

STATE OF TENNESSEE  
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

EMPLOYEE MISCLASSIFICATION ADVISORY  
TASK FORCE MEETING

October 25, 2012

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## 1 Voting Members:

2 Kim Jefferson, Chair Designee

3 Mike Shinnick, Co-Chair Designee

4 Carolyn Lazenby

## 5 Ex Officio Members:

6 Dan Bailey

7 Nathan Burton

8 Martha Campbell

9 Jason Locke

10 Abbie Hudgens

11 Lynn Ivanick, Parliamentarian

12 James Milam

13 Randy Thomas

14 Dr. William Canak

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1                   CHAIRPERSON JEFFERSON: The  
2 meeting will please come to order. Good afternoon  
3 and welcome to the October 25, 2012 Task Force  
4 meeting.

5                   As you can see, Mike Shinnick is not  
6 here today. Mr. Shinnick is visiting with his  
7 family in California, so he's not here. However,  
8 Ashley Arnold is going to make a presentation on  
9 behalf of the insurance committee when she  
10 arrives.

11                   Also, at this time, I would just like  
12 to welcome Dr. William Canak to the Task Force.  
13 Mr. Canak is our newest appointee. And he is  
14 going to serve as the chair of the research and  
15 resource committee. So we're excited about him  
16 being on board.

17                   Do you-all have any other  
18 announcements before we get started?

19                   (No verbal response.)

20                   CHAIRPERSON JEFFERSON: If there  
21 are no other announcements, then we'll have the  
22 roll call by Ms. Lynn Ivanick.

23                   MS. IVANICK: Kim Jefferson?

24                   CHAIRPERSON JEFFERSON: Here.

25                   MS. IVANICK: Carolyn Lazenby?

1 (No response.)

2 MS. IVANICK: Mike Shinnick?

3 (No response.)

4 MS. IVANICK: Daniel Bailey?

5 MR. BAILEY: Here.

6 MS. IVANICK: Nathan Burton?

7 MR. BURTON: Here.

8 MS. IVANICK: Martha Campbell?

9 MS. CAMPBELL: Here.

10 MS. IVANICK: Dr. Canak?

11 DR. CANAK: Here.

12 MS. IVANICK: Jason Locke?

13 MR. LOCKE: Here.

14 MS. IVANICK: Abbie Hudgens?

15 MS. HUDGENS: Here.

16 MS. IVANICK: Myself.

17 James Milam?

18 MR. MILAM: Here.

19 MS. IVANICK: Randy Thomas?

20 MR. THOMAS: Here.

21 MS. IVANICK: So you have 1 of 3

22 voting members, Ms. Jefferson.

23 CHAIRPERSON JEFFERSON: I see

24 that Mr. Locke just walked in.

25 MS. IVANICK: Okay. Yes, I did

1 catch him.

2 CHAIRPERSON JEFFERSON: Okay.

3 MS. IVANICK: 9 of the 9  
4 nonvoting members for a total of 10 of 12.

5 CHAIRPERSON JEFFERSON: Okay.  
6 Great. Do we have a quorum?

7 MS. IVANICK: Not a voting quorum  
8 but we have a quorum, the 10 of 12, yes.

9 CHAIRPERSON JEFFERSON: Okay.  
10 Great. And the other items on the agenda, if they  
11 require voting, then they will only be  
12 informational at this point.

13 Next on the agenda is the  
14 September 27, 2012 meeting minutes. All of our  
15 meeting minutes can be found on the Task Force  
16 website. If you don't have the Task Force  
17 website, let me know. And we can make sure we  
18 provide that for you. A copy of the meeting  
19 minutes are on the table as well, so if you didn't  
20 get an opportunity to read those, then you can  
21 have one from the table.

22 And does everyone have a copy of the  
23 October 25th, 2012 agenda? As you can see, our  
24 agenda is not as detailed as it normally is.  
25 Today it's going to be rather brief. We expected

1 a really brief agenda today to mainly allow the  
2 committee chairs to make their presentations,  
3 their committee reports.

4 In addition, I had wanted responses  
5 from the public. I wanted public comments. But I  
6 don't really see that many people here. How many  
7 people plan to make public comments today?

8 (No verbal response.)

9 CHAIRPERSON JEFFERSON: Carolyn  
10 Lazenby is here.

11 MS. IVANICK: We do now have a  
12 voting quorum as well.

13 CHAIRPERSON JEFFERSON: We do.

14 And at this time, I think it would be  
15 proper for us to determine whether or not we want  
16 to adopt the September 27, 2012 meeting minutes.  
17 Can I have a motion?

18 MS. LAZENBY: I make that motion.

19 CHAIRPERSON JEFFERSON: I second.

20 MS. IVANICK: The adoption of the  
21 September 27 meeting minutes has been moved and  
22 properly seconded. Is there any discussion?

23 (No verbal response.)

24 MS. IVANICK: All those in favor?

25 (Affirmative response.)

1 MS. IVANICK: All opposed?

2 (No verbal response.)

3 MS. IVANICK: And the "ayes" have  
4 it and the motion carries.

5 CHAIRPERSON JEFFERSON: And at  
6 this time, we need to determine whether or not we  
7 need to adopt the October 25th, 2012 agenda.

8 MS. LAZENBY: I make that motion.

9 CHAIRPERSON JEFFERSON: I second.

10 MS. IVANICK: The motion to adopt  
11 the October 25th, 2012 agenda has been made and  
12 properly seconded. Any discussion?

13 (No verbal response.)

14 MS. IVANICK: All those in favor?

15 (Affirmative response.)

16 MS. IVANICK: All opposed?

17 (No verbal response.)

18 MS. IVANICK: The "ayes" have it  
19 and the motion carries.

20 CHAIRPERSON JEFFERSON: Thank  
21 you.

22 The next item on the agenda are the  
23 committee reports. The first committee report is  
24 the insurance committee, but I don't see Ashley  
25 yet. She should be on her way. Until she

1 arrives, let's just go to the next committee  
2 report. And that's a committee report by Dan  
3 Bailey who represents the legal committee.

4 MR. BAILEY: I'm going to pass  
5 out a handout that was not on the table.

6 What I'm going to report on is not a  
7 report by the legal committee. We did not have a  
8 legal committee meeting since the last Task Force  
9 meeting. But we have met with some fraud  
10 detection software vendors. And, actually, Mike  
11 was going to make this presentation, but as Kim  
12 said, he's out of town today, so he asked if I  
13 would do it.

14 But basically, I just tried to put on  
15 that paper, that was handed out, the information  
16 that we have as of now regarding SAS, which is one  
17 of the fraud detection software vendors. In fact,  
18 they presented at our last Task Force meeting, if  
19 you will recall. And they have some experience in  
20 this.

21 Basically, as I note at the top  
22 there, prices of the options below are based on  
23 the system being hosted on a Tennessee Department  
24 of Labor server. So that's what these prices are  
25 based on.

1           And there's two options. Option 1 is  
2   licensing and modeling/scoring of leads for  
3   workers' compensation misclassification issues  
4   only. And it tells what the assumptions are, the  
5   expected data sources, and a potential data  
6   source.

7           The cost for Option 1 is \$550,000 for  
8   the first year. After that, licensing fees after  
9   the first year are \$107,800 per year.

10          For Option 2, which includes  
11   licensing and modeling/scoring of leads for  
12   workers' compensation and unemployment insurance  
13   tax misclassification -- and again, it tells the  
14   assumptions that were made, the expected data  
15   sources -- the cost for the second option is  
16   \$895,000 for the first year. Licensing fees after  
17   the first year are \$175,420 per year.

18          The second page tells you, at the  
19   top, what hardware would be needed for the  
20   Tennessee Department of Labor to host the system.  
21   And below that is the Tennessee Department of  
22   Labor information technology's response to the  
23   hardware needed with associated costs.

24          Now, one thing I did not -- I sought  
25   information from our IT department regarding some

1 of these costs -- these are per-month costs --  
2 but, like, at the bottom where it talks about data  
3 storage SAN first TB -- I don't even know what  
4 that means -- per GB -- which I understand that to  
5 be gigabyte -- per month, 3.05.

6 Now, what I don't know is how many  
7 gigabytes would be a reasonable estimate that we  
8 would use per month, so I posed those questions to  
9 IT and did not get a response by the time of this  
10 meeting. So I don't know exactly how much more  
11 per month that would actually add to the monthly  
12 cost. It looks like it would be somewhere between  
13 \$1,600 and \$2,000 more per month for the Tennessee  
14 Department of Labor to host it.

15 I also did ask SAS for a price for  
16 them hosting the system, and they said they would  
17 get back to me on that, but I had not heard from  
18 them by the time this meeting occurred. The  
19 advantages to SAS hosting the system would be that  
20 the project implementation would be faster. There  
21 would be no hardware that we would need, our IT  
22 people would need, to obtain, and there would be  
23 no IT support needed from your IT people other  
24 than the data fee to SAS. But I do know for them  
25 to host it, the licensing fees that -- the yearly

1 licensing fees that are on the front page will be  
2 higher. How much higher I do not know.

3 So that's my presentation on SAS.  
4 Does anybody have any questions?

5 MR. BURTON: I don't have any  
6 questions but I do have a comment. I think as  
7 you're exploring those options, especially the one  
8 used by SAS, the hosted option, you need to make  
9 sure either way whether it's in-house, or if they  
10 host it, you need to make sure, when you're  
11 talking with your IT people, that you're talking  
12 about making sure that you've got a plan to secure  
13 the data --

14 MR. BAILEY: Right.

15 MR. BURTON: -- because you've  
16 got data from different agencies.

17 So in our case it's not that big of a  
18 deal because it's public data. When you start  
19 talking about motor vehicle registration records,  
20 that's a whole, different ballgame.

21 MR. BAILEY: Right.

22 MR. BURTON: So you've got to  
23 think about that. And the data storage fees, to  
24 get there cost-wise, it's really going to each of  
25 those agencies where you want the data and asking

1     them to get with their IT people so you can get a  
2     feel for their current data base size and then you  
3     can calculate.  "TB" is terabyte, so once you get  
4     beyond the first terabyte, the price goes down  
5     because you've got storage capacities and it's  
6     kind of the same rule of the more you use it's  
7     cheaper because you've already kind of got the  
8     hardware in place.

9                     So I would caution you.  I think one  
10    of the natural tendencies when you're talking  
11    about support from a state infrastructure  
12    perspective, from IT, it's very easy to say if  
13    somebody else hosts it, it doesn't take a lot of  
14    support.  I will tell you, that's a common  
15    misconception that comes back to bite you later.

16                    You've really got to understand and  
17    delineate who is doing what, because there's  
18    things that, you know, when you don't have IT  
19    people in the room, that we don't think about.  
20    But when you put the IT people in the room,  
21    they'll say, well, what about this and what about  
22    this and what about this and what about this?  And  
23    all of a sudden, it goes from, "Well, it really  
24    doesn't take that much" to "Uh-oh, I need a person  
25    to do that."

1                   So you only get one bite at this  
2 apple in terms of making sure that you cost model  
3 it right. So you've got to get down in those  
4 details and get those IT people around the table  
5 to make sure you've got a good estimate and you've  
6 clearly delineated who's responsible for what.

7                   CHAIRPERSON JEFFERSON: We were  
8 very fortunate, because at one of the SAS  
9 presentations, we did have the privilege of having  
10 the IT person there. She's unable to attend this  
11 meeting today and she was unable to attend the  
12 other day, Tuesday, when we had a telephone  
13 conference, but she is involved. But you're  
14 exactly right. We do have to have them around the  
15 table. Because we don't know enough about IT  
16 to --

17                   MR. BURTON: And you need to make  
18 sure that if you're using other agencies' data,  
19 that you've got an IT rep from those agencies at  
20 the table as well, because it's really important  
21 to make sure -- because then you're talking about  
22 data flow one way or the other or both.

23                   CHAIRPERSON JEFFERSON: Right.

24                   MR. BURTON: So it's important to  
25 make sure you've got all the agencies represented

1 around the table when we're talking about that  
2 data as well as who is going to have access to it.  
3 You've got to make sure that if you get in certain  
4 places that you've got the right firewall rules on  
5 them, on the firewalls, so the right people can  
6 access it, the people who don't need access don't  
7 have access to it.

8                   It's just one of those things. You  
9 think, oh, it's -- when it comes up -- everything  
10 is easy if you don't have to do it, so making sure  
11 you've got those IT people around the table from  
12 all the agencies to make sure we scope this thing  
13 correctly.

14                   MR. BAILEY: There's also another  
15 vender that came into the picture as of yesterday.  
16 It's called On Point. I don't know if you have  
17 had contact with --

18                   CHAIRPERSON JEFFERSON: Actually,  
19 I have not had an opportunity to obtain additional  
20 information. I did become aware that the  
21 Department is already contracting with the company  
22 called On Point Technology. I don't know all the  
23 details, when the contract began, how long it  
24 lasts, whether or not it will accommodate workers'  
25 comp or not, but that's something we have to take

1 a look at.

2 Now it seems as though we need to  
3 allow that vender to make a presentation for all  
4 of us. That way we can listen and we can ask the  
5 questions and we can bring the proper people to  
6 the table.

7 MR. BAILEY: They're currently in  
8 the Employment Security Division as an active  
9 contractor.

10 CHAIRPERSON JEFFERSON: Yes.

11 DR. CANAK: Dan?

12 MR. BAILEY: Yes?

13 DR. CANAK: Do we have any sort  
14 of ballpark estimates, if we implement this, what  
15 changes in revenue might offset some of these  
16 expenses?

17 MR. BAILEY: I don't have those  
18 with me. There were some figures that were given  
19 for -- I think it was Louisiana -- as to their  
20 before and after and stuff like that.

21 And just, you know -- I mean, one of  
22 the things that has come out of this is that the  
23 assumption is, I guess, or the thinking is there's  
24 a lot of low-hanging fruit out there. It's just a  
25 matter of, you know, being able to put the

1 spotlight on them through one of these type  
2 systems.

3                   And all the vendors we've talked to  
4 have talked about implementing it in stages and,  
5 you know, maybe put in enough right now to go  
6 after some of the low-hanging fruit and see the  
7 revenues you can draw back in through that. And  
8 that then will justify advancing and implementing  
9 another stage to maybe dig deeper. I didn't bring  
10 those kinds of figures with me, though. But it's  
11 been pretty significant, but --

12                   DR. CANAK: But it's easier to  
13 look at this if it's an investment and not an  
14 expense.

15                   MR. BAILEY: Exactly.

16                   DR. CANAK: That's the way I look  
17 at it.

18                   CHAIRPERSON JEFFERSON: And keep  
19 in mind, too, the Task Force, our duty is to  
20 explore all these different options and be  
21 prepared to discuss those options in our next  
22 annual report. Ultimately, the Department will  
23 have to decide which program they decide to  
24 purchase, if they purchase one, or whether or not  
25 they want to stick with the On Point, the one that

1 exists.

2 But for our purposes, I guess, the  
3 best thing for us to do is to determine whether or  
4 not the need exists first, whether or not we need  
5 to pursue this type of system. And if so, to  
6 present all of the information to the legislature,  
7 to the committee chairs. So as long as we do  
8 that, I think we're on the right track. I think  
9 that's our goal.

10 So if you-all don't have any other  
11 questions for Dan...

12 (No verbal response.)

13 CHAIRPERSON JEFFERSON: Thank  
14 you, Dan.

15 Next on the agenda is Martha Campbell  
16 representing the enforcement committee.

17 MS. CAMPBELL: I will be brief.  
18 When we had our last Task Force meeting, which was  
19 back in September, I had felt bad because we  
20 hadn't had an enforcement committee meeting and we  
21 didn't have another report, so I made sure that we  
22 had -- even though it was kind of a short  
23 turnaround, we had an enforcement committee  
24 meeting on the 16th, which I believe was last  
25 week. And we had there me, Alex -- who's not here

1 today -- Norman Auffhammer, and John Basford,  
2 Blake Alford, James Milam, and Jason Locke.

3 And the main thing I wanted to do in  
4 that committee meeting was work on what we had  
5 already, previously submitted, and work towards  
6 our submission for the final report.

7 Kim, when do we need to get those in,  
8 by the way?

9 CHAIRPERSON JEFFERSON: As far as  
10 your individual reports?

11 MS. CAMPBELL: Yes.

12 CHAIRPERSON JEFFERSON: I sent an  
13 email yesterday and I believe it was mid November.

14 MS. CAMPBELL: Okay.

15 CHAIRPERSON JEFFERSON: I'll  
16 verify the dates.

17 MS. CAMPBELL: All right. I hope  
18 that perhaps we can have those submissions in time  
19 for me to prepare a report and get it in, but it  
20 was such a short turnaround. And I made  
21 assignments to various individuals and they just  
22 weren't complete by the time I could prepare a  
23 report for this meeting. And quite frankly, I  
24 felt like, well, I would rather have a good,  
25 accurate, expanded, you know, final report and

1 submit it than hurry up and get something in soon.

2 But I will say that we looked at all  
3 of the different provisions that we had discussed  
4 in our earlier report that was from the June 27th  
5 meeting, which is what is set out. What is set  
6 out in the current report is simply what we talked  
7 about before.

8 But we looked at really each and  
9 every issue and discussed, you know, how we can  
10 expand upon it, how we might be able to refine it,  
11 and how we might be able to verify it. And that's  
12 what the various committee members are working on  
13 now. So I hope by November we will have that  
14 report prepared and it will be in final form,  
15 ready for the annual report. So I'm not going to  
16 go over all those provisions again.

17 But I will say that one thing that  
18 we're going to recommend in the final report,  
19 we're going to include a recommendation regarding  
20 stop-work orders. And I think Blake and Alex are  
21 working on that. I don't think that we have any  
22 particular format of the work order prepared yet.  
23 But we think that's an important tool that can be  
24 used in employee misclassification.

25 As I said in the report, statutory

1 authority to issue and enforce targeted stop-work  
2 orders against violating employers who fail to  
3 comply with the workers' compensation law are an  
4 invaluable and necessary tool for bringing  
5 employers who engage in employee misclassification  
6 practices into compliance with the law. Short of  
7 criminal prosecution, which is costly, time  
8 consuming, labor intensive and has a high burden  
9 of proof, issuing and enforcing a stop-work order  
10 against a violating employer may be the only way  
11 to bring some violators into compliance.

12                   Therefore, we are going to make our  
13 recommendation on that, and that will be included  
14 in our final report. And that is about all I have  
15 to tell the committee members.

16                   CHAIRPERSON JEFFERSON: As far as  
17 stop-work orders --

18                   MS. CAMPBELL: Yes, stop-work  
19 orders.

20                   CHAIRPERSON JEFFERSON: -- now,  
21 you know that there was a recommendation in our  
22 last report for that.

23                   MS. CAMPBELL: Well, we want to  
24 include it again in the enforcement committee  
25 report. So basically all I can report to you is

1 that we are working on our final report and hope  
2 that it will be a good one.

3 CHAIRPERSON JEFFERSON: Okay.  
4 Great. Thank you, Martha.

5 And just to revisit what's needed for  
6 the 2013 annual report, last year we actually took  
7 a look at Tennessee Code Annotated 50-6-919,  
8 Subsection (b), and we studied Items 1 through 6.  
9 This time we're studying Items 7 through 13. And  
10 those are the ones that we need recommendations  
11 for.

12 I guess the various committees would  
13 need to take a look at the various items and  
14 determine which item applies to their committee  
15 and decide whether or not they want to make  
16 recommendations for those specific items.

17 And this particular report will focus  
18 more on progress and solutions. And what I would  
19 hope to include would be piecharts from various  
20 divisions, workers' comp division, the IT  
21 division, maybe something from the Secretary of  
22 State office, from the Board of Licensing  
23 Contractors so that we can show actual numbers,  
24 what's being done.

25 In addition, I have reports from the

1 different committees. Bring all of that  
2 information so that we can review -- establish a  
3 review committee like we did the last time so we  
4 can all review that information and determine what  
5 needs to be in the report and what we don't need  
6 to include in the report.

7 Do you-all have any other suggestions  
8 as to what should be included in our 2013 annual  
9 report? Do you feel those items are sufficient or  
10 should we focus --

11 MR. BAILEY: Should we go ahead  
12 and let Ashley present?

13 CHAIRPERSON JEFFERSON: Yes.

14 Are you ready?

15 MS. ARNOLD: Yes.

16 CHAIRPERSON JEFFERSON: Next on  
17 the agenda is Ashley Arnold. She is going to  
18 present on behalf of the insurance committee.

19 MS. ARNOLD: Good afternoon. I  
20 apologize to everyone. My lunch ran late and  
21 consequently I ran late.

22 Kim may have told you-all that Mike  
23 sends his regrets. He was out of town this week  
24 so he asked that I present.

25 Ashley Arnold, the general counsel

1 interests of Tennessee, for the court reporter.

2 I know that Dan talked to y'all about  
3 the SAS presentation. Yesterday we had the  
4 opportunity, as well, to hear from RiskMetrics  
5 and -- I want to get the company's name right --  
6 Insurance Technology, which is Kevin Hale's  
7 company, which I know he has talked to you-all  
8 about some solutions on this in the past as well.

9 Basically, what Kevin presented to us  
10 yesterday is after research and working with the  
11 Department of Labor, which has been, I know, a  
12 good relationship. In talking to the IT folks and  
13 some other things, he decided that collaborating  
14 with RiskMetrics, who is currently working with  
15 NCCI and provides, I think they said, over 30  
16 states with work comp data today, would make more  
17 sense and would present a more, I would say,  
18 consolidated solution for the state of Tennessee.

19 What they came to us yesterday and  
20 said is they have come up with a solution which  
21 would be a turnkey solution for the state of  
22 Tennessee to get where they need to be, not only  
23 for construction, but they could use it for all  
24 areas of workers' compensation. Because the data  
25 they're getting that's being funneled into their

1 software would be all work comp data, not just  
2 construction codes, although they could drill down  
3 and then an investigator could use any portion of  
4 the information that they needed.

5           Basically, they set forth a proposal  
6 that -- it was four-pronged -- that I talked to  
7 Kevin McCarthy afterwards, who's with RiskMetrics,  
8 and I said I think one of the prongs is the  
9 touchy-feely which is the education outreach. But  
10 the meat of their solution was aggregating the  
11 data, integrating the data, and analyzing the  
12 data.

13           Basically, what their solution would  
14 do would be to take data from NCCI, the proof of  
15 coverage data, unemployment insurance data,  
16 Secretary of State, and then additional potential  
17 areas, which we've talked about on the phone,  
18 would be commercial auto insurance information,  
19 licensing boards, like the contractor's licensing  
20 boards, as well as the relationship that they  
21 already currently have with Dun & Bradstreet,  
22 Experian, and LexisNexis, pulling all of that  
23 together, analyzing the data to create useful  
24 information for the investigators to be able to go  
25 out and target, like you said, the low-hanging

1 fruit or the people that they feel like are  
2 currently potentially not complying with the law.

3 All of that being said, getting down  
4 to brass tacks, what's it going to cost? They,  
5 without a specific RFP, are working with general  
6 numbers, but he said they're looking at an annual  
7 cost of \$500,000 to \$800,000 a year. We talked  
8 about some of that. He said the primary cost of  
9 that would be pulling the data in from the various  
10 sources, making sure it's usable data, it works in  
11 their system, and then turning it back around.

12 We've printed for you-all the  
13 PowerPoint presentation that they provided. I  
14 would point out a couple of things that I thought  
15 were unique or useful. In addition to the  
16 reports, an investigator can seek specific  
17 information based upon working with the State and  
18 figuring out what they're looking for. But  
19 also -- and I thought, personally, this was kind  
20 of unique -- is that there's a visual --

21 (Interruption to the proceedings  
22 after which a recess was observed.)

23 MS. ARNOLD: As I was saying, one  
24 of the unique things about their software, if you  
25 look at pages 7 and 11 of the PowerPoint

1 presentation, they use a visual as well as a  
2 report-based mechanism for identifying targets to  
3 look at, which, actually, I thought was quite  
4 fascinating because it would allow an  
5 investigator -- currently how it's set up that  
6 they're using it in Florida is for an  
7 investigator -- excuse me, not an investigator --  
8 the red dots that you see on page 11 are any  
9 policies that have canceled. And he said that  
10 they have found that policies that have canceled,  
11 oftentimes there are more cancellations than there  
12 are companies that have gone out of business. And  
13 that raises some red flags because -- it may not  
14 be specifically construction related, but that  
15 raises red flags as to businesses or entities that  
16 could potentially not be carrying workers'  
17 compensation for some reason that otherwise should  
18 be carrying workers' compensation.

19 I believe that they could change  
20 those parameters to show other things, depending  
21 upon what the State needed or wanted to show up in  
22 red, yellow, or green or whatever. So he said it  
23 allows for an investigator to have an opportunity  
24 to pinpoint and target where they want to go and  
25 then even go so far as to plot out the actual

1 route, the quickest route to take to get to all  
2 those locations in a day.

3           But that being said, a couple of  
4 things I wanted to mention that I think were the  
5 benefits that I heard from the presentation about  
6 the system, once again, RiskMetrics' insurance  
7 technology solution is a turnkey solution. What  
8 that means to the State of Tennessee is that there  
9 is no cost regarding servers, regarding housing  
10 data, any of those things that go into, I know,  
11 the SAS proposal. It would be housed in a  
12 cloud-based server facility. The one that they  
13 currently use is, he said, the largest cloud-based  
14 server data storage facility in the United States.  
15 It's in Florida.

16           And it -- of course, because of the  
17 data that they currently are keeping, they have  
18 all of the security measures and everything,  
19 protocol, in place to keep the data secure at all  
20 times. The second thing he said is that it can  
21 be -- the entire system can be created and  
22 implemented in three to four months once you say  
23 go. And it doesn't require any retrofitting of  
24 current state systems and it doesn't require any  
25 state employees to be trained to use the software.

1 Because my understanding of some of the other  
2 solutions are there are software programs that the  
3 state employees would be required to enter the  
4 data into and/or manage in some way different from  
5 RiskMetrics, where they manage the data, they  
6 massage it, they analyze it, and then would train  
7 the investigators and/or any other state employees  
8 that wanted to use it how to pull the data and the  
9 reports out so that literally all they're doing is  
10 that the investigators are getting information and  
11 then going after the targets as opposed to having  
12 state employees that are having to massage the  
13 data on this end.

14                   So no servers to purchase or  
15 integrate with. It's cloud based. And I think  
16 personally -- or -- one thing that I heard them  
17 say that I think would be useful or could be a  
18 benefit is, in addition, you have the local  
19 support, obviously, with Insurance Technology.  
20 But with RiskMetrics, they're more of a partner, I  
21 would say, as opposed to a vender. And so I think  
22 that that could have some benefit. If there are  
23 questions or problems or concerns, the guy we were  
24 talking to is the guy that answers and solves the  
25 questions or problems or concerns. So that is, I

1 think, a benefit from working with just a software  
2 vender.

3 Other than that, he just wanted me to  
4 let y'all know that the pricing variable that's in  
5 there has to do with how many data bases, what  
6 kind of shape the data bases are in today, and  
7 what would need to be done to them to get them so  
8 that they will merge and talk to the other data,  
9 frequency of updates, number of users and number  
10 of reports and things like that that the State  
11 would want, which is all information that would be  
12 decided later.

13 That's pretty much a very short  
14 summary of an hour-and-a-half-long presentation.  
15 Any questions or thoughts?

16 (No verbal response.)

17 CHAIRPERSON JEFFERSON: All  
18 right. Thank you, Ashley.

19 I had scheduled a break here, but  
20 since we just had one, we won't need to do that.

21 The next thing -- do we have anyone  
22 who would like to make a public comment? Anyone  
23 who would like to comment?

24 (A non-verbal response was made.)

25 CHAIRPERSON JEFFERSON: When you

1 take the podium, if you could introduce yourself  
2 and your organization, please.

3 MR. MOORE: I'm Gary Moore,  
4 president of the Tennessee AFLCI. Let me first  
5 say I appreciate the work the committee has done.  
6 And what I appear to be looking at here -- is this  
7 not the full committee report, or is this just a  
8 report that is identifying procedures by which you  
9 can track the --

10 CHAIRPERSON JEFFERSON: Which  
11 report are you referring to? Are you talking  
12 about one we submitted today?

13 MR. MOORE: Yes, ma'am.

14 CHAIRPERSON JEFFERSON: No.  
15 Those are individual subcommittee reports.

16 MR. MOORE: Okay.

17 CHAIRPERSON JEFFERSON: I'm not  
18 sure if you have a copy of the actual 2012 annual  
19 report. If you don't have a copy of that, we'll  
20 get you a copy of that. That's the actual report  
21 that was submitted to the legislature back in  
22 January.

23 MR. MOORE: And without actually  
24 having fully read the report -- I have briefed  
25 it -- but I just simply want to make a statement

1 that I appreciate the work the committee has done.  
2 And hopefully, some workers' comp reform -- I've  
3 sat in -- I'll just leave it at that -- on several  
4 committee meetings that dealt with the workers'  
5 comp reform, and I think one of the things lacking  
6 was no data on how many cases were actually  
7 misclassifying personnel. We knew it existed but  
8 we didn't know how many and to what extent. So I  
9 think this will probably help track that.

10 But one thing I think -- and the  
11 committee may have addressed this -- but I think  
12 one that definitely needs to be addressed is field  
13 personnel in order to police, if you would,  
14 anything that this committee may recommend  
15 implementing. And it doesn't do any good to  
16 identify who the culprits are, if you would, if  
17 you don't have any kind of enforcement on.

18 And in addition to that, I think it  
19 would be -- and again, the committee may have a  
20 recommendation in their full report as to what's  
21 the penalty. You know, if you're going to slap me  
22 on the wrist because I misclassify somebody, guess  
23 what? I'm going to come back and I'm going to  
24 misclassify them again. So I hope the committee  
25 has addressed that.

1                   And I will, believe me, take the time  
2 to look at this in more detail, but I appreciate  
3 the opportunity to address the committee, and I  
4 thank you for your work.

5                   CHAIRPERSON JEFFERSON: And thank  
6 you for your comments.

7                   MR. MOORE: Sure.

8                   CHAIRPERSON JEFFERSON: And I'm  
9 sure you'll be pleasantly surprised when you  
10 review the report, because in the first report, we  
11 did address additional personnel, we addressed the  
12 administrative penalties, as well as stop-work  
13 orders.

14                   MR. MOORE: Have y'all  
15 identified, without looking at this, what  
16 percentage of contractors may be -- especially  
17 contractors, I think that's where most of the  
18 infractions lie -- but have y'all identified  
19 possibly what percentage have been misclassifying?

20                   CHAIRPERSON JEFFERSON: Yes.  
21 Dr. Canak did in his report.

22                   DR. CANAK: I did a report that  
23 was made public in 2010. And we have similar  
24 studies using various methodologies that are very  
25 comparable from many states, and they all, within

1 a range, are fairly comparable for the  
2 construction industry. And we can show you where  
3 those are.

4 MR. MOORE: The subcommittee  
5 report is addressing more of a mechanism for  
6 tracking from what I can see, and evidently --  
7 does Florida already have a system like that in  
8 place?

9 DR. CANAK: Yes.

10 MR. MOORE: And I'm sure you have  
11 a history on Florida's --

12 DR. CANAK: Yes.

13 MR. MOORE: -- work and their  
14 success rate? That's great. And, again, I  
15 appreciate the committee's work. Thank you.

16 CHAIRPERSON JEFFERSON: Thank  
17 you.

18 Does anyone else have any comments?

19 (No verbal response.)

20 CHAIRPERSON JEFFERSON: If not,  
21 the last item on the agenda is the 2013 annual  
22 report, if we can talk about that a bit, and then  
23 we'll adjourn the meeting.

24 If we can just have you-all to throw  
25 out -- before Ashley spoke, we had started

1 discussing the 2013 annual report and what the  
2 report should include. Do you-all have  
3 suggestions as to what the report should include?  
4 I had previously thrown out that the committee  
5 reports -- the final reports, we would get  
6 together after everyone completed their committee  
7 report and we would review that, review those  
8 reports as a group like we did the first time.

9           We would also have piecharts for  
10 workers' comp to determine specific numbers,  
11 non-construction versus construction, number of  
12 investigations and some other statistics that  
13 we're looking at.

14           The Unemployment Insurance Tax  
15 Division previously prepared a piechart which I  
16 believe we can use. If the Secretary of State's  
17 office would like to prepare a chart to talk about  
18 the exemption registry, then that would be  
19 helpful.

20           The Board of Licensing Contractors,  
21 if you-all could somehow track the cases, number  
22 of investigations and so forth, that would be  
23 helpful. If any of the other agencies would like  
24 to prepare piecharts for the report, that would be  
25 helpful.

1                   Of course, we would have a letter to  
2 the committee chairs, like we did before, an  
3 executive summary. I think the efforts and  
4 progress portion would be helpful to describe what  
5 we've done so far, and those reports and the  
6 piecharts.

7                   Can you-all think of anything  
8 additional?

9                   MR. BURTON: I think to the  
10 extent that you can include an update on any items  
11 where we made recommendations and then took action  
12 so that it has the outcome to show here is one the  
13 recommendations, here is the action that was  
14 taken, and here is the result. And I think it  
15 ties back together. So we need to go back through  
16 the recommendations and future action items and  
17 make sure, if there are any actions that we've  
18 taken, that we note those. And I think that  
19 builds that track record of here is what we said  
20 was important, here is what we've done. Now,  
21 based on that, here is what we're doing going  
22 forward.

23                   CHAIRPERSON JEFFERSON: And  
24 that's a good point, because if you look at page 2  
25 of that executive summary -- or of the annual

1 report -- page 2, under the initial  
2 recommendations, you'll see what we recommended in  
3 the first report. And then under future action  
4 items, these are the items that Nathan was just  
5 referring to. Educate employers and employees.  
6 We were to establish a website including a fraud  
7 tip line and tip form, which we've done, so we  
8 completed that.

9 Train investigators, so we provided  
10 certified training for all of our investigators  
11 and only one person was not trained, given  
12 certified training, and which we have to give him  
13 certified training as well.

14 Collaborative investigations, we're  
15 doing that. Two of our investigators, John  
16 Basford and Norm Auffhammer, actually established  
17 what we call the investigator round table. And  
18 what they do is work collaboratively with other  
19 divisions within the Department. At some point,  
20 we want to extend that to other departments, but  
21 initially I thought it would be a good idea for us  
22 to just work within the Department. So we're  
23 doing that.

24 Of course, leveling the playing field  
25 is something that we'll continue to do. We have

1 to create ways to level the playing field, and we  
2 have to continue to do that.

3 As far as the fraud detection  
4 software, that's what we're working on now.  
5 That's why we're interviewing all these vendors to  
6 determine what we need to do.

7 MS. ADKINS: This is Kim Adkins  
8 with the Capital Strategy Group on behalf of the  
9 carpenters. Just a note. Could we, as we move  
10 forward with the next report -- my recollection is  
11 that the last report, I think, was given to the  
12 committee chairs at the legislature, and if we  
13 could, especially in the beginning of the session  
14 when they don't have much going on in the  
15 committees, maybe plan to have a presentation of  
16 an overview of the work of the Task Force. I  
17 think that would be really helpful, so something  
18 that I would just like to offer as a suggestion.

19 As we look to continue to build  
20 education and support around our issue, I think if  
21 we can meet -- get it on the agenda to actually  
22 have a presentation so, you know, Representative  
23 Moore's committee can have a better understanding  
24 of the work that everyone has put into this and  
25 the recommendations to date.

1                   CHAIRPERSON JEFFERSON: I think  
2 that's a really good idea.

3                   MS. ADKINS: Because usually at  
4 the beginning of a session those committees don't  
5 have -- they don't have full agendas like they do  
6 at the end of the session, so it would be easy to  
7 get on their schedule.

8                   CHAIRPERSON JEFFERSON: And,  
9 also, Kim -- I'm not sure if you were at the last  
10 meeting -- our legislative liaisons were here at  
11 the last meeting, and what they're trying to do is  
12 to set up a meeting with the chair of both  
13 legislative committees. And we're going to invite  
14 the entire Task Force, all the stakeholders, and  
15 they can bring as many members as they want. And  
16 what we plan to do is give a presentation of the  
17 initial report. Because you're right, we didn't  
18 get an opportunity to do that.

19                  MS. ADKINS: Is that before  
20 sessions starts? It's my understanding that was  
21 before --

22                  CHAIRPERSON JEFFERSON: Actually,  
23 it's supposed to be in December, but we don't have  
24 a definite date. So if we were unable to do it in  
25 December, we have to work with them in what their

1 calendars will allow. But that's up and coming.  
2 I just want you to know we do plan to meet with  
3 them.

4 MS. ADKINS: Well, because we're  
5 talking about a new session and we're going to  
6 have new members of that committee, so the people  
7 we might sit down with in December might not even  
8 be on the committee that will have influence over  
9 this issue in January.

10 I mean, I'm all for meeting and  
11 educating as much as we can, but I'm just kind of  
12 throwing that out there.

13 CHAIRPERSON JEFFERSON: Okay.  
14 And that's something we definitely want to take  
15 into consideration, because that may require us to  
16 possibly delay our meeting, if that's the case  
17 that our members won't be there. Or we'll have to  
18 think about making two different presentations.  
19 So that's something for you-all to consider. I  
20 guess we can kind of think about that and see what  
21 happens in December, see if a tentative date is  
22 set, because we're not for sure if a date will be  
23 set. But when we talk with the legislative  
24 liaison, we will definitely relay that.

25 Do you have anything to add?

1 MS. HUDGENS: I was just thinking  
2 we'll know more in three weeks. In three weeks,  
3 we'll know a little bit more.

4 MR. BAILEY: If I could, just for  
5 the record, I guess, I would like to express my  
6 disappointment. I mean, you went through the  
7 future action items from last year's report,  
8 what's been done and what's not been done, but I  
9 can't help but notice above that is the -- our  
10 initial recommendations, three of them from last  
11 year's report," and none of them got any action.

12 So I'm just expressing a little  
13 frustration at this point.

14 CHAIRPERSON JEFFERSON: Well, I  
15 think that's what Abbie was referring to, and  
16 we'll know more.

17 MS. HUDGENS: And part of it --  
18 and everyone should keep this in mind as you go  
19 forward to make the report. Last year's report  
20 did not come out until right at the deadline,  
21 which is February 3rd. By February 3rd, the  
22 legislative agendas had been pretty much set. It  
23 was difficult to get into the mix. And that's  
24 certainly what happened with the conversations  
25 about legislation.

1                   So legislation is being considered.  
2   We'll know soon whether that will be part of the  
3   governor's agenda. But I think it's very  
4   important to get that in your report so it's there  
5   when they convene again. Because, as you  
6   mentioned, after they've been there for a while,  
7   it gets crazy and anything that comes the  
8   beginning of February is going to end up being in  
9   the summer study session.

10                   CHAIRPERSON JEFFERSON: If that's  
11   the case, when should we look at submitting our  
12   report?

13                   MR. BAILEY: That's kind of bad  
14   timing, though, for when our report is supposed to  
15   be due.

16                   CHAIRPERSON JEFFERSON: It's due  
17   on or before February 1st.

18                   MR. BAILEY: It's kind of, like,  
19   dead for a year.

20                   CHAIRPERSON JEFFERSON: Right.

21                   MS. HUDGENS: But there's no  
22   reason why you-all can't try to get it done  
23   earlier. It doesn't say it has to be done  
24   February 1st.

25                   MR. BAILEY: No. I can

1 understand that.

2 MS. HUDGENS: And I think we can  
3 learn from what happened last year.

4 CHAIRPERSON JEFFERSON: Okay. Do  
5 you-all have any suggestions as to --

6 DR. CANAK: Well, in anticipating  
7 that, we might want to make sure that these  
8 initial recommendations from last year should be  
9 in our second report, but also communicate those  
10 as early as possible from the first report to the  
11 legislature.

12 MR. BAILEY: Well, this meeting  
13 that you're talking about, maybe having it at the  
14 very beginning of the session -- I mean, it's a  
15 perfect time to highlight what we said last year  
16 and are going to say again this year.

17 MS. HUDGENS: And what would be  
18 better is if we had this year's report at that  
19 meeting.

20 MR. BAILEY: Well, yeah, sure.  
21 That would be great.

22 MR. BURTON: I think the first  
23 day of session is, like, January the 10th,  
24 somewhere around there. The second Tuesday,  
25 whatever the second Tuesday is. That's really

1 when it needs to be ready.

2 CHAIRPERSON JEFFERSON: Well,  
3 that means that instead of waiting like we did the  
4 last time -- the last time we were working through  
5 December and January --

6 MS. ADKINS: It's January 8th.

7 CHAIRPERSON JEFFERSON: That  
8 means that we have to work through November-  
9 December this time, and we'll have it done by the  
10 end of December. So that's what we're looking at.

11 MR. BURTON: I think it's  
12 important to have it done by then if you want it  
13 to be included in the discussion that I believe is  
14 going to happen about workers' comp as a whole. I  
15 think it's really important to have that  
16 information there and available to them. Because  
17 otherwise, if you bring it to the table later, the  
18 train has left the station and some important  
19 pieces that could be included may not get there in  
20 sufficient time.

21 CHAIRPERSON JEFFERSON: And if  
22 that's true, and I know it is, we're going to need  
23 to work on our timelines. So that means that  
24 we'll go back to our offices, you will receive an  
25 email from me, and I'll just ask you-all to look

1 at your calendars for November and December,  
2 because we'll need to have those -- that will  
3 change the date for the final committee reports  
4 because we had originally said that we would give  
5 you until mid November to have the piecharts and  
6 the committee reports ready. But if that's the  
7 case, they're going to have to be due the first  
8 week in November so that we can start scheduling  
9 meetings throughout November and December.

10 MS. HUDGENS: I can make a  
11 suggestion, just thinking about -- I looked at my  
12 calendar before I came over here, and I know what  
13 day it is. There's just one more week in October.  
14 Might it be possible to give the subcommittees a  
15 week more and have less meetings to kind of go  
16 over it? I know last year there were an awful lot  
17 of meetings talking about it. Some of those  
18 might -- I think if we can be more efficient in  
19 our meetings to review the reports, well, the work  
20 needs to be done on the reports more than it needs  
21 to be done on the...

22 CHAIRPERSON JEFFERSON: Well, not  
23 these meetings. I'm not referring to Task Force  
24 meetings. Last year we stopped meeting.

25 MS. HUDGENS: No. I'm --

1 MR. BAILEY: She's talking about  
2 the review.

3 CHAIRPERSON JEFFERSON: Okay.  
4 Review committees.

5 MS. HUDGENS: I'm talking about  
6 the review which went on for -- it's the work of  
7 the subcommittees that is critical here. So I  
8 would hate to see the subcommittees come to  
9 conclusions too quickly because they were trying  
10 to meet at the first of November or an early  
11 November deadline.

12 CHAIRPERSON JEFFERSON: Okay.  
13 Yes?

14 MS. ARNOLD: I was just going to  
15 say, to follow up with what Abbie said -- Ashley  
16 Arnold, Insurers -- to me, email is just as easy  
17 as sitting around a table and sometimes a lot  
18 easier and faster to get responses. And so, I  
19 mean, obviously it's your choice and your  
20 decision, but once the subcommittees meet, if they  
21 present reports, I mean, I get just as much and  
22 probably more out of it if you send me the report  
23 and say, "Read this and give me your comments or  
24 suggestions" as I do listening -- not that Dan is  
25 not a wonderful speaker -- but to Dan standing up

1 and reading it to me.

2 And it's faster for everybody that  
3 way because you can say, "Look, give me your  
4 comments by Friday or don't at all," you know.  
5 And then that way you just meet one time and say,  
6 "Here is the final subcommittee report."

7 CHAIRPERSON JEFFERSON: Oh, so  
8 you-all just want to meet one time and go over --

9 MS. ARNOLD: It's just a  
10 thought -- no, I'm just -- that's just a  
11 suggestion.

12 MS. HUDGENS: I don't think we  
13 can predict, but I think it's a good idea to --  
14 that way people can have -- once they see the  
15 comment of one person, they can think about it  
16 quietly and a lot of people -- I'm probably one of  
17 them -- does thinking better if I read it, ponder  
18 on it, and then can email back a comment and then  
19 other people can respond and have a distillation  
20 rather than being in the room, trying to get all  
21 of our thoughts out at the same time, and to think  
22 carefully about it.

23 CHAIRPERSON JEFFERSON: Okay.  
24 Well, that sounds fine to me. Do you-all agree  
25 with that?

1 (Non-verbal response.)

2 CHAIRPERSON JEFFERSON: Well,  
3 that sounds fine to me. The less we meet, the  
4 better we'll all be, I'm sure. So what we want to  
5 do -- I think the best thing for us to do is to  
6 just return to our offices and take a look at our  
7 calendars and just try to get a deadline for us to  
8 complete the task -- and it would be at the end of  
9 December, obviously -- and to just try to get some  
10 type of timeline together for submitting all of  
11 this information. So that's the first step. So  
12 we'll just do that.

13 Is everybody good with that? Do you  
14 have any other suggestions or comments?

15 (No verbal response.)

16 CHAIRPERSON JEFFERSON: All  
17 right. If you don't, motion to adjourn.

18

19

END OF THE PROCEEDINGS.

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STATE OF TENNESSEE )  
COUNTY OF WILLIAMSON )

I, Cassandra M. Beiling, 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 25th day of October, 2012.

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 1st day of November, 2012.

\_\_\_\_\_  
Cassandra M. Beiling, CCR, LCR# 371  
Notary Public State at Large  
My commission expires: 3/12/2016