

Commission in dark about black markets

State needs regulatory reform, not armies of new inspectors

By Steven Greenhut, U-T San Diego, March 16, 2015

SACRAMENTO — One of the most notorious features of the Soviet Union as it limped toward collapse were black markets. Rather than deal with that nation's myriad regulations and restrictions in the official economy, Russians relied heavily on these markets to survive.

A close look at the United States economy also points to a large and growing underground economy — not just for illegal goods and services such as drugs and prostitution, but for legal ones such as cigarettes and construction. Indeed, the more heavily taxed and regulated the activity, the more likely black markets will arise.

It's no surprise this is common in heavily regulated California. This month the state's independent oversight agency, the Little Hoover Commission, released a report ("Level the Playing Field: Put California's Underground Economy Out of Business") detailing the costs of what it calls an "insidious multibillion-dollar" marketplace.

Little Hoover focuses on a lack of enforcement: "The commission found the underground economy is growing and thriving in part because of insufficient resources for enforcement." It calls for more government officials, and for increasingly punitive measures

such as "bolstering asset seizure laws" that let the government, say, seize the trucks owned by unlicensed contractors.

The report sidesteps other possibilities. Many say California's tax and regulatory structure pushes people into the underground economy and that an enforcement-heavy approach will lead to more obtrusive inspections at private job sites, reduced economic activity, a bigger bureaucracy and more poverty given that many of those who work without licenses don't have the financial wherewithal to get them.

A guy who builds a deck without a license isn't the same thing as a pimp or a drug pusher. Yet prostitution is the world's oldest profession and shows no signs of going away. Likewise, the nation's drug wars haven't put the drug cartels out of business and never will. What's the likelihood that a new "war on handymen" or unlicensed hair braiders will put the underground economy out of business?

"People go underground because the paperwork, taxes and licensing are onerous," said William Anderson, a professor of economics at Frostburg State University in Maryland. "A lot of times (the scofflaws) are smaller guys who don't have the resources to comply. (These regulations) destroy jobs and

turn what would normally be law-abiding activity into criminal activity.” As a small example, I recently gave a speech at an event in Southern California, but was not allowed to personally sell my books unless I applied for and purchased a city business license. Is the problem a lack of enforcement agents to fine and possibly jail authors? Or is the problem an unreasonable regulation that does nothing to advance the safety of book buyers and sellers?

Because such rules often are so unreasonable and meant mainly to bolster local budgets or protect a powerful interest group (e.g., shop owners who don't like the competition), most people tend not to worry morally about breaking them. We find more regulations everywhere, with increasingly bizarre outcomes – such as cities shutting down children's lemonade stands, or sending SWAT teams to arrest people who sell raw milk.

“If we want to follow the letter of the law, we better not have the local kid (cut

your lawn); you better get a licensed contractor with permits,” Anderson added. This raises costs and it inserts government and lawyers into every private transaction. “Less gets done at a higher price ... and there are fewer opportunities for younger people to learn how to work,” he added.

Contractors and unions often lobby for more regulations because it gives them a competitive advantage over lower-cost businesses and workers. Then they complain “it isn't fair” that others ignore many of the edicts. “Taking more aggressive action against the underground economy is essentially about fairness,” agrees the commission.

But if commissioners were truly concerned about fairness, they would once again evaluate ways to make California's laws more reasonable, so there's far less benefit to ignore them. Unless, of course, they believe the Soviet Union's economy would have worked better had there only been better enforcement.

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<http://www.utsandiego.com/news/2015/mar/16/commission-sacramento-underground-economy-reform/>

Clean Air Performance Professionals (CAPP) would oppose these policies unless amended by random quality audit (secret shopper) to improve market performance.

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The interesting question might be ... “WWJD”?

CAPP contact: Charlie Peters

Is Comp Fraud Grant Funding Model a Solution for Underground Economy Fight?

By Employment Law Academy, March 16, 2015

Sacramento, CA - The California Little Hoover Commission, is an independent state agency charged with recommending ways to improve the efficiency and effectiveness of state programs. The Commission's recommendations are submitted to the Governor and the Legislature for their consideration and action. By statute, the Commission is a bipartisan board composed of five public members appointed by the governor, four public members appointed by the Legislature, two senators and two assemblymembers.

The Commission said in the 140 page report, that California businesses are losing ground to unscrupulous competitors who break the rules to gain an unfair advantage, in a report calling on the Governor and Legislature to more effectively fight the state's underground economy. The Commission found the underground economy is growing and thriving in part because of insufficient resources for enforcement. The Commission learned that many cheaters break the rules because getting caught is unlikely. If they are caught, few are charged in court. When found guilty, the profits from cheating often outweigh the fines and penalties. More, there is an abysmal record of collecting restitution. The state loses an estimated \$8.5 billion or more annually in tax revenue, yet efforts to combat the underground economy are disjointed and under-resourced, the Commission found. It reported that the state's bureaucratic disorganization and neglect provide significant incentives to cheat, making the rewards of participating in the underground economy outweigh the risks.

The Commission found that existing laws can be so confusing and inconsistent that even business owners who try to comply sometimes later learn they have broken rules. Recommended improvements include defining independent contractor in statute, bolstering asset seizure laws, and generally refining laws to improve clarity and to ensure rewards don't outweigh risks.

The Commission also recommends replicating the current workers' compensation fraud grant funding model to other high-fraud areas, enabling local district attorneys to increase their role in tackling the underground economy. Many stakeholders told the Commission that the workers' compensation grant model, financed by premiums paid by California employers for fraud investigations and prosecutions, is an effective funding model. Nearly \$59 million has been allocated for the FY 2015-16 grant cycle. A worker's compensation manager of a Fortune 100 company and member of the Fraud Assessment Commission, which determines how much grant funding will be available for the program, told Commission staff that good oversight is what makes the grant process effective. "The Fraud Assessment Commission pushes and pushes for counties to do better. We constantly tell them that they have to do better to get the money. And it works," he said. "If similar programs are established, you should create a similar mechanism that requires proven performance for funding."

Counties funded by the grant dedicate prosecutors to investigating workers' compensation fraud. "I have no

workers' compensation cases, because of the grant," the EDD Chief of Investigations told the Commission. Many district attorney offices have opened workers' compensation fraud sections, in part because of the grant. Representatives from the Orange County District Attorney's Office said the grant program allowed them to hire fraud specialists. "These cases can take years sometimes to get up to speed. The grant funding allows someone to build an expertise in fraud."

Prosecutors investigating workers' compensation fraud cases frequently uncover additional unlawful activity. San Bernardino Deputy District Attorney David Simon told Commission staff: "Workers' compensation fraud is just one spoke in a wheel of a wide variety of illegal conduct that we refer to as unfair business practices. This is what the Business and Professions Code defines as practices that unfairly advantage one business that disadvantage another business in the free market. We find that businesses without workers' compensation are often unlicensed to do contracting, engaging in cash-pay transactions and income tax evasion, not paying overtime or engaging in theft of labor. They're all related and a legitimate business person cannot possibly compete against the bid of these companies."

The Report concludes "Because of the effectiveness of the workers' compensation grant program, stakeholders suggested that it could be expanded and replicated in other high-fraud areas, including dedicated funding for complex cases." Read More...

<http://www.workerscompensation.com/compnewsnetwork/news/20933-is-comp-fraud-grant-funding-model-a-solution-for-underground-economy-fight.html>

CAPP contact: Charlie Peters

Op/ed: The underground economy cheats legitimate firms

by Pedro Neva, Pacific Coast Business Times, March 13th, 2015

It's tough to run a successful business in California. It's tougher when competitors undercut bids to gain an unfair advantage by ignoring rules and licenses, paying cash under the table and not carrying any or enough workers' compensation insurance.

This kind of cheating occurs daily throughout San Luis Obispo, Santa Barbara and Ventura counties — as it does statewide, the Little Hoover Commission found during its year-long review of California's thriving underground economy. The ease of this cheating and the widespread lack of consequences is patently unfair to the thousands of hard-working honest business people — and to their employees. And this phenomenon is gradually being allowed to undermine the economies of communities, regions and damage the state's business climate.

The Central Coast's communities focus intensely on economic development, crafting long-term strategies for job creation and retention. These strategies are a vital piece of maintaining the region's stellar quality of life. It is important that these economic development strategies also include a component for weakening the underground economy — with California's state government providing better-coordinated and more effective enforcement and educational campaigns.

The Little Hoover Commission was established in 1962 to help state government operate more efficiently and economically. In reviewing the

state's response to the underground economy, the commission found a jumble of agencies working on the issue but discovered that no one is in charge. It found the state legislature all too willing to pass new laws to regulate businesses, but seldom the necessary funds to enforce them. For years, the financial resources allocated to policing wage theft, tax fraud, employee misclassification and other characteristics of cheating in the underground economy has been the same or less — even as the size of the state economy and the number of California businesses have expanded drastically.

The commission's review found in many cases that honest businesses are asked to pay higher fees and surcharges to fund enforcement and restitution for the misdeeds of others. And yet, many businesses told the commission they see little enforcement against their cheating competitors. It became a common refrain for the commission to hear that cheating business owners have little fear of being caught, and if caught, they have little fear of paying significant penalties for the offense. When ordered by a court to pay restitution, it is unlikely the money will be collected. Even then, there is little to stop a business from shutting down and re-opening under a new name to conduct the same process all over again.

Contrast that with an employee seeking unpaid wages, who might wait a year for the legal process to play out and then get a small percentage of what they were owed. In too many cases,

employees of cheating businesses must silently put up with wage theft and abuse under the scenario that any job is better than no job.

The commission believes it is time that incentives for business success are aligned with the interests of honest employers and their workers. To that end it has made 15 recommendations in three key areas:

Accountability: Gov. Jerry Brown, in consultation with other leaders with jurisdiction over the underground economy, should appoint a temporary independent leader from inside or outside government to untangle overlaps in enforcement responsibilities and coordinate agencies within their respective silos. This leader should report back within six months with administrative or legislative changes to remove obstacles.

Enforcement: The state must better coordinate enforcement to remove the notion that cheating is an easy and

lucrative business model. The state should define who is and who is not an independent contractor to cut down on abuse of this job classification. The state also should provide more resources to local district attorneys to increase their role in tackling the underground economy.

Education: Making it easier to comply with the rules should be a priority. The commission recommends a one-stop source of information that shows how to legally own and operate a business, and also a single portal allowing business owners to interact with state entities.

Thirty years ago the Little Hoover Commission conducted a similar study of the underground economy and then, too, recommended more focused enforcement for the benefit of businesses that play by the rules. Its newest review finds that little has changed in 30 years – except for the underground economy growing larger. This is not an economic development strategy worthy of California.

• Pedro Nava is chairman of the Little Hoover Commission, which released its report on the underground economy on March 9. He formerly represented Santa Barbara and Ventura counties in the general assembly.

<http://www.pacbiztimes.com/2015/03/13/oped-the-underground-economy-cheats-legitimate-firms/>

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Republican chairman says EPA has 'muzzled dissenting voices'

By Timothy Cama, THE HILL, Tuesday, March 17, 2015

Republicans on the House Science Committee questioned Tuesday whether the Environmental Protection Agency's proposal to reduce ozone pollution would bring the promised benefits.

The panel, led by Rep. Lamar Smith (R-Texas), held a hearing with health and economic experts, and tried to poke holes in the EPA's contention that reducing the allowable level of ozone, a component of smog, would improve respiratory health.

Republicans on the committee also sought to highlight the forecast from NERA Economic Consulting that the regulation would cost well over \$1 trillion, an estimate that the EPA and the rule's supporters dispute.

"During earlier stages of this rule-making, EPA relied on studies with data that was not publicly available," Smith said at the hearing.

"This raises a lot of suspicions. Furthermore, the EPA has regularly chosen to disregard inconvenient scientific conclusions and muzzled dissenting voices," he said.

Smith used the hearing to promote two of the committee's bills that would restrict which scientific studies the EPA could use to justify its rules. The House will vote on the bills this week.

"There is no concrete evidence to support a lower standard for ozone before we have even complied with the last standard," said Rep. Brian Babin (R-Texas). "If anything, more research needs to be done," he added, while

accusing the EPA of using "a very limited set of studies."

The EPA proposed in November to limit ground-level ozone concentrations to between 65 and 70 parts per billion, down from the current 75 parts per billion.

The agency and groups supporting the rule say it would significantly reduce respiratory problems, including asthma attacks. That would reduce healthcare costs, missed days of school and work, and premature deaths.

"It's clear that air quality-related illnesses have a very real and destructive effect on the economy — on the order of hundreds of billions of dollars annually — and the benefits of reducing those effects will be seen throughout the country," said Rep. Eddie Bernice Johnson (D-Texas), the top Democrat on the committee.

Democrats also pointed to the Clean Air Act, which requires the EPA to set ozone standards based solely on the impact to human health and the environment, and can only consider costs in implementing the standards.

Rep. Suzanne Bonamici (D-Ore.) drew an analogy to medicine, using Dr. Mary Rice, a physician and instructor at Harvard Medical School who testified in support of the rule, as an example.

"You don't make your medical diagnosis based on the cost of treatment, you don't say to your patient, 'This is what you can afford, so this is what I'm going to diagnose,'" she said.

<http://thehill.com/policy/energy-environment/235951-lawmakers-question-benefits-of-epa-ozone-rule>

By Jay Leno

<http://autoweek.com/article/car-life/jay-leno-hates-ethanol?>

CAPP contact: Charlie Peters

California's Labor Enforcement Task Force Finds Most Businesses Out of Compliance

Cal/OSHA's inspections of 2,495 businesses during the past three years identified 7,131 violations, 15 percent of which were classified as serious violations. Violations in the garment industry, as well as safety, overtime, misclassification, and other types of violations, have been identified through the task force's 2012, 2013, and 2014 inspections, according to the report.

Mar 12, 2015

A new report summarizes the results of 2012, 2013, and 2014 investigations done by the California Department of Industrial Relations' Labor Enforcement Task Force, and it shows safety, workers' compensation, overtime, and other types of violations were identified at most of the inspected businesses. Cal/OSHA personnel inspected a total of 2,495 businesses as part of the task force during those years and found 81 percent of them were out of compliance, with a total of 7,131 violations identified, 15 percent of which were classified as serious violations. Initial assessment amounts on these Cal/OSHA cases totaled \$4,369,847.

Several other agencies participate in the task force, including DIR's Division of Labor Standards Enforcement (DLSE), the Contractors State Licensing Board, the Bureau of Automotive Repair, Alcoholic Beverage Control, and the state's attorney general and district attorneys throughout California, according to the 2015 report.

It says "over 40 percent of businesses inspected are found to be out of compliance with all inspecting agencies. Furthermore, instances of noncompliance were

consistently high across results reported for all three years, ranging from 63 to 94 percent and demonstrating the efficacy of joint inspections."

DLSE is checking for workers' comp, minimum wage, overtime, garment, and child labor violations, contractor's license violations, misclassification and unlicensed farm labor contractor violations, and violations involving rest periods and meal periods, among other things. Its personnel inspected 2,858 businesses during the period, with 53 percent of them found to be out of compliance, and identified a total of 2,516 violations and assessed \$22,363,976 for these violations.

The report includes an summary of activity by DIR's Roofing Compliance Working Group, which was launched in 2013 and is a collaboration of the task force partners, local district attorneys, roofing contractors, and unions. It aims to combat unsafe and unfair practices in the roofing industry. To date, the working group has conducted 22 inspections and cited more than 60 violations with nearly \$100,000 in initial penalties assessed, according to the report.

<http://ohsonline.com/articles/2015/03/12/task-force-finds-most-businesses-out-of-compliance.aspx?admgarea=news>

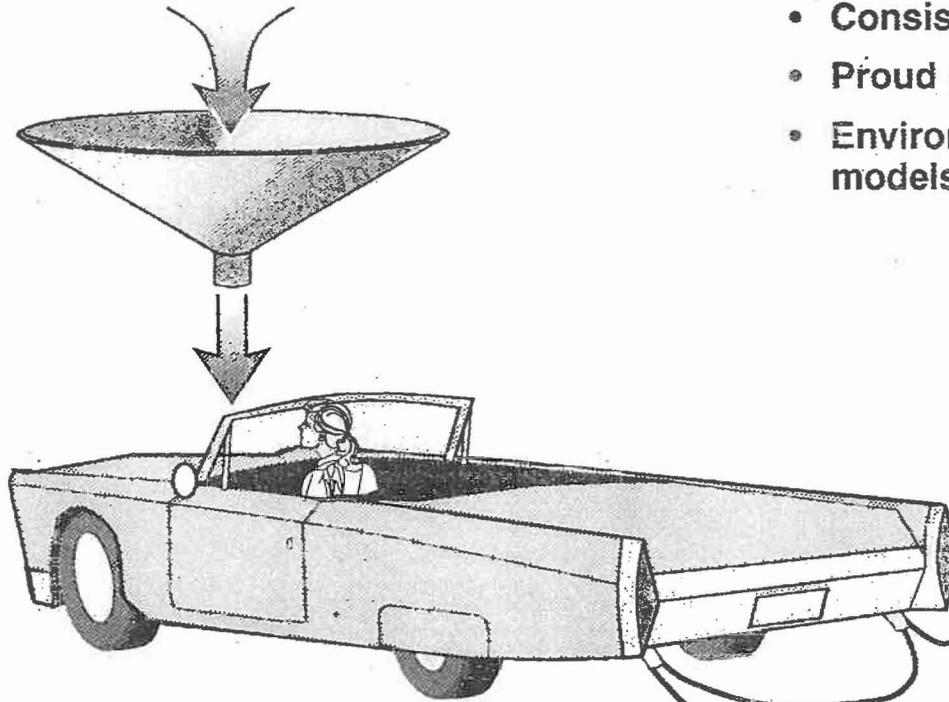
I'm Confused by compliance results. TQM has a goal of full compliance Can a change in performance matter? Is privatization the answer? Is fines and crimes the answer? Adding Demming TQM methods can improve compliance 50% in 1 year, and improve cost and profit of business. . A proof of concept performance pilot can demonstrate results in about 3 months. Mr Governor a 5 minute phone call can jump start California improved future. Charlie Peters (CAPP) 510-537-1796

CAPP contact: Charlie Peters



CAPP TQM/enhanced PICA Program

Responsible Quality Management



Outcome

Responsible State Government Management
will result in:

- Effective government
- Consistent and effective consumer service
- Proud professional repair industry
- Environmental impact superior to the models

