to the advantages
13 of memorandums of understanding, MOUs. And I'm going
14 to ask Josh Baker to just give us an overview. If you
15 prefer, Josh, I'll start off by taking a look at some
16 of the research that you provided. We took a look at
17 a generic memorandum of understanding, and Josh
18 reviewed the memorandum for us. He's the
19 administrative attorney for our division.

20 And some of the things that he identified
21 are the responsibilities of each parties in
22 coordinating investigations. He saw that as being an
23 issue with the memorandum of understanding. And take
24 a look at the memorandum of understanding. You have a
25 copy of that in your package. And it's on the front

1 table, if you didn't get a copy. But the
2 responsibilities of each party in coordinating
3 investigations. Will information we provide to other
4 agencies be protected under disclosure under the
5 federal law. Which other agencies, if any, will share
6 division information obtained through the MOU.
7 Because that's an issue.

8 Will other agencies try to share
9 information with other agencies. Because that will be
10 a problem for our division. So I just want Josh, if
11 you will, to speak on the last three issues; the first
12 being the responsibilities of each party in
13 coordinating investigation, why that's important.

14 MR. BAKER: I'm Josh Baker. I'm with
15 the Department of Labor Division, Workers'
16 Compensation. I did a little research on memorandums
17 of understanding, and we've spoken, at least, briefly
18 with the Federal Department of Labor about this issue.
19 The good thing about memorandums of understand is that
20 they really don't have a legal standing. They're kind
21 of what's been called, in the past -- it's sort of a
22 more formal gentlemen's agreement, is what it is.

23 So it's not really responsibilities of the
24 parties under there. There are just things that they
25 will agree to do. So of course, that has its good

1 points and its bad points. The good points are that
2 you can have this agreement, and you can comply with
3 it. But then if you don't comply with it, there's
4 really no repercussions for either side. So what
5 they're good for is to sort of provide a structure to
6 a relationship you would have with, say, well, the
7 Federal Department of Labor and the Tennessee Division
8 of Workers' Compensation.

9 Now, in this arena, in this particular
10 memorandum of understanding, which is just a draft,
11 there are some points that concerned, as Kim said,
12 responsibilities of parties in coordinating
13 investigations. Now, that's something that we would
14 need additional input from the people who were doing
15 some of the investigations. Of course, our
16 investigators will be doing them. But if the TBI were
17 to do investigations on some of these issues, we would
18 need to know, one thing, what information could be
19 shared with the Federal Government. That's something
20 that has to be sort of put together up front before we
21 can enter into any memorandum.

22 And two, what information, obviously,
23 cannot be shared. And these are the things that maybe
24 you can share, and these are the things that you
25 definitely cannot share. We need to know those

1 things. After talking with the representative from
2 the Federal Department of Labor, who is here. Her
3 name is Pamela Sullivan. She's sitting right over
4 there.

5 They are perhaps looking into focusing on
6 misclassification for their next three-year cycle. It
7 hadn't been decided when we last spoke, what they were
8 going to do, but we would like to, if possible,
9 establish as much of a flow of information, as we can.
10 Of course, keeping in mind that there are things that
11 cannot be shared by both sides. So the memorandum
12 would go a long ways towards doing that. And of
13 course, there are federal way of laws to consider and
14 things of that sort.

15 But what we would like to do is sit down
16 and sort of have everyone decide what information is
17 needed for the investigations, and then maybe that can
18 come from this group. Maybe it can't. I don't know
19 the answer to that question. But we do need to know
20 what kind of information is needed, and then also,
21 what kind of information we can provide to the Federal
22 Department of Labor before we can hammer out any kind
23 of memorandum.

24 MS. JEFFERSON: Right. And I think
25 that those issues can be hammered out in the working

1 committee. It's probably better suited for the
2 working committee.

3 DR. CANAK: Do we not have some
4 examples from other states where these MOUs have
5 already been implemented? I seem to recall, from
6 Washington State, that they had such an agreement with
7 the IRS, at least.

8 MR. BAKER: Well -- and there are
9 agreements with the IRS that --

10 MS. JEFFERSON: Yeah. We do. We
11 have copies of sample. In fact, this is a sample we
12 attached.

13 MR. BAKER: I mean, this is not --

14 DR. CANAK: You didn't just invent
15 this.

16 MR. BAKER: I didn't write any of
17 this. That is not mine. My comments may be on there
18 somewhere, but I certainly didn't write that.

19 DR. CANAK: That's good. Take from
20 the best. Yeah.

21 MR. BAKER: Exactly.

22 MS. JEFFERSON: But thank you. And I
23 basically wanted Josh just to give an overview, wanted
24 to let you all know that we had, actually, two
25 meetings with Ms. Sullivan. We met with -- the Task

1 Force met with her on one occasion, and Josh and I met
2 with her afterwards because we had department
3 concerns. And this is something that we'll continue
4 to review.

5 Again, it's going to be all these items or
6 items for the 2014 annual report. These are items
7 that we're going to be working on and studying, as we
8 go forth.

9 Do you all have anything else to add to
10 that?

11 MS. HUDGENS: Other than, we do think
12 it's a good idea to partner. We were looking to find
13 a way to make that happen.

14 MS. SULLIVAN: And we are very
15 interested in that, as well.

16 MS. JEFFERSON: Okay. And the next
17 item on the agenda is pursuing misclassification in
18 industries, other than construction. And for that
19 item, I took a look at the 2013 annual report. Randy
20 Thomas provided an actual chart. It's on page 19.
21 I've separated that, so you should have that within
22 your package. And it's styled, employee
23 misclassification findings provided by the Travelers
24 Insurance Companies.

25 And he lists various other industries

1 because we know that, although, employee
2 misclassification is prevalent in the construction
3 industry, it also occurs in other industries, as well.

4 Randy, could you discuss that chart you
5 prepared?

6 MR. THOMAS: Sure. The way I came up
7 with those numbers, that's just -- I looked at all the
8 audits I did over the year before I did that, put them
9 in different categories. And like, the first column,
10 those are the ones that -- well, I was there because
11 they had a workers' comp policy. The second column is
12 after I got there, they didn't file any -- I mean,
13 they were paying insurance premiums on their employees
14 for workers' comp purposes, but they were not paying
15 to the unemployment or anything like that.

16 So then I grouped them by the business
17 section. And as you can see, like, residential
18 construction stood out, but also, have a problem in
19 trucking. And kind of got lumped together with
20 healthcare, but most of the problems on that I found
21 is, like, home health nurses and stuff like that.

22 MS. JEFFERSON: We've had problems
23 with those types of industries, as well. Another one
24 that we have seen are carrier -- courier companies.

25 MR. THOMAS: Oh, yeah. The delivery

1 service. Well, that got lumped into trucking.

2 MS. JEFFERSON: And what we want to
3 do is expound on this list, as we go forward. We hope
4 to review this and maybe provide an update for the
5 2014 report.

6 DR. CANAK: An example on the
7 carriers, FedEx for their -- they have FedEx Ground.
8 They deliver packages. FedEx Ground, they have it
9 separated into two businesses. And FedEx Ground that
10 delivers to commercial enterprises, those people are
11 all employees of FedEx. Everybody who comes to your
12 house, delivering a FedEx package is an independent
13 contractor.

14 MR. BAILEY: That's partially true.
15 Why I say that is, there's an agreement -- there was a
16 settlement agreement between FedEx and this department
17 several years ago that addressed that issue. And
18 under that agreement, the FedEx drivers have to -- had
19 to become incorporated and have to have actual
20 employees because there would be no single -- no
21 single entities any longer in the State of Tennessee.

22 So there was a settlement entered into
23 about four years ago that addressed Tennessee only,
24 and it required FedEx to do -- to change their -- that
25 was very true up until that agreement. But that

1 changed around -- I don't know. If you remember when
2 it was.

3 MS. JEFFERSON: About two years ago.

4 MR. BAILEY: About 2008, 2009, right
5 around there. But we were going to -- we were in a
6 situation where FedEx was going to be cited. They
7 were cited, and it came to a settlement agreement
8 where they agreed to change their operation around
9 that conformed to our liking, basically, and it
10 required them to set up individual business entities
11 that had employees.

12 DR. CANAK: But they did it because
13 we --

14 MR. BAILEY: Yeah. Exactly.

15 DR. CANAK: -- took the initiative.
16 And so I think the point is here that even large
17 multinational companies, like, FedEx can be
18 noncompliant with these practices.

19 MR. BAILEY: Oh, yeah.

20 DR. CANAK: And so when we look to
21 other economic sectors and industries, we shouldn't be
22 surprised that this will be extensive.

23 MS. JEFFERSON: Very good. All
24 right. Thank you for that information. And I knew
25 that when you started talking about FedEx, I knew that

1 Dan Bailey would remember that case because it was a
2 really big department case.

3 And next, we're going to talk about the
4 charts. If you all take a look at the information
5 behind Randy's chart on page 19. Page 20 provides
6 shared investigation results for the past 12 years for
7 the program. This is the information we submitted
8 last year in the 2013 report, along with all the other
9 reports.

10 The next report is the number of
11 investigations. And on page 23, it talks about --
12 actually, describes investigations by territory. And
13 we hope to have similar charts next year. If you all
14 have ideas for additional charts that we should
15 include in the 2014 annual report, please let us know.
16 Otherwise, we'll have reports on charts very similar
17 to the ones that we have here.

18 And the final item on the agenda is
19 updating insurance/premium tax cost projections. Is
20 it necessary. If so, how do we develop a strategy.
21 And Mike Shinnick is going to talk about that.

22 MR. SHINNICK: I'm going to step back
23 a bit and look at a comment that was made on the 2012
24 report from the legislature concerning our findings,
25 the work that had been done by Dr. Canak. It says --

1 I'll just read this brief paragraph to you.

2 Finally, while acknowledging the severity
3 of loss of earnings of the insurance industry due to
4 misclassification, the Task Force believes the new
5 workers' compensation laws need to season before an
6 attempt is made to reevaluate leakage in the system.
7 After the new construction of law have seasoned for a
8 year or two, we will attempt to gather viable data to
9 reassess the current financial impact of
10 misclassification on the insurance industry. This new
11 study would take into consideration new methodologies
12 for protecting the loss of earnings through the
13 insurance industry.

14 If you'll recall, when that report was
15 done, we projected losses to the insurance industries
16 and premiums to be about \$52 to \$92 billion, based
17 upon 2006 data. Now, 2006 is almost eight years old,
18 where we are at this point in time. And we've had
19 some significant law changes during that period of
20 time, as well. So it kind of makes sense for us to
21 reevaluate those numbers with Public Chapter 1149 and
22 Public Chapter 422 that was implemented 3/1/2011, and
23 I believe, 11/1/2011.

24 The landscape has changed a whole lot. We
25 now either have someone that is operating their

1 construction business being exempt or having an
2 insurance policy to cover themselves. I checked the
3 exemption registry yesterday, and there are,
4 approximately, 38,125 exemptions on the registry.
5 Now, of course, Nathan and I talked about this during
6 the break. He's got a figure of about 2,500 renewals
7 that are in that database. So we've got to take into
8 consideration the renewals, as well.

9 Dr. Canak and I have talked. We have
10 e-mailed each other quite a bit over the last two
11 weeks to kind of talk about maybe him teaming up with
12 us to make that projection, based on 2013 data. He's
13 looked at some of the other states that have had
14 similar interest; the State of Massachusetts, the
15 State of Michigan has some things on their website
16 about their look into the misclassification cost
17 issue. Of course, we know that Florida -- there's a
18 lot going on in Florida.

19 There has been for a number of years with
20 the check-cashing schemes down there, bypassing
21 workers' compensation premium roles. In April,
22 Operation Dirty Money uncovered about 335 million in
23 fraudulent transactions in the workers' compensation
24 premium fraud schemes. So we're all -- I think we've
25 had a lot of discussion in this Task Force about that.

1 Some of the methodologies that we might want to employ
2 include unemployment audit data, building and permits,
3 Bureau of Labor Statistics -- all these came from Dr.
4 Canak -- census data, IRS data, and of course,
5 insurance company data.

6 So you know, we talked a little bit about
7 the fact that the landscape has changed a whole lot.
8 Dr. Canak came up with a figure of about 65,200
9 construction firms in the State of Tennessee without
10 employees in 2011. And so there's been some
11 discussion about correlating that with the exemptions
12 in the exemption registry.

13 MR. PITTS: What year was that?

14 MR. SHINNICK: 2011. 65,220.

15 MR. PITTS: How many companies had no
16 employees?

17 MR. SHINNICK: 65,220 construction
18 employees -- construction companies.

19 MR. PITTS: Had no employees?

20 MR. SHINNICK: Had no employees.

21 MR. PITTS: I thought you just gave
22 out -- okay. I'm with you.

23 MR. SHINNICK: Okay. Now, we would
24 have to scrub that data a lot from our discussions
25 with the Secretary of State's office because that

1 data, you can have multiple exemptions per entity. If
2 you had a corporation with four owners that owned 25
3 percent apiece, you would expect four entries there in
4 the exemption registry.

5 So you can't just really make a
6 correlation between the number of exemptions on the
7 registry and the number of firms without employees.
8 So I just kind of throw that out to kind of let you
9 know that there are a number of things that can be
10 done.

11 I don't know that I have the expertise or
12 we have the expertise, as the Insurance Committee, to
13 make this assessment, and I would just ask Kim, if
14 there are funds available in the Employee
15 Misclassification Education and Enforcement Fund, to
16 fund the research of Dr. Canak.

17 MS. JEFFERSON: And I think that that
18 might be -- actually, a legislative proposal
19 recommendation may be more appropriate because we
20 can't really decide how that money is used, other than
21 the specific way in which the legislature has asked us
22 to use it. And we know that we're to use it for
23 education purposes, enforcement purposes, and now,
24 fraud detection software, and hiring new employees.

25 MR. BAILEY: I would consider that

1 education.

2 MR. SHINNICK: I would, too.

3 MS. JEFFERSON: Right. Well --

4 MR. BAILEY: Of those studies, new
5 numbers would be something that would be very valuable
6 information.

7 MS. JEFFERSON: And that's something
8 that we would have to take a look at. The Department,
9 of course, will look at that as the Task Force -- as
10 we go forth because we still have a whole year to
11 decide that. And I'll need to speak with
12 representatives from the Department to see if there's
13 enough money in the budget to do all the different
14 things we have to do because we do have to do a lot.

15 That fraud detection software is going to
16 be very, very costly, and I know that's something
17 that -- during the time that the legislation is being
18 proposed, I know that they specifically wanted us to
19 put moneys towards that. So as long as that's taken
20 care of and we have additional money to hire employees
21 and do other things, there shouldn't be a problem.
22 But I can't say, today, how -- whether or not that's
23 going to happen.

24 MR. BAILEY: I understand that, but I
25 mean, I've always found it a little bit -- gave me a

1 little heartburn every time we're citing statistics
2 from 2006, and we've had a major recession since then,
3 and we've just kind of rolled out of it. It's just,
4 like, how relevant were those numbers.

5 MS. JEFFERSON: Right. Because
6 they're so old, and now, they're outdated.

7 MR. BAILEY: Right.

8 DR. CANAK: The numbers themselves in
9 terms of the absolute might have changed -- should
10 have changed because of the changes in the economy.
11 There's no necessary reason to expect the patterns and
12 behavior and the issues that we're addressing in this
13 study --

14 MS. JEFFERSON: Right.

15 DR. CANAK: -- have changed, so --

16 MS. JEFFERSON: Okay. And that's
17 something that we will definitely look into. Abbie,
18 would you like to make comments on that?

19 MS. HUDGENS: I think looking into it
20 would be very appropriate. We need to find out how
21 much it would cost, put in our budget. First I've
22 heard of it today, but certainly, important to pursue.

23 MR. SHINNICK: I would like to ask
24 Dr. Canak, if he could, to give us a projection, about
25 how much he would think it would be to come up with

1 the numbers that are fraudulent, such as that.

2 DR. CANAK: Well, it depends on the
3 extent in the data and the timelines and what the
4 deliverables would be, but that's certainly something
5 we can discuss.

6 MR. SHINNICK: Okay.

7 DR. CANAK: Sure.

8 MS. JEFFERSON: Sounds fine. Thank
9 you.

10 And at this time, we're limited because we
11 have about ten minutes before the official meeting
12 ends, and the public comments section. Bob Pitts has
13 asked to go first. You're welcome to take the podium.

14 MR. BAILEY: Ten minutes is not
15 enough for Bob.

16 MR. PITTS: Madam Chair, I would
17 respectfully request that you all give consideration
18 to everybody hanging around for a little period of
19 time. I don't want to cut anybody off. And nobody
20 here may respect me, but I've got some things to say
21 to you all that I think you ought to think about. And
22 I believe, if you'll let me get through it without
23 cutting off anybody else who wants to say something, I
24 believe, I'll be comfortable with the vote that they
25 ought to be looked at.

1 First of all, to establish a little bit of
2 the credibility of making observations, for those of
3 you who don't know me, I've represented the commercial
4 construction industry for, say, 27 years. Eighteen
5 prior to that, I represented the trucking industry in
6 this state. And before that, I was with the Hospital
7 Association. And before that, I was in a high-policy
8 position under two Governors in this state. So about
9 50 years of being around this, and 40-odd involved
10 with workers' compensation, including serving on the
11 last four major reforms in the State and on the
12 Advisory Council on workers' comp for 20-odd years
13 now.

14 So I'm not an expert, don't pretend to
15 believe I have all the solutions. But I think there
16 needs to be some thought given in the framing of how
17 you go forward. I want to remind this group of two
18 things. There's been a workers' comp law in this
19 state since 1919. We really didn't talk about
20 enforcement a great deal, nor did we have any
21 resources to deal with it until, basically, industry
22 groups and employee organizations started demanding it
23 in the legislature.

24 And I guess, as being a participant in
25 that effort and a believer in what you all are trying

1 to do, I'm really concerned that you've spent two
2 years -- and I'm not being critical. When this all
3 started, y'all didn't even know each other. You
4 didn't even talk to each other. So there's been a lot
5 of studying a lot of investigation. You've got a good
6 team now, and the question becomes, where do we go
7 from here. And I think that becomes vastly important.

8 I will start off by saying to you, I don't
9 care whether the Advisory Council is continued or not.
10 I'm willing to support it. But if it doesn't, I would
11 recommend two things. The Administrator in her
12 department who has prime responsibility ought to
13 continue to have a working group of the people
14 involved in the regulatory aspect of employer. I
15 would secondarily say that y'all have an advisory
16 industry group that you can bounce things off of.
17 There's a way to do the same thing, regardless of
18 whether you have any statutorily-appointed Advisory
19 Council. So don't let that be an impediment.

20 With respect to this report -- and I'm not
21 being critical or taking a shot at anybody. I'm just
22 making an honest observation. I really think your
23 2014 report is about the least important thing you've
24 got to do. Trust me. As long as you all get on with
25 the enforcement, the industry that asks for it is

1 behind you and will support you. Legislature will not
2 go against industry desire for a reasonable level of
3 importance. So nobody has to justify their position
4 or their job.

5 In terms of doing the 2014 report, I hope
6 y'all keep that objective in mind. We don't need to
7 go manufacture stuff to assure the legislature we're
8 doing something important. You need to look at what
9 you honestly got, what can be appropriately presented
10 that is of importance, and then you just need to spend
11 the rest of your time in your report, telling them
12 that with all the law changes over the last two or
13 three years and with the study, here's the other
14 things we're going to do, given the time to do them.
15 I think that's what the legislature is interested in
16 hearing, not a whole lot of statistics except if
17 they're pertinent.

18 Now, I was sincere about my comment, that
19 a lot of good, in terms of thinking, has been
20 accomplished by this working group, and I applaud
21 that. And I know some of you are very frustrated that
22 we haven't made a big show yet, and I'll be the first
23 to join you. I would like to have seen more
24 enforcement. But you've also got to keep in mind,
25 because I'm the most effective industry in the room,

1 which is construction, and that's where you've really
2 got some teeth now.

3 So I guess, that qualifies me to comment
4 on it. If you really stop and think about it, it
5 wasn't to the legislative changes, just before this
6 last reform, that you even had a workers' comp law
7 that you could practically even attempt to go out and
8 enforce because anybody that wanted to just called
9 themselves independent contractors. Nobody was doing
10 anything about it, and you had to clean up that mess
11 before you really could determine whether or not
12 somebody was complying with the law.

13 I submit to you that those changes and the
14 data that you now have and what has been accomplished
15 in this last reform package, you've got the tools to
16 take the next step. You may not have a lot of
17 empirical data yet about the success of it, but I
18 don't think any of us who have been involved in these
19 efforts are not convinced it will show results over
20 time practically, significantly, if we have good
21 enforcement.

22 Now, let's talk about that for a moment.
23 Everybody in this room is aware that we had a major
24 solution to enforce under workers' comp for the
25 commercial construction industry about three years

1 ago. If you were on a job site, you had to have
2 workers' comp. Very logical. Damned if we didn't
3 pass it to legislature. Within six months, we were
4 confronted with an effort to have a special session to
5 repeal it. And then survive that, and then the
6 following January, we started down the road of 487
7 millions about carve outs of how we were going to keep
8 the majority of the legislature happy to where we had
9 any kind of reasonably enforceful workers' comp
10 program for the commercial construction industry and
11 construction in general.

12 With that background, there's a point.
13 You have an industry who is willing to support
14 enforcement; reasonable, fair, honest, honorable
15 enforcement. At the point you become obsessive, like,
16 the IRS, you're going to lose industry support. And
17 in my opinion, you're going to lose support for
18 enforcement activity in the General Assembly. And so
19 to me, this is a critical time in putting the program
20 together, determining what the real priorities are,
21 and then work the plan.

22 I wish everybody in this room had had the
23 opportunity to participate, as I did, at one point in
24 which three event goers came in and made a
25 presentation to the State about how they could help

1 you with your enforcement activity. I'm not promoting
2 any group, but I was very impressed with some comments
3 of one of the vendor groups from the State of
4 Washington. He had been the actual head of the
5 enforcement activities in that state, had some of the
6 most common-sense observations and recommendations of
7 anybody I've ever heard of.

8 We've got all this mess out here, and
9 we've got limited resources. We all know if we get a
10 complaint, we've got to go and investigate it. And
11 with strict compliance with the law when you get one
12 of those, you've got to take action. But outside of
13 that, we're going to mine the data for where the
14 priorities are. You want to go get folks who are
15 violating the independent contractor law. You want to
16 go get people who are just not paying workers' comp,
17 who are paying workers off the table, who are involved
18 in fraud, who are potentially connected to organized
19 crime, who may have a deal with a check-cashing
20 company to keep it all covered up and buried. That's
21 big bucks. It will blow you away, how big it is.

22 That's an area that the industry wants to
23 see enforced, and that's where we want to see the
24 priority. And I would say, at this point, that that's
25 the kind of activity in which there needs to be

1 across-the-state cooperation, and perhaps you need an
2 MOU with the IRS. Use all the situations to detect
3 who they are, and go after them big time. What does
4 it accomplish? It puts your resources where your
5 greatest potential is.

6 And if you want to justify yourself, go
7 with that data to the legislature after another year,
8 and you won't have any issues about financial support
9 and appropriations for enforcement activities and
10 stuff. On the other hand, if you spend time --

11 I'm determined I'm not going to talk to
12 them. They haven't figured that out yet.

13 But then they have a descending order of
14 priorities. We're going to work this group; we're
15 going to work that group; we're going to cross-check
16 it between cars, how many people they're paying taxes
17 on, how many vehicles they've got registered. That's
18 what you really need to have before you worry about
19 everything else.

20 And there needs to be a buy-in in the
21 group that that's where you're going. That's what the
22 industry will support. Abbie and I were in a meeting
23 this morning. She was leading the discussion, and I
24 was a listener. But this subject of misclassification
25 came up, and it reminded me that I wanted to make a

1 comment or two and in that group up until now. But
2 folks, this whole enforcement activity is not about
3 becoming a bureaucratic regulator.

4 If you find the company -- and I'll use
5 the morning example. They're all roofers, and they're
6 reporting them as clerks, bust them. But if the issue
7 is whether they're a stenographer one or two, folks,
8 you're wasting a bunch of time that ought to be spent
9 on other things. If somebody reports it and you go
10 check it, you've got to deal with it, I understand,
11 under strict interpretation.

12 But there are two issues. The first
13 issue, there are, like, 600 classifications of the
14 NCCI. I served on an appeal panel for the State for
15 many years, dealing with classification workers.
16 Under our law, a company that disagrees over
17 whether -- or an agency on whether it's properly
18 misclassified or not by an insurance company, the
19 first appeal is NCCI.

20 If either party disagrees with that, the
21 final word is the Commissioner of the Department of
22 Commerce unless that's changed, and I haven't been
23 told. Is that still where it is, actually?

24 MR. SHINNICK: Yeah. That is true
25 with the exception of assigned risk appeals go to Aon

1 first.

2 MR. PITTS: Well, today, I'm not
3 worried about assigned risk. We've got another 90
4 percent to worry about.

5 But the point is, I've been there. I've
6 looked at these classifications. And folks, some of
7 them are so integrally inclined, a Philadelphia lawyer
8 wouldn't know whether it was in the right class or not
9 until on high -- (indiscernible) -- kicks.

10 You'll spend tons of time in that. It
11 will take you eons to get through all those appeals.
12 It may not be a lot of bucks. If it's willful and
13 fraudulent and big dollars, go get them. But don't
14 waste your time on trivial stuff when you're mining
15 where the enforcement activities are going to go.

16 I think -- it seems like there was one
17 other point I wanted to make, and I apologize for
18 taking so long.

19 One observation that comes to mind
20 might -- what you brought up. Obviously, if there are
21 people that don't have employees, it's a fertile field
22 to go investigate. But let me remind you that prior
23 to the change in the law now, two or three years ago,
24 we had tons of companies in this state, and we all
25 know the classifications they were in.

1 Principally, tile, carpet, drywall, or
2 somebody had a company, and everybody that installed
3 was a contractor to them. I believe, our new law has
4 cleaned that largely up. But all I'm saying is,
5 you'll need to bear that in mind, as you reevaluate.

6 Also, on the large number of people who
7 are exempted, let me remind everybody, particularly,
8 the regulators, that anybody that wants to that meets
9 certain criteria can go up there and be exempt. But
10 in case of my industry, the statutes specifically
11 say -- what is it? Two?

12 MR. SHINNICK: Three.

13 MR. PITTS: Three that can be on a
14 construction site. So there may be a lot of folks
15 that have that exemption, who are not working for the
16 commercial construction industry because of the
17 limitation of three on the job site. But they may
18 have gone and qualified to do independent work or work
19 for the residential side. So just two things to keep
20 in mind when you review that.

21 I preached the sermon. I apologize. I
22 guess, if you've got a question, I'll answer. I'll go
23 hush.

24 MS. JEFFERSON: Do you all have any
25 questions?

1 MR. HALE: Can I take up the alter?

2 MS. JEFFERSON: Thank you, Mr. Pitts.

3 MS. HUDGENS: Jim Brown had to leave,
4 and he asked that I mention something so it was put on
5 the record.

6 I think it's -- we may have touched on it,
7 but he wanted to, I guess, give it an underscore. He
8 wanted to ask that when we look at metrics, we see,
9 going forward, how much money was collected through
10 each vehicle. For example, through the fraud
11 detection software, through the investigations,
12 through the tip form. And he thought that being able
13 to link the amount collected to the vehicle for which
14 it was collected would be very helpful, and wanted to
15 ask that if we consider that.

16 And if I could just make one comment to
17 everyone here that comes from the first thing that Bob
18 said. We certainly hope that even when the group
19 sunsets, that those people who are interested in this
20 will continue to work with us. We see this to be a
21 lifelong project. At first, to clean it up, and then
22 to monitor it to make sure it stays cleaned up. So I
23 wouldn't want anybody to think there's any thought on
24 our part about doing away with the Task Force, even
25 when the sun does set.

1 MR. PITTS: Can I say two quick other
2 things? I would like to say to the Administrator that
3 I think the governmental people around this table need
4 to give us a private sector, a hint as to whether you
5 want to see the group continue or not because I
6 suspect most of us are willing to support it, if in
7 fact, the regulators would like to see it.

8 The other thing I forgot -- I knew there
9 was one other thing, and this one is important. And
10 nobody may agree with me, but I'm going to put it on
11 the table. Everybody's worried, and I'm worried that
12 in the long term, there's never going to be a
13 practical solution to going after the tough cases
14 through the District Attorneys.

15 Now, we all know the rest of the time,
16 that's where the jurisdiction is. But we all know
17 that many of them, it isn't one of their top
18 priorities. And I don't really have a problem with
19 that. I offer, as a suggestion -- and I believe, it
20 could be sold -- that somewhere down the road, if that
21 really is reflective of the DA's opinions, would they
22 sign off without a legislative finding on giving the
23 responsibility of workers' comp prosecutions to the
24 Attorney General's office.

25 And I can tell you, you don't have to go

1 check, and I'm not going to go any further than that.
2 It is a function that would be accepted by that
3 office, if there was a reasonable appropriation to
4 staff it. Now, you're never going to get over this
5 lack of uniformity across jurisdictions until we get
6 some kind of prosperity power at the state level. And
7 I just offer that for your thought.

8 MR. BAILEY: I do have just one minor
9 comment on something that Mr. Pitts said. He
10 recommended, if the Task Force sunsets, to continue to
11 have a working group, and then there'd be an advisory
12 industry group to kind of bounce things off of. If an
13 advisory group is established, I would hope that would
14 include both industry and representatives of organized
15 labor, as well.

16 MR. PITTS: Well, I meant for it --
17 the outside group, if y'all want to work as a
18 government-only committee, the advisory groups outside
19 certainly should include associations and
20 employee-representative groups.

21 MS. JEFFERSON: All right. And based
22 on the hearing, you all are saying, actually, meeting
23 some of the concerns that legislators had at that
24 hearing. They wanted to make sure that we continue to
25 operate as an informal body. In the event the formal

1 body goes away, we would still operate as an informal
2 body, and there would be employers', employees'
3 interest. People represent those interests involved
4 in the process.

5 And as Abbie indicated and Bob Pitts has
6 indicated, and Dan, that's necessary for us to
7 continue the process. To me, it's not necessary for
8 us to continue the Task Force per se because we can do
9 the same thing informally. We don't -- we've met the
10 statutory requirement. The statute actually asks us
11 to take a look at all those itemized issues, and we've
12 actually done that. But we do have a lot more work to
13 do, and we can do that informally. So I don't see any
14 reason for the Task Force to continue formally.

15 MS. HUDGENS: To put it another way,
16 we think that the legislature wants us to keep on
17 doing what we're doing. They just don't want us
18 coming back and making --

19 MR. BAILEY: They don't want to hear
20 from us anymore.

21 MS. HUDGENS: I think that's the
22 bottom line.

23 MR. BAILEY: That's probably right.

24 DR. CANAK: My point -- and I've
25 mentioned this in previous meetings, and it came out

1 today. That is that what we learned through research
2 and through our own work on the Task Force is the
3 extent and the misclassification and underreporting
4 and the impact on both the state and the public and
5 the private sector.

6 But we also know, from existing research
7 and from our own experience, and as we discussed
8 today, this is a practice that extends in other
9 industries. And so I personally think there is a
10 reason for the Task Force focusing on construction
11 perhaps to sunset, but there are very strong reasons
12 for us to think about a Task Force, that we could use
13 our success to reach out to address these practices in
14 other industries.

15 MS. JEFFERSON: And we thought about
16 that issue at the sunset hearing. And if issues like
17 that arise, you know, as an informal body, you can
18 provide those issues to the Department, and the
19 Department -- they have representatives and
20 legislative liaisons who can, you know, possibly
21 propose it, if it becomes necessary.

22 DR. CANAK: Well, I think it's easier
23 to bring in -- even as we've had the construction
24 industry well represented here and heard from them
25 very effectively, I think it's easier if you have an

1 official Task Force to get participation from those
2 other industries when we're in early days in taking
3 initiative there. I could be wrong, But that's my
4 sense because this works so well.

5 MS. JEFFERSON: Did you want to
6 say -- did someone have a question?

7 MS. DEWBERRY: Madam Chairman, I
8 brought John Crabbe, Crabbe Construction, I think, the
9 only contractor in the whole room today, to speak as
10 to how it's going to affect him and his business
11 personally, or perhaps -- he's on the -- he's vice
12 president of Clarksville Montgomery County Homeowners
13 Board, and that's why I asked him to come in.

14 MR. CRABBE: I won't take very much
15 time.

16 MS. JEFFERSON: You're okay.

17 MR. CRABBE: I apologize for being
18 late. I didn't hear the first part of this. I took
19 my son to a football camp, and it's a good thing.

20 I walked into this meeting, and I asked
21 Dana -- looking around, I was shocked that there's no
22 builders. I cannot believe that you guys don't have
23 representation. I'm listening to your all's comments,
24 and I'm going -- I understand the research that you
25 guys have done is pretty extensive, but I had a few

1 questions for you here.

2 When you get into the word "enforcement,"
3 for a guy in the private sector, that word terrifies
4 me. And up until last month, it didn't. I thought,
5 man, I am one of the most upfront, outstanding -- I'm
6 so heavily insured. I've got -- I've taken care of my
7 people for so long. I feel like I'm one of the best
8 businessmen in Clarksville. And my reputation is that
9 way. I recently -- and it's funny, ma'am. You're
10 with the Federal Department of Labor?

11 MS. SULLIVAN: I am.

12 MR. CRABBE: I recently, because of
13 our downturn in our market, I had to furlough my
14 employees 20 percent. Said, okay, it's better to keep
15 all of my employees employed, rather than lay off a
16 bunch of people and go under. I suspect that because
17 of a complaint or a question about that furlough, that
18 I got investigated. I had a wage-and-hour
19 investigation done on me. And the comment was made by
20 the investigator repeatedly, the word "enforcement"
21 was used.

22 And this is involving an instance where
23 superintendents -- she tells me that superintendents
24 are not exempt employees. And bear with me. I've got
25 a point here. So my superintendents aren't exempt

1 employees. They run everything out on the job site.
2 Their biggest tool that they use is an iPhone and an
3 iPad. But yet, they're not executives of my company.
4 And my point to this is, this investigator is
5 enforcing the government regulations, but yet, that
6 enforcement has required me to go get an attorney. It
7 has cost me, as a small business person whose, number
8 one, struggling. I'm going to pay \$20,000 now for a
9 retainer on an attorney to battle this.

10 And so the word "enforcement," when you're
11 looking at this, it makes no sense to me. Who
12 benefits? Other than the employees by carrying
13 workers' compensation insurance, who benefits from
14 what you guys are trying to do? The insurance
15 companies. The insurance companies are the ones that
16 benefit here. It's not the workers. The workers,
17 if -- you know what happens, if somebody is
18 misclassified and not -- and they're on my job site
19 and they fall and they get hurt, an investigation is
20 done, guess who it ultimately comes back on. Me.

21 Am I wrong here? I mean, because -- and
22 not only that. There's criminal possibilities here.
23 Well, you didn't check your insurance and stuff.
24 Although, I have no authority to go to my
25 subcontractors and ask them for their certified

1 payrolls. I'm a residential guy. I like what Mr.
2 Pitts was saying about commercial. I've worked for
3 the Corps of Engineers, and I understand being able to
4 audit, as a businessman or as an organization, being
5 able to audit payrolls and stuff. Residential doesn't
6 have that ability.

7 So you guys, when you're getting into
8 this, you're saying, hey, the enforcement here is
9 necessary. Why not put it back on the insurance
10 companies? Why not make those insurance companies
11 hold them accountable? If somebody is not properly
12 classified -- do you know how many times my insurance
13 guy has been on my job? Zero. Zero. I've never seen
14 one of my insurance guys, but yet, my tax dollars are
15 going to pay you guys to come tell me I'm doing
16 something wrong. My insurance guy is over there.
17 He's going to collect more money. So I'm failing to
18 see here where the word "enforcement" is fair.

19 I made a note here, ma'am. I heard you
20 say "enforcement." And my first note was, enforcement
21 in the private sector is, like, a witch hunt. There
22 is no incentive for any investigator -- and I saw this
23 with the wage-and-hour investigator. There's no
24 incentive for her not to find anything.

25 I want to read a text here from one of my

1 former employees. She texted me and said, hey, Wage
2 and Hour just called me. I said, yeah, I know; we had
3 to furlough our people. She said, FYI, the way they
4 worded the questions are damning for the employer; it
5 was hard to get her to listen to my answers past the
6 "yes" or "no."

7 She texted me a little bit later. She
8 said, geez, she called me a couple of times; I think
9 that's a good -- I told her I hired an attorney. I
10 think that's a good move on your part; I felt she was
11 twisting questions and responses to get negative
12 answers, and not listening to when I explained
13 further.

14 From a private business owner, I read that
15 and I go, wow. And now, I come to this meeting, and
16 ladies and gentlemen, I am wholeheartedly behind
17 making sure that our employees are covered. It's
18 sickening to me -- when I was with the Corps of
19 Engineers, I watched a guy fall from a scaffold and
20 die, so -- but I watched him. He was covered under
21 workers' comp, and his family and things were covered.

22 So I understand more than most residential
23 guys, but what you all are trying to do terrifies me,
24 as a private -- yes, sir?

25 MR. MILAM: I think there's a drastic

1 misunderstanding of what's actually happened here
2 today. We're not the Internal Revenue Service. We're
3 not even the Federal Government. Any criminal
4 investigation has to prove knowing deception by an
5 employer. It's not strict liability. It's not
6 holding you responsible for what somebody on a
7 subcontract did on your job. You're only responsible
8 for what you do.

9 MR. CRABBE: Sure. Yes, sir.

10 MR. MILAM: So rest easy. It's not a
11 witch hunt.

12 MR. BAILEY: I'll wait for you to
13 finish. Are you finished?

14 MR. CRABBE: Yeah. Yeah. I'm done.
15 Apparently, I need to rest easy, so --

16 MR. BAILEY: You were saying that the
17 only people who benefit are the employees and the
18 insurance companies. And I just want you to know that
19 it also -- there's a -- when an employer does not
20 buy -- does not purchase workers' comp insurance or
21 does not purchase the correct amount of workers' comp
22 insurance, there's also lost taxes to the State.

23 MR. CRABBE: Yes.

24 MR. BAILEY: Okay? That are
25 designated to fund certain things. So the State does

1 lose, also. And the employers who are buying --

2 MR. CRABBE: That's correct. Yes.

3 MR. BAILEY: -- and are paying their
4 unemployment taxes are benefited by the fact that
5 they're not getting undercut on projects by these
6 cheaters.

7 MR. CRABBE: I wholeheartedly agree.

8 MR. BAILEY: So there's more than
9 just the insurance company and the employee who
10 benefit from this, so --

11 MR. CRABBE: Regardless of -- my
12 point to employees are benefited, I don't think
13 anything that you're doing here is going to hurt the
14 employees. And I'm glad to see that because that's --
15 so you're right. And whatever you come up with will
16 certainly be just fine for the employees. My point to
17 the insurance companies, there can be a much more
18 proactive approach with the insurance companies.

19 MR. BAILEY: And you may -- I can't
20 address that. There are insurance company reps in
21 here that might could. But I mean, I agree. If
22 you're a carrier and never been to your job site,
23 there's probably something wrong there, but I don't
24 know. But also, in -- you know, I cannot speak for
25 federal Wage and Hour.

1 I can speak for our department's
2 investigations. And I know that, you know, we're very
3 reasonable, cooperative. If we get -- even if an
4 employer has been found to, you know, not be in
5 compliance with the law, I know the Workers' Comp
6 Division does everything they can to work with that
7 employer to set up settlement agreements, a payment
8 plan, that -- you know, where it's not, like, oh, we
9 got you now kind of thing. They try to work with you
10 the best they can. And I mean, I just don't -- I
11 can't buy into that part of it.

12 MR. CRABBE: Ladies and gentlemen, I
13 certainly didn't mean to offend any of you all. I'm
14 seriously giving you the perspective of a private
15 industry. As a business owner in the private
16 industry, and I apologize for --

17 MR. MILAM: You don't owe an apology.
18 I'm just glad to know that people in your business are
19 hearing "enforcement" as the word "witch hunt" when
20 you can't convict somebody of anything unless you
21 prove beyond a reasonable doubt that they intended to
22 lie, cheat, and steal, and profited by doing it. So
23 if you're not doing any of that stuff --

24 MS. JEFFERSON: All right. All
25 right. Both --

1 MR. CRABBE: One more thing on this.
2 It's not the criminal side of it that I'm really
3 concerned about here. It's the small business owners,
4 that things like that can -- you make the comment
5 about settlements. Construction is coming out of --
6 you've got to make comments, coming out of a
7 recession.

8 MR. BAILEY: Sure.

9 MR. CRABBE: A settlement is the same
10 as a nail in the coffin.

11 MS. JEFFERSON: I'm really glad that
12 you're here because I've wanted more employee
13 representatives to come -- I'm sorry -- employer
14 representatives to come. And I invite you to come to
15 our next Task Force meeting. Bring more employer
16 representatives because you all need to be a part of
17 this conversation. I wish you all had been a part of
18 it earlier. I wish we had had more representatives to
19 come earlier. But I want to speak to the --

20 MR. BAILEY: We've had some.

21 MS. JEFFERSON: We've had some.
22 Well -- but we haven't had as many to be as vocal.
23 And that's good.

24 MR. CRABBE: I'm sorry.

25 MS. JEFFERSON: And that's good. I

1 mean, because the way that we're able to understand
2 things, we need to hear both perspectives.

3 MR. CRABBE: Yes, ma'am.

4 MS. JEFFERSON: We really do. That's
5 very important to us. But I wanted to explain the
6 funding because I'm not really sure you understand how
7 the program is funded. This program is funded -- when
8 I say "this program," I'm referring to the Employee
9 Misclassification Program -- is funded by the
10 Secretary of State's office through the exemption
11 registry. I'm sure you're familiar since you're in
12 construction.

13 MR. CRABBE: I'm actually --

14 MS. JEFFERSON: Now, you're required
15 to carry workers' compensation coverage on yourself or
16 be listed on the exemption registry unless you fall
17 under some recognized exception. So the fees come
18 from the exemption registry.

19 Since this new law has been passed, the
20 new law we talked about earlier -- went into effect on
21 July 1st -- fees from -- monetary fees from the
22 penalties that we will assess will also be deposited
23 into that fund. So we'll have two sources of funding.
24 But keep in mind, we don't pursue this. Dan was
25 indicating earlier, we're not out here, trying to

1 pursue people who are doing the right thing. We have
2 legitimate businesses. We have businesses that are
3 not so legitimate. We have employers --

4 MR. CRABBE: I've seen my share of
5 that.

6 MS. JEFFERSON: -- who submit bids,
7 and unfortunately, they outbid other employers because
8 they don't include things, like, workers' compensation
9 premiums. They don't include unemployment insurance
10 taxes. They don't pay federal taxes, state taxes,
11 other state taxes.

12 MR. CRABBE: Right.

13 MS. JEFFERSON: So those are the ones
14 that this legislation is designed to -- for us to
15 investigate. We investigate those. We don't pursue
16 and just penalize. We go through a full
17 investigation, decide whether or not a penalty is even
18 warranted. Sometimes it's warranted. Sometimes it
19 may not be warranted. So I don't want you to think
20 our whole focus --

21 MR. CRABBE: Who determines that?

22 MS. JEFFERSON: We determine that,
23 based on the law, what the law requires. If the law
24 requires us to pursue, then we have no --

25 MR. CRABBE: And for the average

1 business owner, in order for me to debate that and
2 argue that --

3 MS. JEFFERSON: You're entitled to a
4 hearing. We have a --

5 MR. CRABBE: But then I've got to go
6 get the attorney. And that's --

7 MS. JEFFERSON: Are you incorporated?

8 MR. CRABBE: No, ma'am. General
9 partnership.

10 MS. JEFFERSON: If you're not
11 incorporated, you're not required to have an attorney.

12 MR. BAILEY: You can represent
13 yourself.

14 MS. JEFFERSON: You can come here.

15 MR. CRABBE: Yes, ma'am.

16 MS. JEFFERSON: You can show cause --

17 MR. CRABBE: I understand.

18 MS. JEFFERSON: -- why -- you can
19 just explain why you believe a penalty should not be
20 assessed against your business.

21 MR. CRABBE: Right. And you know,
22 incidentally, with workers' comp, never have to worry
23 about that. Again, I'm behind what you're doing.
24 Just the term "enforcement" really worries me. Thank
25 you very much.

1 MS. JEFFERSON: Thank you very much
2 for coming.

3 MR. CAPECE: Matthew Capece with the
4 United Brotherhood of Carpenters. Just earlier this
5 week, I met with an employer who told me about the
6 problems that he is having, competing against other
7 businesses who use labor providers who pay people off
8 the books. And I frequently meet with employers who
9 tell me the same thing.

10 And this employer who I met with earlier
11 this week is from Tennessee, and he is very happy
12 about the work this group is doing. He's someone
13 who's attended these meetings, and he's enthusiastic
14 about the penalty that was put in place. And because
15 in my job, I meet construction owners around the
16 country, and medium, large, and small construction
17 companies; Texas, Oklahoma, here, Maryland,
18 Connecticut, New York, all over the country.

19 And it's a similar story. They're looking
20 to see more enforcement of the law so they can be --
21 remain competitive and get jobs because they're the
22 tax payers, and they believe that it's a duty of the
23 State to protect them since they are paying the taxes
24 and doing what the law requires. So there are a lot
25 of voices out there, the contractor community and

1 people who come here earlier and -- earlier meetings,
2 and the work that you're doing here in Tennessee is
3 very much needed.

4 Some quick comments. I'll reserve some
5 comments on some points raised in the agenda. On the
6 metrics, think about the coattail effects that you all
7 will have when enforcing -- we have better enforcement
8 of workers' comp laws. There's going to be coattail
9 effects; things like additional UI assessment money
10 coming in due to your investigations. So think about
11 adding that to your metrics because you'll have that
12 kind -- your work will have that kind of benefit, as
13 we've seen in other states.

14 On the website tip form, I met with some
15 workers this week, working on a hospital project -- a
16 hospital project here in the state, and they don't
17 even -- they've run into other coworkers on the site
18 who have been paid off the books, and they -- those
19 other workers don't even know the name of the company.
20 So there are people who are the -- who can qualify as
21 employers who don't even have company names. And I
22 know, on your tip form, you have company name, company
23 this, company that. So just bear in mind --

24 MS. IVANICK: That's why we had
25 thrown in the license plate or a logo of the truck.

1 They're just driving white trucks, too, and no logo.

2 MR. CAPECE: That's true.

3 MS. IVANICK: I imagine most of them
4 do, you know --

5 MR. CAPECE: There's plenty of people
6 doing the dirt. For instance, the labor providers,
7 the larger construction companies, they don't even
8 have company names.

9 And on Bob's comments, Bob made some
10 excellent comments. I just want to let you know
11 that -- I want to add to the comments on the criminal
12 prosecution side. There's this issue about resources
13 were effective, prosecutions and investigations. If
14 there is an egregious case, let's say, off in a rural
15 county where there's, for instance, a factory being
16 built and there's an egregious violation there, you
17 don't want to lose out on a potentially good
18 prosecution because the DA's office out there is not
19 well-resourced, or the DA in that area isn't up to
20 speed enough to do a case like that.

21 So I think there is cause to have some
22 thought behind having someone and some entity or some
23 district to have some statewide prosecution authority.
24 And you should think about that.

25 MR. MILAM: Just -- not to get off on

1 it, but to interject. Local DAs do have the option of
2 requesting assistance from the Tennessee Attorney
3 General's office. They have the Enforcement Division.
4 They can specifically step in at the direction of the
5 Attorney General to assist with a particular case,
6 so --

7 MR. CAPECE: Good. Good. All right.
8 That's it.

9 MS. JEFFERSON: Next.

10 MR. HALE: Speak very quickly. You
11 have to type fast. We are here, and this Task Force
12 was created by the legislature because the insurance
13 companies were paying claims on residential
14 subcontractors. Okay? It wasn't because of
15 Mr. Pitts-type people. Commercial GCs, and even,
16 subcontractors on commercial work sites have much more
17 business acumen. It is, like, comparing between
18 Mr. Pitts' industry, commercial subs, and -- your
19 name?

20 MR. CRABBE: John Crabbe.

21 MR. HALE: And John's subcontractors.
22 It's, like, comparing apples to tennis balls. As a 33
23 insurance agent, Randy, am I right? When you do an
24 audit between a commercial contractor and a
25 residential?

1 MR. THOMAS: It is night and day.

2 MR. HALE: It could not be further
3 from the difference. The reason we are here, the
4 reason this Task Force was created is because the
5 insurance company says, we're paying claims -- when
6 Johnny is on top of a ladder and says, I'm an
7 independent contractor, who needs to become an
8 employee. Sometime between here and that floor.
9 Okay? And that was the problem. I'm just telling you
10 like it is.

11 Here's the problem: And so the insurance
12 company says, no, no, no can do. They send out Randy,
13 and all of a sudden, GC says, no, independents,
14 independents, independents. Insurance company gets,
15 Johnny falls off a ladder, Suzy falls off a ladder,
16 and they're covering the claim. They said, you can't
17 have it both ways. That's why, with all due respect,
18 Mr. Pitts, the law that says, everybody's got to have
19 workers' comp wasn't going to work because John has
20 got the right, in my opinion, and the reason that the
21 legislature almost caused a special session to
22 overturn the law. They said, you know what, it's
23 going to put this guy out of business. Okay?

24 It's trying to take commercial and
25 residential and make them one, and they'll never be

1 one. They'll never be one. Our problems today are
2 with the residential construction, as a whole. And I
3 was just telling Pam, death by 1,000 cuts. It's not
4 big people. That's why we've only got two cases in
5 this state that's been prosecuted. But we can go
6 out -- and I'm telling you.

7 You go out to Cheatham County, Dickson
8 County, Davidson County, and you can find about every
9 general contractor that's got contract labor. And
10 according to Pam, say, uh-uh, that's an
11 employer/employee relationship. It's a subculture,
12 and it's something that I don't know if we'll ever be
13 able to solve, but Mr. Pitts has got the more wisdom
14 than me.

15 MS. JEFFERSON: All right.

16 MS. SULLIVAN: Madam Chairman, just
17 very quickly. I've been referenced several times
18 here. I just wanted to make sure you know who I am.
19 Pam Sullivan, U.S. Department of Labor Wage and Hour
20 Division. I'm here because we are interested in
21 working with the State of Tennessee. We are
22 interested in working on getting an MOU. But whatever
23 information that we can share, as far as trends that
24 we see, what sorts of industries you're finding
25 misclassification in.

1 We're also interested in sharing
2 information, as far as contractors or employers that
3 we find that are in violation and making those
4 referrals to you all, and hopefully, vice versa. I'm
5 also interested in talking with any of you
6 stakeholders about concerns that you have, friends
7 that you see, referrals that you want to make. We --
8 I guess, I should back up and say, very briefly, what
9 it is we do.

10 We do enforce federal labor laws. That is
11 what we are charged with doing, enforcing federal
12 labor laws. The main law that we enforce is the Fair
13 Labor Standards Act, which covers minimum wage,
14 overtime, child labor, and recordkeeping. But
15 misclassified independent contractors and workers who
16 are being paid under the table are a big part of the
17 problems that we encounter.

18 This is where we find many of the minimum
19 wage and overtime violations, and sometimes child
20 labor violations, as well. So please -- I'd be glad
21 to give all of you my card and would like to speak
22 with anybody who's interested.

23 Mr. Crabbe, I appreciate your comments.
24 This is an ongoing investigation that we have, so I
25 can't comment on that right now. But I'll be pleased

1 to talk to you at a later time.

2 MR. CRABBE: That'd be great.

3 MS. JEFFERSON: All right. Well, if
4 you all don't have anymore comments, I move to
5 adjourn.

6 MR. SHINNICK: I second.

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8 END OF PROCEEDINGS.

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C E R T I F I C A T E

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

I, Sarah M. Motley, LCR, a Notary Public in
the State of Tennessee, do hereby certify:

That the within is a true and accurate
transcript of the proceedings taken before the
Employee Misclassification Advisory Task Force,
Tennessee Department of Labor & Workforce Development,
on the 11th day of July, 2013.

I further certify that I am not related to any
of the parties to this action, by blood or marriage,
and that I am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 29th day of July, 2013.

Sarah M. Motley, LCR #383
Court Reporter
My commission expires: 1/29/2017