

Licensing Reform Task Force Construction Subcommittee

SUMMARY RECOMMENDATION: CONTRACTOR COMPLIANCE & ENFORCEMENT

Recommendation

The **Construction Subcommittee** recommends that the Licensing Reform Task Force direct staff to conduct a focused enforcement review of **unlicensed construction activity and contractor compliance**. The review should examine existing tools for complaint intake, investigations, coordination with local building officials, licensing-board jurisdiction, worker-classification enforcement, workers' compensation compliance, and employer work-authorization verification under the **Legal Employment and Government Accountability Law (LEGAL Act)**. The Construction Subcommittee recommends that the full Task Force direct staff to review current enforcement tools addressing unlicensed construction activity, contractor compliance, worker misclassification, and employer work-authorization verification.

The Subcommittee does not recommend framing this issue primarily around immigration status. Instead, the Subcommittee recommends focusing on conduct within state authority: unlicensed practice, false or misleading contractor representations, failure to comply with contractor registration or licensing requirements, worker misclassification, failure to maintain required records, and failure to comply with employment-verification obligations under the LEGAL Act.

Executive Order No. 1-2026 Report Elements Addressed

This recommendation directly supports several report elements identified in **Executive Order No. 1-2026** for the Task Force's final written report to the Governor:

- **Whether unregulated practice creates a direct, immediate, or foreseeable hazard to public health, safety, or welfare.** The recommendation is centered on unlicensed construction activity and asks staff to determine what enforcement tools apply when individuals or businesses perform work requiring a license without authorization.
- **Whether there is a public benefit provided by licensure.** By focusing on consumer protection, job-site compliance, and enforcement against noncompliant actors, the recommendation would help the Task Force evaluate whether construction-related licensure or registration requirements provide a concrete public benefit.
- **Whether the scope of practice is readily identifiable and distinguishable.** The proposed staff review asks which construction-related trades or contractor categories currently require licensure,

registration, or other authorization, which would help clarify whether regulated construction scopes are identifiable and distinguishable from other occupations.

- **Whether an occupation requires specialized skill or training.** The recommendation would permit staff to examine construction trades where licensure is tied to specialized training, technical competency, safety standards, or nationally recognized standards.
- **Whether qualifications for licensure are justified.** Mapping enforcement authority and identifying which trades require authorization will help determine whether existing qualifications remain justified by public-safety, consumer-protection, or job-site compliance concerns.
- **Whether unnecessary barriers to entry exist for applicants.** Although the recommendation is primarily enforcement-focused, distinguishing licensure, registration, classification, insurance, and LEGAL Act issues can help avoid overbroad enforcement responses that would create unnecessary barriers for lawful applicants or compliant contractors.
- **Whether existing licensing requirements contribute to workforce shortages or access constraints in rural frontier communities.** Construction access and contractor availability may be affected if licensing rules are either under-enforced against noncompliant actors or overbroad as applied to lawful entrants; staff review could identify whether enforcement or regulatory structure affects rural access.
- **Whether public support exists for continued licensure.** The recommendation arises from public comment expressing concern about unlicensed and noncompliant construction activity, and the review would help determine whether public concern supports continued licensure, registration, or targeted enforcement in construction-related fields.

Policy Assessment

Public comment raised concerns about undocumented, unclassified, or unlicensed construction workers bypassing licensing and regulatory requirements. The Subcommittee correctly recognizes that the comment combines several distinct legal issues—immigration status, licensure, worker classification, contractor registration, insurance, and employment-verification compliance. Those issues implicate different statutes, enforcement programs, and agencies. Treating them as a single “undocumented worker” problem risk confusing occupational licensing reform with federal immigration law and could obscure existing state-law compliance tools.

A targeted review would allow DLI and the Task Force to identify practical enforcement gaps while staying within the proper scope of state authority. The review should determine whether consumers, contractors, workers, local building officials, and permitting authorities know how to report unlicensed construction activity; whether complaints are routed to the correct DLI program; whether DLI has sufficient authority to investigate non-licensees, businesses, employers, and job sites; and whether DLI programs coordinate when the same facts implicate licensing, worker classification, wage and hour, workers’ compensation, and LEGAL Act issues.

DLI already has relevant enforcement infrastructure. Its licensing-complaint process allows complaints against licensees and includes notice, response requests, screening-panel review, investigation when needed, due process, adjudication-panel review, and judicial review. DLI materials also identify investigative authority under **37-1-308, MCA**, and note that some matters require document collection, witness interviews, and coordination with criminal investigative agencies.

Recent legislation also strengthened the enforcement environment. **House Bill 563** voids contractual provisions that restrict licensing complaints or cooperation in investigations, and **House Bill 435** amended

37-1-316(1)(p), MCA, to prohibit licensees from interfering with audits, investigations, inspections, or disciplinary proceedings.

The LEGAL Act gives DLI a separate enforcement tool for employer work-authorization verification. It requires employers to verify an employee's legal ability to work before the employee begins work, using E-Verify or a completed Form I-9 with supporting documents. The Act authorizes DLI to investigate, audit, inspect records, issue subpoenas, compel testimony, seek court orders, and assess civil penalties. For repeated violations, license suspension may be required.

Implementation Options

After staff review, the Task Force may consider a graduated response:

Option A – Public education and complaint-routing improvements: Develop clearer public guidance on reporting unlicensed construction work, contractor registration violations, worker misclassification, insurance concerns, and LEGAL Act concerns.

Option B – Interagency referral protocol: Create a routing protocol for complaints that may involve DLI programs, local building departments, permitting authorities, workers' compensation, wage and hour, tax, or law-enforcement issues.

Option C – Construction compliance review: Conduct a targeted review to determine whether recurring compliance problems exist and whether existing penalties are sufficient.

Option D – Legislative or rulemaking proposal: If staff identifies a legal gap, develop a narrow proposal addressing enforcement authority, complaint referral, documentation requirements, or penalties, while avoiding duplication of or conflict with federal immigration law.

Motion

The **Construction Subcommittee** recommends the Task Force **advance the recommendation for staff review and enforcement mapping**, and direct staff to report back on: Existing enforcement tools for unlicensed construction activity; Complaint-routing and public-education improvements; Coordination with local building and permitting officials; Interaction with worker-classification and workers' compensation enforcement; Current LEGAL Act implementation and applicability to construction employers; and Whether any statutory, rule, or administrative changes are needed to close identified enforcement gaps.