SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 1976	**Hearing Date:**	June 12, 2024
Author:	Haney		
Version:	May 20, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Occupational safety and health standards: first aid materials: opioid antagonists

KEY ISSUE

This bill requires, on or before December 31, 2026, the Occupational Safety and Health Standards Board (Standards Board) to draft and adopt a rulemaking proposal to revise existing standards on first aid materials to require all workplace first aid kits to include nasal spray naloxone hydrochloride.

ANALYSIS

Existing law:

1) Under the California Occupational Safety and Health Act, protects workers on the job by authorizing the enforcement of effective standards in addition to requiring employers to:
   a. Furnish employment and a place of employment that is safe and healthful for its employees.
   b. Furnish and use safety devices and safeguards, and to adopt and use practices, means, methods, operations, and processes, which are reasonably adequate to render employment and the place of employment safe and healthful.
   c. Do everything reasonably necessary to protect the life, safety, and health of employees. (Labor Code §6300)

2) Establishes the Division of Occupational Safety and Health (Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)

3) Establishes the Occupational Safety and Health Standards Board, within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. (Labor Code §140-147.6)

4) Requires the Standards Board, before December 1, 2025, to draft a rulemaking proposal to consider revising standards relating to toilet facilities on construction jobsites to require at least one single-user toilet facility on all construction jobsites, designed for employees who self-identify as female or nonbinary. (Labor Code §6722)

5) Requires each stadium, concert venue, and amusement park to maintain unexpired doses of naloxone hydrochloride or any other opioid antagonist on its premises, at all times, and

ensure that at least two employees are aware of the location of the naloxone hydrochloride or other opioid antagonist. (Health and Safety Code §11871)

This bill:

1) Requires the Standards Board, before December 1, 2026, to draft a rulemaking proposal revising the existing medical services and first aid standards to require first aid materials in a workplace to include naloxone hydrochloride or another opioid antagonist approved by the United States Food and Drug Administration to reverse opioid overdose and include instructions for using the opioid antagonist.

2) Requires the Standards Board to adopt the revised standards on or before July 1, 2027.

COMMENTS

1. Background:

Many people take prescription opioids, medications like oxycodone or fentanyl, to treat medical conditions, while others may use these opioids recreationally. Some opioid medications are especially potent which increases the likelihood of an unintentional overdose. Fentanyl, for example, is 50 to 100 times more potent than morphine.

According to the Cal/OSHA's Opioid Hazard Alert, "fatalities due to unintentional overdoses have increased in the last several years; more than 100,000 people died of an overdose in the U.S. in 2022. Workplace overdoses are also on the rise. According to the US Department of Labor, Bureau of Labor Statistics, over 100 workplace deaths in California alone were due to unintentional overdose, accounting for 22% of all workplace fatalities occurring in California in 2022."[1]

Opioid overdoses are especially high among industries or occupations where there are elevated rates of injuries and those with access to opioids, such as law enforcement, emergency response, and healthcare. A Centers for Disease Control and Prevention analysis of 47,810 drug overdose deaths recorded in the National Occupational Mortality Surveillance system from 2007 to 2012 showed higher mortality rates for 6 occupational groupings: construction, extraction, food preparation and serving, health care practitioners and technicians, health care support, and personal care and service.[2]

Opioid overdose medications, such as naloxone (also known as Narcan), are available to immediately reverse the effects of an overdose, but only if they are administered in time. Naloxone is not harmful if it is given to a person who is not experiencing an opioid overdose. The Food and Drug Administration (FDA) has approved two forms of naloxone: a nasal spray and an injection. The nasal spray is available over-the-counter and does not require a prescription.

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[1] https://www.dir.ca.gov/dosh/dosh_publications/Opioid-hazard-alert.pdf

[2] Harduar Morano L, Steege, AL, Luckhaupt, SE. Occupational patterns in unintentional and undetermined drug-involved and opioid-involved overdose deaths—United States, 2007–2012. MMWR Morb Mortal Wkly Rep. 2018;67(33):925–930.

2. Petition Pending before the Occupational Safety and Health Standards Board:

In December 2023, the National Safety Council submitted a petition to the Standards Board to require opioid overdose reversal medication stocked at job sites.

> "Petition File No. 602: To amend Title 8, General Industry Safety Orders (GISO), section 3400, Medical Services and First Aid, and Construction Safety Orders (CSO) section 1512, Emergency Medical Services. The Petitioner requests to include a requirement to have opioid overdose reversal medication stocked at job sites and worker administration training as part of these regulations. The Petitioner notes that with the number of workplace overdose deaths on the rise, opioid overdose reversal medication is now an essential component of an adequate first-aid kit and that no industry or occupation is immune to this crisis
>
> Petitioner states that workplace overdose deaths have increased 536 percent since 2011, that nationally, overdoses now account for nearly 1 in 11 worker deaths on the job, but, in California, over 18 percent of workplace fatalities in 2021 were due to an unintentional overdose. Including these medications at worksites – either in a first aid kit or elsewhere – and training employees to use it is a critical component of emergency response to help save a life and would help California combat the opioid crisis by ensuring worksites are appropriately equipped to respond to such an emergency."

The petition is still pending consideration at the Standards Board. This bill would require the Standards Board to draft a rulemaking proposal requiring employers to carry opioid antagonists.

3. Need for this bill?

According to the author:

"In facing today's massive opioid crisis and the abuse of fentanyl, California is reaching an unacceptable number of overdoses. While current State efforts aim to provide naloxone to opioid users, individuals who are in the midst of an overdose cannot self-administer naloxone once they become unconscious. As of 2024, the State has not reached enough naloxone saturation in order to substantially impact the overdose epidemic. AB 1976 ensures widespread access to naloxone in California by requiring it to be in all locations that are required to have a first aid kit. Specifically, all workplace first aid kits will need to contain naloxone nasal spray in order to provide more access to this lifesaving medication and to prevent opioid overdoses."

4. Proponent Arguments:

According to the sponsors, the California Emergency Nurses Association, "…for the first time in California, drug overdoses are deadlier than car accidents and homicides combined. In 2022, over 7,300 deaths have been caused by an opioid overdose with a growing number of those deaths being youth. One out of every 5 youth deaths are caused by an opioid overdose."

Proponents from law enforcement organizations, including from the California Narcotic Officers' Association, argue that:

"Combatting the opioid overdose crisis in California requires that the most effective medication to stop opioid overdose deaths is available in as many places as possible. More than half of the fentanyl-laced prescription pills being trafficked in communities across the country now contain a potentially deadly dose of fentanyl. While current State efforts aim to provide naloxone to opioid users, individuals who are in the midst of an overdose cannot self-administer naloxone once they become unconscious. Increasing accessibility of naloxone in first aid kits ensures that bystanders and first responders possess the ability to rapidly reverse the devastating effects of an overdose. By requiring it to be carried in all workplaces, people will know where they can find it in overdose emergencies."

5. Opponent Arguments:

Opponents of the measure, including the National Electrical Contractors Association, argue that the Standards Board is the appropriate place to determine if a mandate is warranted, and if so, how that mandate would work. They argue that this measure simply requires the Standards Board to adopt the mandate, even if the Standards Board were to determine that a mandate may not be appropriate in all circumstances. They argue,

"Among the items that the Standards Board will likely consider is whether naloxone hydrochloride can be safely stored on job sites that are not temperature controlled, such as construction sites. Current guidelines provide that naloxone hydrochloride shall be stored in temperatures between 68 and 77 Fahrenheit to maintain proper efficacy. This may not be feasible on most construction sites. Further, construction sites are unique because they are a multi-employer environment. In fact, there may be dozens of employers on a building site at any given time, each of whom has their own employees. Pursuant to your measure, each employer would be obligated to include naloxone hydrochloride in their first aid kit, which presumably would need to be maintained in a temperature-controlled environment. To the extent that the kit was necessary, who would administer it, the actual employer or any employer? Again, this is something that the Standards Board should determine, not the Legislature."

6. Suggested Amendment:

As noted by the opposition, there are specific storage guidelines for the opioid antagonist medications that need to be considered as part of the mandate. Particularly, storage needs and limitations of the nature of work for various industries. In order to address the need for direction and guidance on proper storage of the medication, author may wish to consider amending the bill to additionally require the Standards Board to provide this guidance.

Suggested Amendment:

6723. (a) The standards board, before December 1, 2026, shall draft a rulemaking proposal to revise Section 3400 of Title 8 of the California Code of Regulations to require first aid materials in a workplace to include naloxone hydrochloride or another opioid antagonist approved by the United States Food and Drug Administration to reverse opioid overdose and instructions for using the opioid antagonist.

(b) The standards board, in drafting the rulemaking proposal, shall consider, and provide guidance to employers, on proper storage of the opioid antagonist.
~~(b)~~ (c) The standards board shall adopt revised standards for the standards described in this section on or before July 1, 2027.

7. Prior/Related Legislation:

SB 234 (Portantino, Chapter 596, Statutes of 2023) requires stadiums, concert venues, and amusement parks to maintain unexpired doses of an opioid antagonist on its premises and ensure that at least two employees are aware of the location and provides indemnification, as specified.

SB 472 (Hurtado, 2023) would have required each public school to maintain at least two doses of naloxone hydrochloride on its campus. *SB 472 was held under submission in Senate Appropriations Committee.*

AB 19 (Jim Patterson, 2023) would have required each school that has elected to make a school nurse or trained personnel available to maintain at least two doses units of naloxone hydrochloride or another opioid antagonist on its campus. *AB 19 was held under submission in Senate Appropriations Committee.*

AB 24 (Haney, 2023), among other things, would have required a bar, gas station, public library, or residential hotel that receives an opioid antagonist kit from the California Department of Public Health to place the kit in an area of the facility that is readily accessible only by employees. Additionally, the bill would have provided immunity from civil liability to a person or facility for providing, or not providing, aid with the kit. The bill would have also prohibited an employer from requiring or prohibiting its employees to render aid with a kit. *AB 24 was held under submission in Assembly Appropriations Committee.*

SUPPORT

California Emergency Nurses Association (Sponsor)
American Federation of State, County, and Municipal Employees (AFSCME)
American Nurses Association/California
Arcadia Police Officers' Association
Burbank Police Officers' Association
California Alliance of Child and Family Services
California Coalition of School Safety Professionals
California Federation of Teachers
California Narcotic Officers' Association
California Public Defenders Association
California Reserve Peace Officers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Everyday Responder Project
Fullerton Police Officers' Association
Los Angeles School Police Management Association

Los Angeles School Police Officers Association
Murrieta Police Officers' Association
National Safety Council
Newport Beach Police Association
Novato Police Officers Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association
Pomona Police Officers' Association
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

OPPOSITION

Air Conditioning Sheet Metal Association
American Subcontractors Association of California
California Association of Sheet Metal & Air Conditioning Contractors National Association
Construction Employers' Association
Finishing Contractors Association of Southern California
National Electrical Contractors Association
Northern California Allied Trades
Southern California Contractors Association
Southern California Glass Management Association
United Contractors
Wall and Ceiling Alliance
Western Electrical Contractors Association
Western Line Constructors Chapter
Western Painting and Coating Contractors Association
Western Wall and Ceiling Contractors Association

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2182	**Hearing Date:**	June 12, 2024
Author:	Haney		
Version:	March 18, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Public works

KEY ISSUE

This bill makes several changes to state public works law. AB 2182 would 1) authorize the Director (Director) of the Department of Industrial Relations (DIR) to dismiss a contractor's request to review a civil wage and penalty assessment, as specified; 2) provide representatives of a joint labor-management committee (JLMC) access to active public works job sites, as specified; 3) update California's annualization laws to conform to federal regulations; 4) require any change in a prevailing wage rate, as determined by the Director, to take effect 10 days after its issuance for any contract that is awarded or for which notice to bidders is published after July 1, 2025, as specified; and 5) require contractors, upon receipt of a written request, to furnish payroll records to the Labor Commissioner (LC) within 10 days.

ANALYSIS

Existing federal law:

1) Permits, pursuant to the Labor Management Cooperation Act of 1978, the establishment of plant, area, and industrywide labor management committees, which have been organized jointly by employers and labor organizations representing employees in that plant, area, or industry, as specified. (29 U.S.C. §175a)

2) Specifies, under the Davis-Bacon Act (DBA), the terms "wages," "scale of wages," "wage rates," and "prevailing wages" include:

    a. The basic hourly rate of pay,
    b. Any contribution irrevocably made by a contractor to a trustee or third party pursuant to a bona fide fringe benefit fund, plan or program, and
    c. The rate of costs to the contractor which may be reasonably anticipated in providing bona fide fringe benefits pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated to the workers in writing. (29 U.S.C. §3141(2))

3) Provides that, among others, life insurance, health insurance, and pensions, are fringe benefits under the DBA. (40 U.S.C. §3141(2)(B))

4) Requires contractors, except under limited circumstances, to annualize their fringe benefit contributions or costs to determine the hourly credit that may be claimed towards their prevailing wage obligation. (29 C.F.R. 5.25(c))

Existing state law:

1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement (DLSE) under the direction of the LC, and empowers the LC to ensure a just day's pay in every work place and to promote justice through the robust enforcement of labor laws. (Labor Code §79-107)

2) Requires the LC to, with reasonable promptness, issue a civil wage and penalty assessment to the contractor or subcontractor, or both, if the LC or their designee determines after an investigation that there has been a violation of public works laws. (Labor Code §1741(a))

3) Authorizes an affected contractor or subcontractor to obtain review of a civil wage and penalty assessment by transmitting a written request to the office of the LC that appears on the assessment within 60 days after service of the assessment. (Labor Code §1742(a))

4) Requires, upon receipt of a timely request, a hearing to be commenced within 90 days before the Director, who shall appoint an impartial hearing officer. (Labor Code §1742(b))

5) Requires, within 45 days of the conclusion of the hearing, the Director to issue a written decision affirming, modifying, or dismissing the assessment. (Labor Code §1742(b))

6) Authorizes an affected contractor or subcontractor to obtain review of the decision of the Director by filing a petition for a writ of mandate to the appropriate superior court within 45 days after service of the decision. (Labor Code §1742(c))

7) Authorizes a JLMC to bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees or that fails to provide required payroll records. (Labor Code §1771.2)

8) Specifies that the term "per diem wages", as it relates to public works, includes employer payments for, among other things, health and welfare, pensions, and apprenticeship or other training programs, as specified. (Labor Code §1773.1(a))

9) Provides that employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. (Labor Code §1773.1(c))

10) Requires the credit for employer payments to be computed on an annualized basis when the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, unless certain circumstances exist. (Labor Code §1773.1(e))

11) Requires the Director to ascertain and consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, within the locality and in the nearest labor market area, when determining the general prevailing rate of per diem wages. (Labor Code §§1770, 1773)

12) Provides that if during any quarterly period the director determines that there has been a change in any prevailing rate of per diem wages in any locality they shall make such change available to the awarding body and their determination shall be final. Such determination by

the Director shall not be effective as to any contract for which the notice to bidders has been published. (Labor Code §1773.6)

13) Requires each contractor and subcontractor to keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the contractor or subcontractor in connection with the public work. (Labor Code §1776(a))

14) Requires the payroll records to be certified and to be available for inspection at all reasonable hours at the principal office of the contractor, as specified. (Labor Code §1776(b))

This bill:

Civil Wage and Penalty Assessment Provisions

1) Authorizes the Director to dismiss a contractor or subcontractor's request to review a civil wage and penalty assessment issued by the LC and instead issue a decision affirming the assessment if the contractor or subcontractor fails to appear for a prehearing conference or hearing, as specified.

2) Provides that within 15 days of the issuance of the decision, the Director may, upon a showing of good cause for the failure to appear, reconsider the dismissal of the request for review.

3) Requires that as a condition for filing a petition for a writ of mandate, to obtain review of the decision of the Director, the petitioner seeking the writ shall first post a bond with the LC equal to the total amount found to be due and owing as determined pursuant to the decision. Specifies the bond shall be issued by a surety duly authorized to do business in the state and shall be issued in favor of the LC.

Joint Labor-Management Committee Provisions

4) Provides that, effective July 1, 2025, representatives of a JLMC shall be permitted reasonable access to active public works job sites to monitor compliance with the prevailing wage and apprenticeship requirements.

5) Specifies that, for purposes of this section, "reasonable access" means access that is consistent with job site safety and security requirements and that does not disrupt performance of work. Reasonable access includes access to workers during non-work time.

6) Authorizes a JLMC to bring an action in any court of competent jurisdiction against an awarding body, contractor, or subcontractor that willfully denies the committee's representative reasonable access in violation of these provisions. Requires the action be brought within six months after the denial of access.

7) Requires a court in an action described in 6) above to award a prevailing JLMC the following:

a. A civil penalty of one thousand dollars ($1,000) for each occasion that reasonable access was denied.
b. Its reasonable attorney's fees and costs incurred in maintaining the action, including expert witness fees.

Annualization Provisions

8) Removes an exemption that allows the Director to determine that annualization does not further the purpose of the law from a general rule requiring annualization when an employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer.

9) Provides that annualization, as specified, applies to all employer payments towards fringe benefits except for contributions to defined contribution pension plans that provide for both immediate participation and immediate vesting. An employer may take full credit for the hourly amounts contributed to these plans for public works projects even if the employer contributes at a lower rate or does not make contributions for private construction.

10) States that the employer shall have the burden of demonstrating that the credit for employer payments was properly calculated, as specified.

11) Requires the employer to, upon request of the LC, produce records of employee hours and employer payments on private construction sufficient for the LC to verify that the credit for employer payments was properly calculated on an annualized basis.

12) Revokes any exemptions to the annualization requirements of these provisions issued by the Director prior to January 1, 2025.

13) Requires prevailing wage fringe benefit credit issues not addressed by California statutes or regulations shall be governed by the version of the United States Department of Labor Field Operations Handbook in effect on January 1, 2023.

Prevailing Wage Rate Provisions

14) Makes inoperative on July 1, 2025 and repeals, on January 1, 2026, the provision that states if during any quarterly period the Director determines there has been a change in any prevailing rate of per diem wages in any locality they shall make such change available to the awarding body and their determination shall be final. Such determination by the Director shall not be effective as to any contract for which the notice to bidders has been published.

15) Requires, if during any semiannual period the Director determines that there has been a change in any prevailing wage rate in any locality, the Director to make such change available to the awarding body and the Director's determination to be final, except as specified.
16) Provides that the determination of a change in any prevailing wage by the Director shall apply on its effective date to any contract that is awarded or for which notice to the bidders is published after July 1, 2025.

17) Permits any contractor, awarding body, or representative of any craft, classification, or type of work affected by a change in rates on a particular contract to, within 20 days after

publication of the new determination, file with the Director a verified petition to review the determination of that rate on the ground that it has not been determined in accordance with Labor Code §1773. Within two days after the filing of the petition, a copy of that petition shall be filed with the awarding body.

18) Requires the Director, or the Director's authorized representative, to, upon notice to the petitioner, the awarding body, and other persons the Director deems proper, including the recognized collective bargaining representatives for the particular crafts, classifications, or types of work involved, initiate an investigation or hold a hearing. Within 20 days after the filing of that petition, or within a longer period as agreed upon by the Director, awarding body, and all interested parties, the Director shall make a final determination, as specified.

19) States that a determination issued by the Director is effective 10 days after its issuance. The Director shall include an issue date on the determination. The determination shall remain in effect until it is modified, rescinded, or superseded by the Director.

20) Provides that 15) through 19) above are operative on July 1, 2025.

Payroll Records Requests

21) Requires, upon request of the LC, a contractor or subcontractor to make available for inspection by the LC any payroll records requested by the LC to verify the accuracy or completeness of certified payroll records required to be produced, as specified. The contractor or subcontractor has 10 days in which to comply following receipt of a written notice from the LC requesting records. In the event the contractor or subcontractor fails to comply with the 10-day period, the contractor or subcontractor shall be liable for specified penalties.

22) For purposes of 21) above, the term "payroll records" means all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.

COMMENTS

1. Background:

Joint Labor-Management Committees

JLMCs, established pursuant to the federal Labor Management Cooperation Act of 1978, aim to improve communications and working relationships between labor and management, provide workers and employers with opportunities to explore joint approaches to problems, and develop ways to increase productivity and promote economic development. In California, they play a vital role in ensuring compliance with public works laws. Specifically, JLMCs are empowered to bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees or that fails to provide payroll records, as required by public works law. This bill would allow representatives of a JLMC access to an active job site to assist with their monitoring duties.

Opponents to the bill are concerned that granting this access may increase hazards for workers employed on a job site. To the extent that representatives of a JLMC do create a worksite issue, opponents request that a JLMC assume responsibility for this. The committee raises the following question; *Does the language in the bill make it clear that a JLMC's workers' compensation and/or liability insurance policies are the exclusive remedy of the representative and neither the awarding body, contractor, nor subcontractor shall be liable?*

Annualization

The prevailing wage in both federal and California law consists of two parts, 1) the basic hourly rate of pay; and 2) employer payments for fringe benefits, such as health insurance, vacation, and pension contributions, among others. Employers receive a credit towards the prevailing wage rate in exchange for providing specified fringe benefits. With few exceptions, this credit must be annualized. Annualization is generally necessary for computing the fringe benefit credit when a contractor employs workers on both public works and private projects. To annualize the per hour cost of providing a benefit, a contractor must divide the total cost of the fringe benefit by the total number of hours worked on both public and private work. This requirement prevents contractors from subsidizing private projects with public funding and it ensures workers are paid actual prevailing wages on public projects by preventing contractors from taking credit against the required prevailing wage for expenses not actually associated with the covered work.

In the past, the Director has issued contradictory public guidelines, private rulings, and enforcement decisions regarding what benefit payments are exempt from annualization. This bill would conform California's policies to federal guidelines, thus eliminating ambiguity.

Prevailing Wage Calculations

The prevailing wage rate is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within the locality and in the nearest labor market area. The Director issues wage determinations semiannually, on February 22 and August 22. In determining the rates, the Director ascertains and considers the applicable wage rates established by collective bargaining agreements (CBAs) and the rates that may have been predetermined for federal public works.

Existing law states that if the Director determines that there has been a change in the prevailing wage, such change shall be made available to an awarding body. This notification is for informational purposes and *does not require* an awarding body to update wages on existing and ongoing projects.

When bidding on a contract, union contractors must account for increases in labor costs arising out of wage rate increases determined within their CBA. If a CBA provides for a wage increase mid project, then union contractors have to abide by that. This is true regardless of existing law, which specifies updated wage rates, determined by the Director, do not apply to ongoing projects. Non-union contractors do not have to adjust wages mid project.

The prevailing wage provisions in this bill are substantially similar to the language in AB 1140 (Daly, 2013), which was vetoed by Governor Jerry Brown. In his veto message, he stated the following:

> "This measure requires contractors on public works projects to increase workers' pay any time the state updates its prevailing wage rates. This is intended to address the circumstance where a non-union contractor is not required to adjust wages mid-project but a union contractor is subject to such adjustments pursuant to a collective bargaining agreement.
>
> In most cases, projects are bid, awarded and completed in a relatively short period of time and this measure would have little, if any impact. Larger, long term projects are the more likely setting for the union/non-union wage differential this bill seeks to address. Unfortunately, introducing such wage adjustments as proposed by this measure is likely to lead to uncertainty in the cost of public works projects and increase costs ultimately borne by the taxpayers.
>
> Finally, many collective bargaining agreements already address this limited circumstance by allowing wage rates to remain at the level determined by the state at the time of the bid, award or start of the contract. Given this, I do not find a statutory change warranted to address the issue raised by this measure."

The questions raised in the veto message remain relevant today. *Who will bear the costs related to increases in wage rates mid project? What effect will this have on future bids for public works projects?* However, the committee also asks, *is it fair to pay non-union workers employed on lengthy public works projects an outdated prevailing wage rate? Would applying mid-project wage rate increases maintain a level playing field?*

Payroll Records Requests

Existing law requires contractors and subcontractors to keep accurate payroll records showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to every employee employed by the contractor or subcontractor in connection with the public work. Certified copies of these records are available to employees, awarding bodies, DIR, and the public. The LC also receives these records monthly in an electronic format.

The definition of "payroll records" used within the Labor Code is far less comprehensive than the definition used in the California Code of Regulations (CCR). The CCR defines "payroll records" as all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.

This bill specifies that when the LC requests to review a contractor's payroll records to verify their accuracy, the contractor must make available all of the items specified in the CCR's definition of payroll records. Contractors and subcontractors have 10 days to comply with a request from the LC, or they face a penalty of $100 per day until compliance is effectuated.

Opponents argue the 10-day time period is unattainable, however §16400 of the CCR already requires contractors to furnish, upon request, all of the items included in CCR's definition of payroll records within a 10-day period.

2. Need for this bill?

According to the author, "Currently, there are some deficiencies in California Prevailing Wage Law that need to be strengthened. There are 5 problems this bill seeks to address."

3. Proponent Arguments

The sponsors of the measure, the State Building and Construction Trades Council of California, state, in regards to the measure's JLMC provisions:

"This bill would also grant representatives from joint labor-management committees reasonable access to active public works jobsites to ensure compliance with prevailing wage and apprenticeship requirements so that workers are treated fairly."

In regards to the prevailing wage provisions:

"Under existing law, the prevailing wage determination that is in effect when a public works project is advertised for bid governs the project regardless of how long the project lasts. Thus, if work does not start for a long time after the advertisement for bids, or the work goes on for a long time, the required prevailing wage will not keep up with the CBA on which the determination is based.

This bill would make current prevailing wage determinations applicable to projects, so the required prevailing wage or benefits will keep up with the actual prevailing wage rates. Contractors can estimate materials costs when they bid and they can also estimate future increases in labor costs when they bid. Union-signatory contractors already must do this because they must pay the current CBA rates. Using current prevailing wage rates maintains a level playing field."

In regards to the payroll records provisions:

"Under current law, contractors on public works projects are required by Labor Code 1776 to produce certified payroll records so it is possible to verify that construction workers are being paid prevailing wages. The issue AB 2182 is fixing is that the definition of "payroll records" is broader than the definition in Labor Code 1776, and some contractors have used this as a reason to refuse to provide the Labor Commissioner with these backup payroll records."

3. Opponent Arguments:

The Construction Employers Association is opposed to the measure, arguing in regards to the JLMC provisions:

"Under the bill, there could be representatives from multiple JLMCCs roaming worksites at any given time, increasing hazards for workers employed on the site who would have to contend with non-construction personnel. To the extent that employees of a JLMCC do create a worksite issue, the JLMCC should assume any liability for those issues that would otherwise belong to the contractor"

The Associated General Contractors of America are also opposed to the measure, arguing in regards to the prevailing wage provisions:

"There are numerous issues with AB 2182. First, changing the prevailing wage rate during a project would increase contractor costs. When a contractor enters into a contract with a public agency, the wage rates are defined as part of that contract and are reflected in a contractor's bid price. Under AB 2182, the contractors would have to bear the semiannual prevailing wage rate changes, not the awarding public entity."

In regards to the payroll records provisions:

"Under section 6 of AB 2182, if the Labor Commissioner makes a request, a contractor may have to produce a substantial number of documents in a short timeframe. This ten-day timeframe is simply unattainable to potentially provide all time cards, cancelled checks, cash receipts, trust fund forms, books, document, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project."

4. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

5. Prior Legislation:

SB 1162 (Cortese, 2024) would require contractors and subcontractors to include a worker's date of birth in existing public works payroll records and in existing monthly compliance reports made to the public entity or other awarding body for projects with a skilled and trained workforce requirement. *This bill is pending hearing in the Assembly Labor and Employment Committee.*

AB 2135 (Schiavo, 2024) would increase from 18 to 24 months the time period by which the LC or their designee may issue a civil wage and penalty assessment, as specified, to the contractor or subcontractor, or both, on a public work project for violating the law. *This bill is currently pending in the Senate Labor, Public Employment and Retirement Committee.*

AB 2705 (Ortega, 2024) would align the limitations period and tolling provisions of any action by the LC to enforce the liability on a payment bond with the limitations period and tolling provisions applicable to a civil wage and penalty assessment issued by the LC for a violation of public works law. *This bill is currently pending in the Senate Labor, Public Employment and Retirement Committee.*

AB 1023 (Flora, Chapter 326, Statutes of 2021) revised the requirement to furnish payroll records monthly to require that the contractor or subcontractor furnish those records at least once every 30 days while work is being performed on the project and within 30 days after the final day of work performed on the project. The bill also required that the contractor or subcontractor furnish these records in an electronic format, in the manner prescribed by the Labor Commissioner, on the department's internet website.

AB 1140 (Daly, 2013, vetoed) would have provided that if the Director determines, within a semiannual period, that there is a change in any prevailing rate of per diem wages in a locality, that determination applies to any public works contract that is awarded or for which notice to bidders is published on or after January 1, 2014.

SUPPORT

State Building and Construction Trades Council of California (Sponsor)
Air Conditioning Sheet Metal Association
California Democratic Party
California Labor Federation
California Legislative Conference of Plumbing, Heating & Piping Industry
California State Association of Electrical Workers
California State Pipe Trades Council
California State Treasurer
Finishing Contractors Association of Southern California
International Union of Operating Engineers, Cal-Nevada Conference
National Electrical Contractors Association (NECA)
Northern California Allied Trades
Northern California Floor Covering Association
Southern California Glass Management Association (SCGMA)
United Contractors (UCON)
Wall and Ceiling Alliance
Western Painting and Coating Contractors Association
Western States Council Sheet Metal, Air, Rail and Transportation
Western Wall and Ceiling Contractors Association (WWCCA)

OPPOSITION

Associated General Contractors of California
Associated General Contractors-San Diego Chapter
California Building Industry Association
Calleguas Municipal Water District
Construction Employers' Association
Western Electrical Contractors Association

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 1997	**Hearing Date:**	June 12, 2024
Author:	McKinnor		
Version:	April 1, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Teachers' Retirement Law

KEY ISSUE

This bill amends key provisions of the Teachers' Retirement Law (TRL) related to creditable compensation, creditable service, and the reporting of compensation, effective upon a date determined by the California State Teachers' Retirement System (CalSTRS) board, no later than July 1, 2027.

ANALYSIS

Existing law:

1) Establishes the TRL and CalSTRS, which provide a Defined Benefit (DB) pension plan, a Defined Benefit Supplement (DBS) program, and a Cash Balance (CB) program to certificated school employees. (Education Code (ED) § 22000 et seq.)

2) Applies the Public Employees' Pension Reform Act (PEPRA), as specified, to new CalSTRS members first hired on or after January 1, 2013. (Government Code (GC) § 7522.02 et seq.)

3) Defines the following terms:

   a. "Annualized pay rate" means the salary or wages (defined slightly differently for classic (i.e., pre-PEPRA) members and for PEPRA members), a person could earn during a school term for an assignment if creditable service were performed for that assignment on a full-time basis. (ED § 22104.8)
   b. "Compensation earnable" mean the sum of the member's average annualized pay rate, as specified, and other remuneration paid in addition to salary or wages for the school year but excluding creditable compensation contributions credited to the DBS program. (ED § 22115)
   c. "Creditable compensation" means remuneration paid in cash by an employer for all persons in the same class for performing creditable service, as specified. Additionally, for PEPRA members, creditable compensation specifically excludes certain types of remuneration payments, as specified. (ED §§ 22119.2 and 22119.3)
   d. "Creditable service" means specified educational activities performed for school employers, including specified K-12, community college, and charter school employers. (ED § 22119.5)
   e. "Credited service" means service for which required contributions have been paid and service for which required contributions would have been paid in the absence of certain prescribed limits, as specified. (ED § 22121)

f. "Service" means work performed for compensation in a position subject to coverage under the DB program, except as otherwise specifically provided in existing law, provided that the contributions on compensation for that work are not credited to the DBS program. (ED § 221770)

4) Establishes a limit on the amount of compensation CalSTRS uses to compute benefits payable to a member, as specified, pursuant to annual compensation limits established under federal tax law. (ED § 22317.5)

5) Prescribes how CalSTRS shall credit service. (ED § 22701)

This bill:

1) Simplifies the definition of "creditable service" to mean any service in a position subject to CalSTRS membership (i.e., any work done as an educational professional) and eliminates current law's list of educational activities for which members earn creditable service.

2) Simplifies the definition of "creditable compensation" by consolidating classic and PEPRA definitions into one but keeps separate compensation limits and benefit formulas for classic members and PEPRA members.

3) Redefines "creditable compensation" to mean specified annualized salary and special pay (e.g., ongoing differential pay for an advanced degree or longevity/experience pay), but excludes supplemental pay (i.e., any other compensation not explicitly prohibited, such as stipends for additional duty assignments, limited-term payments or overtime).

4) Requires annualized pay rates to be established according to a publicly available pay schedule and exclusively determined as the salary for performing creditable service on a full-time basis in a position subject to membership.

5) Excludes supplemental pay from compensation earnable and instead credits supplemental pay to the DBS Program. However, if the member has less than one year of service in the school year, the bill requires CalSTRS to credit the member with additional service credit at the ratio of the supplemental pay earned to the compensation earnable for that year, as specified.

6) Eliminates the requirement that CalSTRS return to the member any excess member contributions from the DBS Program, thereby allowing the member's DBS account to grow.

7) Requires CalSTRS to determine a date based on when the system has the capacity to implement the bill's changes and to post that date on CalSTRS' internet website no later than July 1, 2027.

8) Makes the bill's provisions operative on the date determined by CalSTRS.

COMMENTS

1. Need for this bill?

According to CalSTRS:

"Over the last year, CalSTRS staff met with various member and employer groups to identify the biggest challenges associated with creditable compensation and creditable service laws and regulations and to discuss possible solutions. As an outcome of those meetings, this bill is a consensus-based approach to address the issues relating to complex compensation and service requirements and achieve more consistent reporting, fewer errors and a reduction in benefit overpayments and underpayments."

2. Proponent Arguments

According to the California Retired Teachers Association:

"CalSTRS has a complex web of existing definitions and reporting requirements regarding what is creditable towards the teachers' Defined Benefit Plan. As a result, errors are often made, due to the lack of clarity of what would, and would not count towards the Defined Benefit Plan. Many of these mistakes can ultimately harm the retirement security of retirees through negative retirement benefit changes or negative audit findings.

AB 1997 (McKinnor) would create a much more simplified definition of creditable service and would enhance transparency requirements regarding both pay rates and salary. Together, these changes would make it easier for districts to administer, easier for teachers to know what service will count towards the Defined Benefit Plan, and easier for retirees to count on a steady retirement salary that won't be reduced due to errors."

According to the California Teachers Association:

"This bill will simplify compensation reporting to the system by employers to provide predictability and consistency in the amount a retired educator will receive as a monthly retirement allowance. Numerous considerations factor into plans to retire with dignity, and having a clear understanding of a teacher's retirement income provides peace of mind and reduces anxiety about financial security in retirement. This bill will help California's educators approach retirement with confidence, knowing that there is a dependable plan in place to support financial needs and goals throughout the golden years."

According to the Association of California School Administrators:

"AB 1997 includes numerous provisions seeking to address the complex system of reporting and calculating creditable compensation and creditable service. This includes consolidating the different types of pay, clearly defining "creditable service" to mean work performed in a position subject to CalSTRS membership, clarifying how service credits are earned from supplemental pay, as well as several others key changes. In doing so, it will alleviate the administrative burden on employer agencies and ensure benefits earned by members are accounted for accurately."

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 644 (Public Employment & Retirement Committee), Chapter 96, Statutes of 2019), among other changes, defined the term "annualized pay rate" as the salary or wages a person could earn during a school term for service performed in an assignment on a full-time basis to distinguish it from the definition of "compensation earnable" and clarified creditable compensation is salary and wages or remuneration in addition to salary for CalSTRS 2% at 62 members.

AB 963 (Bonilla, Chapter 782, Statutes of 2015) clarified the definition of "creditable service" and remedied membership issues for individuals in classified positions who were erroneously reported to CalSTRS.

AB 1381 (Public Employment, Retirement, & Social Security Committee, Chapter 559, Statutes of 2013) made various technical and conforming changes that align the Teachers' Retirement Law with the provisions of the PEPRA, including creating a separate definition of "creditable compensation" for CalSTRS 2% at 62 members.

AB 340 (Furutani, Chapter 296, Statutes of 2012), PEPRA, made various changes to the CalSTRS benefit structure that affect those who first hired on or after January 1, 2013, including requiring final compensation be calculated based on the highest average annual salary rate over three consecutive school years and reducing the limit on compensation and limiting the type of compensation that counts toward retirement benefits.

AB 2700 (Lempert, Chapter 1021, Statutes of 2000), among other provisions, made most compensation for creditable service creditable to CalSTRS, credited member and employer contributions for service in excess of 1.000 year of service per school year to the DBS Program, and made several other changes to the definitions of "class of employees," "creditable compensation" and "creditable service."

AB 1509 (Machado, Chapter 74, Statutes of 2000) established the DBS Program, a cash balance plan, which was credited with 25% of a member's contributions from 2001 through 2010.

AB 3032 (Burton, Chapter 1165, Statutes of 1996) repealed the former definition of "compensation" and "salary" and added new definitions for "creditable compensation" and "final compensation" for purposes of determining benefits and contributions for the DB Program.

AB 948 (Gallegos, Chapter 394, Statutes of 1995) established a definition of various employment activities that are considered "creditable service" that can be reported to CalSTRS.

SUPPORT

California State Teachers' Retirement System (Sponsor)
Association of California School Administrators
California County Superintendents
California Federation of Teachers

California Retired Teachers Association
California Teachers Association
Delta Kappa Gamma California
Elderly Care Everywhere
Faculty Association of California Community Colleges
Los Angeles County Office of Education
Office of the Riverside County Superintendent of Schools

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2011	**Hearing Date:**	June 12, 2024
Author:	Bauer-Kahan		
Version:	May 13, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Unlawful employment practices: small employer family leave mediation program: reproductive loss leave

KEY ISSUE

This bill extends the existing Small Employer Family Leave Mediation Program to disputes arising over the use of reproductive loss leave and eliminates the program's January 1, 2025 sunset date to make the program permanent.

ANALYSIS

Existing federal law:

1) Establishes the Family Medical Leave Act (FMLA) to provide most employees the right to take up to 12 weeks of job-protected, unpaid time off work for the birth or adoption of a child, due to a serious health condition of the employee, for an exigency arising out of the fact that the employee's close relative is a military member on active duty, and for the employee to care for a close relative with a serious health condition. Applies these provisions to private employers that employ 50 or more employees during each of 20 or more calendar workweeks in the current or preceding year. (28 U.S.C. §2601 et seq., §2611)

Existing state law:

2) Establishes the Fair Employment and Housing Act (FEHA) to prohibit discrimination or harassment in employment or the provision of housing accommodations on the basis of age, ancestry, color, race or ethnicity, creed, gender or sexual orientation, national origin, religion, or disability. Prohibits denial of specified leave, retaliation for asserting rights to such leave, or refusing to rehire an employee returning from such leave by certain employers and the state or its subdivisions. (Government Code §12900 et seq.)

3) Establishes the Civil Rights Department (CRD) to combat discrimination in housing and employment. Specifies that the CRD has the power to receive, investigate, conciliate, mediate, and prosecute complaints alleging practices made unlawful by FEHA. (Government Code §12900 et seq.)

4) Establishes the California Family Rights Act (CFRA) and makes it an unlawful employment practice for an employer to refuse to grant a request from an eligible employee to take up to a total of 12 weeks off in any 12-month period for specified family care and medical leave. Defines "family care and medical leave" for this provision to mean taking leave to care for a new child; to care for a child, parent, grandparent, grandchild, sibling, spouse, or domestic

partner who has a serious health condition; to take leave because of the employee's own serious health condition; or for a qualifying exigency related to the employee's close family's active duty as a member of the Armed Forces, as specified. Provides that these provisions only apply to employers with five or more employees, and to employees who have held their job for at least a year and worked at least 1,250 hours in the previous 12-month period. (Government Code §12945.2)

5) Provides that it is an unlawful employment practice for an employer to refuse to grant a request by an employee to take up to five days of reproductive loss leave following a reproductive loss event, as defined. Provides that it is an unlawful employment practice to retaliate against an employee for exercising their right to reproductive loss leave, as specified, and to interfere with, restrain, or deny the exercise of any right under its provisions. Provides that a covered employee is one who has been employed by the employer for at least 30 days prior to the commencement of the leave, and specifies that a covered employer is one who employs five or more employees, or is the state or any political or civil subdivision. (Government Code §12945.6)

6) Provides that it is an unlawful employment practice for an employer to refuse to grant an employee's request for up to five days of bereavement leave following the death of a family member. Applies these provisions to an employee who has worked for their employer for at least 30 days prior to the commencement of the leave, and to employers with five or more employees, and the state or any political or civil subdivision. (Government Code §12945.7)

7) Requires CRD to create, until January 1, 2025, a Small Employer Family Leave mediation Pilot Program (Program) for employers with between **five and 19 employees**. Provides that CRD must notify an employee seeking an immediate right-to-sue letter for an alleged violation of ***CFRA or bereavement leave*** of the mediation program, and that CRD must notify all named respondents of the alleged violation and the mediation program. Specifies that, if either the employer or the employee requests mediation within 30 days of receiving notice from CRD of the alleged violations, the employee may not pursue a civil action until mediation is deemed complete or unsuccessful, as specified. Specifies that CRD must initiate mediation within 60 days of receipt of a request to mediate or receipt of the notification to respondents, whichever is later. (Government Code §12945.21)

8) Specifies that mediation under the Program is deemed complete when the following occur:

   a. Neither the employee nor the employer requests mediation within 30 days of receipt of notification from CRD of the claims, or both parties agree not to mediate;
   b. The employer fails to respond to the notification or mediation request within 30 days of receipt of the notification;
   c. CRD fails to initiate mediation within 60 days of its receipt of the request for mediation or the receipt of notification; or
   d. CRD notifies the parties that it has determined that further mediation would be fruitless, both parties agree further mediation would be fruitless, one of the parties fails to submit information requested by the other party that is reasonably necessary or fair for the other party to obtain, or the mediator determines that the core facts of the employee's complaint are not related to CFRA or bereavement leave.
   (Government Code §12945.21(d))

9) Specifies that mediation is unsuccessful when the claim is not resolved within 30 days of CRD's initiation of mediation, unless CRD notifies both parties that it has determined that more time is needed for the mediation to be successful. (Government Code §12945.21(d)(2))

This bill:

1) Extends the Small Employer Family Leave Mediation Program to disputes arising under the reproductive loss leave provision of Government Code Section 12945.6.

2) Provides one additional basis for mediation under the program to be deemed complete when the mediator determines that the employer has fewer than 5 employees or more than 19. Specifies that this basis shall not apply when the parties disagree about whether the employer has between 5 and 19 employees, and the mediator is unable to determine that the employer has between 5 and 19 employees.

3) Eliminates the Small Employer Family Leave Mediation Program's January 1, 2025 sunset date thereby making the program permanent.

COMMENTS

1. Background:

California Family Rights Act:

Prior to 2021, the California Family Rights Act entitled eligible employees of covered employers with *50 or more employees* to take up to 12 workweeks of unpaid, job-protected leave during a 12 month period for specified family care and medical leave reasons. CFRA defined "family care and medical leave" as any of the following:

a. Leave for reason of the birth of a child of the employee, the placement of a child with an employee in connection with the adoption or foster care of the child by the employee, or the serious health condition of a child of the employee.
b. Leave to care for a seriously ill parent or spouse
c. Leave because of an employee's own serious health condition

In 2020, after almost a decade of attempts, the scope of CFRA was expanded through SB 1383 (Jackson, Chapter 86, Statutes of 2020) to apply to employers with ***five or more employees*** and allow employees to take leave to care for domestic partners, child of domestic partner, grandparents, grandchildren, siblings, and parent-in-law. The Civil Rights Department enforces CFRA and any complaints of employer violations.

Bereavement Leave:

Until recently, all provisions and medical leave programs in existing law provided protections for individuals to take time off from work to care for themselves or their family members while they were still alive. In 2022, AB 1949 (Low, Chapter 767, Statutes of 2022) was signed into law providing employee with a bereavement leave entitlement of up to five

days upon the death of a specified family member. The law defines "family member" for purposes of this leave to include a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or parent-in-law. Bereavement leave is available to employees working for employers with five or more employees and for which the employee has worked a minimum of 30 days. It is unlawful for an employer to discriminate or retaliate against an employee for requesting or using bereavement leave. The Civil Rights Department enforces bereavement rights and any complaints of employer violations.

Reproductive Loss Leave:

Last year, SB 848 (Rubio, Chapter 724, Statutes of 2023) created reproductive loss leave to provide up to five days of job-protected leave for an employee experiencing a failed adoption, a failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction. The bill also applied reproductive loss leave to an employee who has been employed for at least 30 days by an employer with five or more employees. The law requires the leave to be taken within 3 months of the event, except as described, and pursuant to any existing leave policy of the employer. Reproductive loss leave prohibits an employer from retaliating against an employee for exercising their rights under this leave and requires the employer to maintain confidentiality.

2. Background: Small Employer Family Leave Program

In 2020, AB 1867 (Committee on the Budget, Chapter 45, Statutes of 2020), among other things, required the Department of Fair Employment and Housing (since renamed the Civil Rights Department) to create the Program with a sunset date of January 1, 2024. As noted under existing law, the pilot program authorizes a small employer or its employees to request all parties to participate in mediation through CRD's dispute resolution division within a specified timeframe, after notice. The Program prohibits an employee from pursuing civil action until the mediation is complete.

When first enacted, the mediation program applied only to violations of CFRA provisions. AB 1867 specified that the Program would only become operative if SB 1383 (Jackson, Chapter 86, Statutes of 2020) was also enacted. When CFRA was expanded through SB 1383 to cover smaller employers, opponents argued that if the change had to happen, that a mandatory mediation program should at least accompany the expansion. The goal of the Program was to give small employers the chance to resolve disputes over family leave before employees could file a lawsuit, which would raise the dispute resolution costs for all parties.

In 2021, AB 1033 (Bauer-Kahan, Chapter 327, Statutes of 2021) expanded the provisions of the Program to provide more direction to both the department and interested parties on various aspects of the Program including the notification requirements, when a mediation is to be deemed complete or unsuccessful and steps that must be taken before legal action can be pursued.

In 2023, AB 1756 (Committee on Judiciary, Chapter 478, Statutes of 2023), among other things, extended access to the Program to alleged violations under California's newly enacted bereavement leave and extended the January 1, 2024 sunset date to January 1, 2025.

This bill (AB 2011) would extend the Program to disputes arising under the reproductive loss leave enacted last year and would eliminate the January 1, 2025 sunset date to make the program, with all the expansions, permanent.

3. Need for this bill?

The author argues that the Small Employer Family Leave Mediation Pilot Program has been a proven meaningful resource for successfully mediating disputes in support for its permanent extension. The author asserts that, since the program's inception in 2021, there have been 55 complaints referred to the program, 31 of which were mediated. They also highlight that 17 of these complaints were successfully settled, resulting in total settlement amounts of $688,250 for employees.

4. Proponent Arguments:

According to the sponsors, the California Chamber of Commerce, and proponents, "since its inception, the program has been successful. More than half of the mediated cases have resulted in settlement with hundreds of thousands of dollars going directly to workers. We believe this mediation option has been an important way to protect small businesses while maintaining labor rights. The Legislature should make this program permanent and expand its scope to include reproductive loss leave, which is a new leave requirement that also applies to small businesses."

5. Opponent Arguments:

None received.

6. Double Referral:

This bill was double referred and prior to our hearing was heard and passed by the Senate Judiciary Committee.

7. Prior Legislation:

SB 848 (Rubio, Chapter 724, Statutes of 2023) created reproductive loss leave to provide up to five days of job-protected reproductive loss leave for when an employee experiences a failed adoption, a failed surrogacy, miscarriage, stillbirth, or unsuccessful assisted reproduction. The bill also applied reproductive loss leave to an employee who has been employed for at least 30 days by an employer with five or more employees.

AB 1756 (Committee on Judiciary, Chapter 478, Statutes of 2023) extended the sunset for the Program from January 1, 2024 to January 1, 2025 and extended the mediation program to violations under bereavement leave, among a variety of other changes to different provisions of unrelated law.

AB 1949 (Low, Chapter 767, Statutes of 2022) established that an employee who has worked at least 30 days for an employer with five or more employees is entitled to up to five days of bereavement leave within three months of the family member's death, upon the death of a family member.

AB 1033 (Bauer-Kahan, Chapter 327, Statutes of 2021) expanded CFRA to cover care for a parent-in-law, and reworked the Program to require CRD notify employers of an employee's claim and an employer's right to request mediation under the pilot program.

AB 1867 (Committee on Budget, Chapter 45, Statutes of 2020) created the Program requiring parties to engage in CRD-run mediation of claims of CFRA and bereavement leave violations, if requested by one of the parties, among other unrelated changes to other provisions of law. Established a January 1, 2024 sunset date to the pilot program.

SB 1383 (Jackson, Chapter 86, Statutes 2020) expanded CFRA's applicability from employers with 50 employees to those with five or more.

SUPPORT

California Chamber of Commerce (Sponsor)
Associated General Contractors California
Associated General Contractors San Diego Chapter
California Apartment Association
California Association of Winegrape Growers
California Attractions and Parks Association
California Beer and Beverage Distributors
California Builders Alliance
California Credit Union League
California Farm Bureau
California Fuels and Convenience Alliance
California Landscape Contractors Association
California Lodging Industry Association
California Manufacturers and Technology Association
California Restaurant Association
California Self Storage Association
California Special Districts Association
California State Council of The Society for Human Resource Management (CalSHRM)
California Trucking Association
Coalition of Small and Disabled Veteran Businesses
Danville Area Chamber of Commerce
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Flasher Barricade Association
Folsom Chamber of Commerce
Fremont Chamber of Commerce
Garden Grove Chamber of Commerce
Greater Riverside Chambers of Commerce
Independent Lodging Industry Association.
Lincoln Area Chamber of Commerce
Los Angeles Area Chamber of Commerce

Oceanside Chamber of Commerce
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
Rocklin Area Chamber of Commerce
Sacramento Regional Builders Exchange
San Diego Regional Chamber of Commerce
San Marcos Chamber of Commerce
San Pedro Chamber of Commerce
Santee Chamber of Commerce
Shingle Springs/Cameron Park Chamber of Commerce
South Bay Association of Chambers of Commerce
Torrance Area Chamber of Commerce
United Chamber Advocacy Network
Valley Industry and Commerce Association (VICA)
Western Carwash Association
Western Electrical Contractors Association
Women Lawyers of Sacramento
Yorba Linda Chamber of Commerce
Yuba Sutter Chamber of Commerce

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2135	**Hearing Date:**	June 12, 2024
Author:	Schiavo		
Version:	May 20, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Public works contracts: wage and penalty assessment

KEY ISSUE

This bill increases, from 18 to 24 months, the time period the Labor Commissioner (LC) or their designee has to issue a civil wage and penalty assessment, as specified, to the contractor or subcontractor, or both, on a public works project.

ANALYSIS

Existing law:

1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement (DLSE) under the direction of the LC, and empowers the LC to ensure a just day's pay in every work place and to promote justice through robust enforcement of labor laws. (Labor Code §79-107)

2) Creates the Bureau of Field Enforcement (BOFE) within the Labor Commissioner's Office (LCO) to ensure minimum labor standards are adequately enforced and directs the LC to concentrate resources in priority industries, occupations, and areas in which employees are relatively low paid and in which there has been a history of violations. (Labor Code §90.4)

3) Requires the LC to, with reasonable promptness, issue a civil wage and penalty assessment to the contractor or subcontractor, or both, if the LC or their designee determines after an investigation that there has been a violation of public works laws. (Labor Code §1741(a))

4) States that the assessment shall be served not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last. (Labor Code §1741(a))

5) Specifies that the assessment shall be in writing, and include the nature of the violation and the amount of wages, penalties, and forfeitures due, and shall include the basis for the assessment. The assessment shall also advise the contractor and subcontractor of the procedure for obtaining review. (Labor Code §1741(a))

6) Requires the LC to ascertain, to the extent practicable, the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and to serve a copy of the assessment to the bonding company or surety, as specified. (Labor Code §1741(a))

7) Provides that interest shall accrue on all due and unpaid wages, from the date the wages were due and payable until the wages are paid, as specified. (Labor Code §1741(b))

This bill:

1) Increases from 18 to 24 months the time period in which the LC or their designee may issue a civil wage and penalty assessment, as specified, to the contractor or subcontractor, or both, on a public works project for violating the law.

2) Provides that the LC or their designee may extend the deadline in 1) for an additional 18 months if they demonstrate good cause.

3) Specifies that "good cause" includes that an investigation and assessment is ongoing.

4) States that an investigation shall not be dismissed solely on the basis that the LC or their designee did not complete their review and assessment within the prescribed time.

COMMENTS

1. Background:

The Bureau of Field Enforcement (BOFE)

BOFE contains several units, the Public Works (PW) Unit, the Compliance Monitoring Unit, the Labor Enforcement Task Force, and the Underground Economy's Employment Task Force. Together, they enforce minimum labor standards to ensure employees do not work under substandard, unlawful conditions. Specifically, the PW Unit investigates complaints arising from violations of the state's prevailing wage and apprenticeship laws and conducts audits on behalf of workers for back wages owed. In fiscal year (FY) 2020-21, the PWU conducted 1,964 audits with 1,400 audits closed and 516 civil wage and penalty assessments issued (approximately $11.0 million in wages and $12.6 million in penalties assessed)[1].

Under current law, the LC has 18 months after the filing of a valid notice of completion in the office of the county recorder in which the public work was performed, or not later than 18 months after acceptance of the public work to issue a civil wage and penalty assessment. The contractor or subcontractor then has the ability to appeal the penalty by transmitting a written request to the LCO within 60 days after the service of the assessment. Within 90 days of the appeal, the Director of DIR shall appoint an impartial hearing officer, as specified, to review evidence and issue a written decision affirming, modifying, or dismissing an assessment. Within 45 days after service of the decision, the affected contractor or subcontractor may file a petition for a writ of mandate with the appropriate superior court. Upon a final decision affirming an assessment, the following penalties may apply: restitution of wages owed, plus interest and liquidated damages, monetary penalties, and debarment of up to three years.

The Labor Commissioner's Office (LCO) 2024 Audit

Wage theft is a persistent issue across California industries. Every year, tens of thousands of workers lose millions of dollars in stolen wages. Despite having some of the strongest labor

[1] The Bureau of Field Enforcement, Fiscal Year Report, 2020-2021, California Labor Commissioner's Office, p. 12

protections in the nation, California often struggles with enforcement. Even public works projects, with their extensive wage and reporting requirements, are not immune to wage theft. A 2024 audit of the LCO, found that due to an inefficient wage claim process, the LCO often takes two years or longer to resolve the wage claims it receives[2]. Additionally, the LCO is severely understaffed, contributing to a rapidly growing backlog of cases.

For public works violations, this bill would increase the time period the LC has to issue has to issue a civil wage and penalty assessment from 18 months to 24 months, with the option to extend the deadline by another 18 months if an investigation is ongoing. This means the LC has 730 days from the completion of a public works project to take action, or about two years. This aligns with the current length of time it takes the LCO to resolve individual wage theft claims.

The committee notes that AB 2705 (Ortega, 2024), if signed into law, would align the statute of limitations (SOL) the LC has to enforce the liability on a public works payment bond with the SOL the LC to issue civil wage and penalty assessments. Should AB 2705 and this bill both be signed into law, the LC would have 24 months, with the option to extend the deadline, to issue a civil wage and penalty assessment and enforce the liability on a payment bond.

For more information on AB 2705, please see the Senate Labor, Public Employment, and Retirement Committee's June 12th bill analysis.

2. Author Amendments:

The author's office plans to amend the bill in committee to address a drafting error. The following sentence will be struck from the bill, "An investigation shall not be dismissed solely on the basis that the Labor Commissioner or their designee did not complete their review and assessment within the prescribed time." This sentence was intended to be deleted when the author amended the bill on 5/20/24 to limit the length of time the LC can extend the deadline to issue a civil wage and penalty assessment.

1741…

(a) If the Labor Commissioner or their designee determines after an investigation that there has been a violation of this chapter, the Labor Commissioner shall with reasonable promptness issue a civil wage and penalty assessment to the contractor or subcontractor, or both. The assessment shall be in writing, shall describe the nature of the violation and the amount of wages, penalties, and forfeitures due, and shall include the basis for the assessment. The assessment shall be served not later than 24 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 24 months after acceptance of the public work, whichever occurs last. The deadline for service of the assessment may be extended for an additional 18 months by a showing of good cause by the Labor Commissioner or their designee. A showing of good cause includes that the investigation and assessment is ongoing. ~~**An investigation shall not be dismissed solely on the basis that the Labor Commissioner or their designee did not complete their**~~

[2] "The California Labor Commissioner's Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers." California State Auditor, May 2024, https://www.auditor.ca.gov/wp-content/uploads/2024/05/2023-104-Report.pdf

~~review and assessment within the prescribed time.~~ Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and awarding body…

3. Need for this bill?

According to the author;

"For public works projects, a complaint can be submitted to the Labor Commission at any time if an employee suspects a labor violation has occurred. Once the project completes and a notice of completion has been filed with the county, it starts an 18 month clock for the Labor Commissioner to complete the investigation and serve the entity with an assessment if a violation is found. The Labor Management Compliance Council, an entity that works to ensure companies and contractors are adhering to labor code, have been submitting complaints to the Labor Commissioner for years. In 2023, they found that one third of cases closed were closed due to reaching the statute of limitations, even if the complaint was submitted prior to the notice of completion was filed … This bill would address this issue by extending the statute of limitations as well as allow the labor commissioner to extend an investigation one time."

4. Proponent Arguments:

The California State Pipe Trades Council, California State Association of Electrical Workers, and Western States Council of Sheet Metal Workers, are in support of the measure, arguing;

"Far too often, contractors on public works projects violate the prevailing wage laws whether on purpose or by accident. One specific project in our area had many violations including failure to hire Apprentices, misclassification or workers, incorrect Apprentice to Journeyperson ratios and failure to submit DAS 140 and 142 forms. This case was presented to the DLSE but was closed due to reaching the Statute of Limitations resulting in wage theft to the workers that helped build that building.

Wage theft is a pervasive yet historically difficult labor violation to address, and those who live paycheck to paycheck are deeply impacted by it. Workers must overcome the fear of retaliation, navigate the difficulties finding documentation, and have the time and capacity to submit a complaint. In the case of complaints submitted to the Labor Commissioner, a worker's efforts can be in vain if the Commissioner's Office cannot issue an assessment for any reason within 18 months after the filing of a notice of completion with the county. This stacks the system against a worker, and for employees who have been wronged, staffing shortages or any other emergency which would delay the Labor Commissioner's Office can be the difference of a worker receiving pay they're owed or not.

AB 2135 extends this 18-month timeline and allows an investigation to be extended beyond for good cause, which includes ongoing investigations."

5. Opponent Arguments:

The American Subcontractors Association of California and the Western Electrical Contractors Association are opposed to the measure, stating:

"We recognize the importance of ensuring the timely payment of workers in the construction industry and penalizing employers who violate the law. However, ASAC and WECA regrettably disagree with the approach taken in AB 2135. Instead of incentivizing the LC to complete timely investigations or provide additional resources, this bill could delay the resolution of claims. Further, while we appreciate the intent to ensure that a party's claims are not unfairly dismissed, we remain concerned about allowing up to 42 months to investigate.

Unfortunately, we also believe the timeframe proposed in AB 2135 could have unintended negative impacts on medium and small contractors and subcontractors, including minority-owned and Disabled Veteran Business Enterprises (DVBE). Specifically, we are concerned this could drive up the cost of bonding and limit the supply of sureties willing to write such business. This will hurt contractors and subcontractors, as bonding requirements can currently be a barrier to entry for small businesses on public works projects."

6. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

7. Prior Legislation:

AB 2182 (Haney, 2024) would, among other things, authorize the Director of DIR to dismiss a contractor or subcontractor's request to review a civil wage and penalty assessment issued by the LC and instead issue a decision affirming the assessment if the contractor or subcontractor fails to appear for a prehearing conference or hearing, as specified. *This bill is currently pending in the Senate Labor, Public Employment and Retirement Committee.*

AB 2705 (Ortega, 2024) would, for violations of public works law, align the statute of limitations for the LC to enforce the liability on a payment bond with the statute of limitations the LC has to issue civil wage and penalty assessments. *This bill is currently pending in the Senate Labor, Public Employment and Retirement Committee.*

AB 1336 (Frazier, Chapter 792, Statutes of 2013) increased from 180 days to 18 months the statute of limitations for the LC, if the LC or his or her designee determines after an investigation that there has been a violation of the public works provisions, to issue a civil wage and penalty assessment to the contractor or subcontractor, or both.

SUPPORT

California Labor Federation
California Plumbing & Mechanical Contractors Association (CPMCA)
California State Association of Electrical Workers
California State Pipe Trades Council
Ironworkers Local 433
Southern California Labor/management Operating Engineers Contract Compliance
Southern California Pipe Trades District Council 16
Sprinkler Fitters U.A. Local 709
State Building and Construction Trades Council
U.A. Local 250 Steamfitters & Refrigeration

U.A. Plumbers & Pipefitters Local Union 114
United Association Local 398
United Association of Plumbers & Pipefitters Local 761
United Association of Plumbers and Pipefitters Local 447
United Association of Plumbers Pipe and Refrigeration Fitter Local 246
Western Area Contract Compliance
Western States Council Sheet Metal, Air, Rail and Transportation

OPPOSITION

American Subcontractors Association-California
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Chapters of the National Electrical Contractors Association
Construction Employers' Association
Southern California Contractors Association
United Contractors
Western Electrical Contractors Association
Western Electrical Contractors Association INC.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2167	**Hearing Date:**	June 12, 2024
Author:	Cervantes		
Version:	May 20, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Unemployment insurance: paid family leave

KEY ISSUE

This bill 1) authorizes workers to file a claim for Paid Family Leave (PFL) benefits up to 60 days in advance of the first compensable day of disability and up to 60 days following the first compensable day; and 2) extends the deadline for an individual to appeal EDD's decision of ineligibility for PFL benefits to 60 days from the service of the notice of determination.

ANALYSIS

Existing law:

1) Establishes the Employment Development Department (EDD) to, among other duties, administer the Unemployment Insurance and Disability Insurance programs. (Unemployment Insurance Code §301)

2) Establishes the State Disability Insurance program as a partial wage-replacement plan funded through employee payroll deductions that is available through the Disability Insurance and Paid Family Leave programs to eligible individuals. (Unemployment Insurance Code §2601-3308)

3) Provides, through the State Disability Insurance (SDI) program, short-term wage replacement benefits to eligible workers who are unable to work due to a non-work-related illness or injury. SDI benefits can be used for an illness or injury, either physical or mental, which prevents an employee from performing their regular and customary work and includes elective surgery, pregnancy, childbirth, or other medical conditions. (Unemployment Insurance Code §2601-3308)

4) Provides, through the Paid Family Leave (PFL) program, eligible employees up to eight weeks of wage replacement benefits within a 12-month period to workers who need to take time off work for the following reasons:

    a. To care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner;
    b. To bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption;
    c. To participate in a qualifying event because of a family member's military deployment. (Unemployment Insurance Code §3301)

5) Requires an SDI and PFL claim, accompanied by a certificate on a form furnished by EDD, to be filed no later than the 41st consecutive day following the first compensable day, with the possibility for extensions upon a showing of good cause, as specified. (Unemployment Insurance Code §2706.1 and §3301)

6) Requires EDD to issue the initial payment for both SDI and PFL benefits to a monetarily eligible claimant who is otherwise determined eligible by the department under applicable law and regulation within 14 days of receipt of their properly completed claim. (Unemployment Insurance Code §2701.5 and §3304)

7) Authorizes a claimant for SDI benefits to appeal a determination of ineligibility to an administrative law judge within 30 days from service of the notice of determination, with possible extension for good cause. "Good cause" includes, but is not be limited to, mistake, inadvertence, surprise, or excusable neglect. (Unemployment Insurance Code §2707.2)

This bill:

1) Extends the timeline for an individual to file a claim for PFL benefits to no later than the 60th consecutive day following the first compensable day.

2) Authorizes an individual to file a claim for PFL benefits up to 60 days before the first compensable day with respect to that claim.

3) Extends the deadline for an individual to appeal EDD's decision regarding their eligibility for PFL benefits to 60 days from the service of the notice of determination, as specified.

COMMENTS

1. Background:

The State Disability Insurance (SDI) program, administered by the EDD, was created in 1946 to provide monetary benefits to workers unable to work due to non-work-related illness, injury, or pregnancy. Benefits are payable for a maximum of 52 weeks and provide a wage replacement of about 60-70 percent. The SDI program is financed solely by worker contributions and covers approximately 18 million individuals.

In 2004, California was the first state in the nation to implement a Paid Family Leave program (administered as part of SDI) that provides benefits to workers who need to take time off to care for a seriously ill family member, or to bond with a new child either from birth, adoption, or foster care placement. Effective January 1, 2021, the PFL scope was expanded to include employees taking time off work to assist a military family member under covered active duty or call to covered active duty. PFL provides up to eight weeks of the 60-70 percent wage replacement. According to EDD's SDI Statistical Information, for fiscal year 2022-23, there were a total of 288,756 claims paid with a total of $1,688,294,154 in benefits paid. The average weekly benefit amount was $874 for approximately 7.18 weeks.[1]

[1] Paid Family Leave Program Statistics. https://edd.ca.gov/siteassets/files/about_edd/quick-stats/qspfl_pfl_program_statistics.pdf

In 2022, SB 951 (Durazo) was adopted to, among other things, for claims commencing on or after January 1, 2025, revise the formula for determining benefits under both the SDI and PFL programs to provide an increased wage replacement rate ranging from 70-90 percent based on the individual's wages.

2. Need for this bill?

For both SDI and PFL programs, existing law requires that a claimant wait to apply for benefits until the first day they suffer a wage loss. EDD will then process the application and, barring any issues, is required to issue initial payment of benefits within 14 days of receipt of the properly completed claim. Delays in receipt of benefits can occur if an application contains errors or there is an issue with receipt of the doctor's certification.

This bill will allow claimants, when the use of PFL is foreseeable, to apply up to 60 days prior to the first compensable day of disability and for up to 60 days following the first day of eligibility. This bill also extends the deadline for an individual to appeal EDD's decision regarding their eligibility for PFL benefits from 30 days to 60 days from the service of the notice of determination.

According to the author, "by allowing for early submissions, it could ease the pressure from birthing people to allow for a less stressful and easier transition for those who work up until birth. Extending the deadline will also ensure that individuals have sufficient time to settle into the new lifestyle that comes with a newborn and apply for benefits on time. The current appeal timeline process may not allow individuals enough time to gather necessary documentation or additional information to ensure a fair and thorough review."

3. Author Amendments:

The author would like to amend the bill in Committee to extend the authority to apply up to 60 days prior to the first compensable day of disability and for up to 60 days following the first day of eligibility to benefits sought under the State Disability Insurance program. The amendments would also increase from 30 to 60 days after notification, the deadline for an individual to appeal EDD's decision regarding their ineligibility for SDI benefits.

4. Staff Comment:

In April, this Committee heard SB 1090 (Durazo, 2024) which would authorize workers to file a claim for State Disability Insurance (SDI) or Paid Family Leave (PFL) benefits up to 30 days in advance of the first compensable day of disability and requires the EDD to issue payment on those claims within 14 days of receipt (per existing law) or as soon as eligibility begins for the claimant, whichever is later. SB 1090 is pending in the Assembly Insurance Committee.

Both SB 1090 and this bill (AB 2167) attempt to accomplish the same goal and amend the same sections of the PFL provisions. With the amendments to be taken by the author in this Committee, noted above to include SDI in these authorizations, the two bills will address the same provisions. One would allow for pre-applying for benefits 30 days prior to the disability and another would allow for 60 days pre and post for applying. Prior versions of AB 2167 included additional provisions that would have required the application for PFL to be

available on EDD's website for download and fillable in PDF format. Additionally, prior versions also would have authorized an individual applying for benefits to provide their social security number or individual taxpayer identification number when applying for benefits. Amendments coming out of Assembly Appropriations Committee struck the latter two provisions out of the bill. As noted above, some of the provisions that remain in the bill are in conflict with SB 1090.

5. Proponent Arguments:

According to the proponents,

"Existing law does not allow the sufficient time necessary for individuals to apply for Paid Family Leave with reasonable expectations. There are various constraints such as a 41- day window to apply starting on the day that leave begins, not being able to apply early, difficulty in obtaining paperwork necessary to apply, and excluding any individual without a SSN from applying online, although citizenship and immigration status does not impact eligibility for benefits. Additionally, denial of benefits must be appealed within 30 days from the issue date of notice."

6. Opponent Arguments:

None received.

7. Prior/Related Legislation:

SB 1090 (Durazo, 2024) would authorize workers to file a claim for State Disability Insurance (SDI) or Paid Family Leave (PFL) benefits up to 30 days in advance of the first compensable day of disability and requires the EDD to issue payment on those claims within 14 days of receipt (per existing law) or as soon as eligibility begins for the claimant, whichever is later. *SB 1090 is pending in Assembly Insurance Committee.*

AB 2123 (Papan, 2024) would delete the authorization for an employer to require an employee to take two weeks of vacation leave before accessing benefits under the PFL program. *AB 2123 is pending in the Senate Appropriations Committee.*

AB 518 (Wicks, 2023) would have expanded eligibility for benefits under the PFL program to include individuals who take time off work to care for a seriously ill designated person. *AB 518 is pending on the Senate inactive file.*

AB 575 (Papan, 2023, Vetoed) would have expanded eligibility for the PFL program to provide benefits to workers who take time off work to bond with a minor child within one year of assuming responsibilities of a child in loco parentis, as defined. Additionally, this bill would have deleted (1) the restriction in law specifying that an individual is not eligible for PFL benefits if another family member is ready, willing, and able and available to provide the required care, and (2) the authorization for an employer to require an employee to take two weeks of vacation leave before accessing PFL benefits that are funded by employees.

SB 951 (Durazo, Chapter 878, Statutes of 2022), revised the formula for the computation of SDI and PFL benefits to increase the wage replacement available to claimants.

SB 1058 (Durazo, Chapter 317, Statutes of 2022), required EDD to collect demographic data, including race and ethnicity data and sexual orientation and gender identity data, for individuals who claim disability benefits under the SDI and PFL programs.

AB 1041 (Wicks, Chapter 748, Statutes of 2022), expanded the list of individuals for which an employee can take leave under the California Family Rights Act and the Healthy Workplaces, Healthy Families Act of 2014 to include a designated person.

SB 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2019), beginning July 1, 2020, extended from six to eight weeks the maximum duration of PFL benefits individuals may receive.

SB 1123 (Jackson, Chapter 849, Statutes of 2018) expanded the PFL program to include time off to participate in a qualifying exigency related to covered active duty, as defined, or call to covered active duty of the individual's spouse, domestic partner, child, or parent in the armed forces.

SB 770 (Jackson, Chapter 350, Statutes of 2013) expanded the definition of family to include in-laws, siblings and grandparents.

SUPPORT

California Work & Family Coalition
Legal Aid at Work

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2364	**Hearing Date:**	June 12, 2024
Author:	Luz Rivas		
Version:	May 20, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Property service worker protection

KEY ISSUES

This bill (1) requires the Division of Labor Standards Enforcement (DLSE) to establish an advisory committee to approve a comprehensive set of recommended regulations establishing janitorial standards that protect the health and safety of workers; (2) makes changes to the registration requirements for certain janitorial employers; and (3) increases the amount per participant that janitorial employers must pay to qualified organizations providing required sexual violence and harassment prevention training sessions.

ANALYSIS

Existing law:

1) Requires, under the California Occupational Safety and Health Act, an employer to:

    a. Furnish employment and a place of employment that is safe and healthful.
    b. Furnish and use safety devices and safeguards, and to adopt and use practices, means, methods, operations, and processes, which are reasonably adequate to render employment and the place of employment safe and healthful.
    c. Do everything reasonably necessary to protect the life, safety, and health of employees. (Labor Code § 6300 et seq.)

2) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency (LWDA), and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code §50.5)

3) Establishes within the DIR, various entities including the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC with ensuring a just day's pay in every workplace through robust enforcement of labor laws, including the investigation of complaints. (Labor Code §79-107)

4) Requires every janitorial employer to register annually with the LC and requires the DLSE to enforce the provisions relating to the registration of those employers. (Labor Code §1422 and 1423)

5) Requires janitorial employers to keep records for three years that include, among other information, the names and addresses of all employees, the hours worked daily by each employee and the wage and wage rate paid each payroll period. (Labor Code §1421)

6) Prohibits DLSE from approving the registration of any janitorial employer unless the employer has paid a registration fee and has executed a written application, sworn to by the employer, which contains specified information, including, among others, attestation that a specified sexual violence and harassment prevention training was completed as required by existing law. (Labor Code §1429)

7) Requires janitorial employers to use a qualified organization from a list maintained by the director of DIR to provide the required sexual violence and harassment prevention training, as specified, and to pay the qualified organization $65 per participant, unless an alternative payment option has been agreed to under a collective bargaining agreement. (Labor Code §1429.5)

8) Requires the Director of the DIR to maintain and periodically update a list of qualified organizations to provide the above-referenced sexual harassment and violence training, and allows the LC to adjust the fee per participant as needed, but not to exceed the cost to DLSE of administering the list. (Labor Code §1429.5(h))

9) Prohibits DLSE from registering a janitorial employer under specified circumstances, including, among others, the janitorial employer failing to satisfy specified judgments or to remit specified contributions related to unemployment insurance, social security, or Medicare. (Labor Code §1430)

This bill:

1) Requires the DLSE, no later than July 1, 2025, to establish a seven-person advisory committee composed of all the following members:

    a. One representative from the DLSE.
    b. Two representatives from a recognized or certified collective bargaining agent that represents janitorial workers.
    c. Two representatives from the janitorial industry.
    d. Two representatives from joint labor-management groups in the janitorial industry.

2) Requires the advisory committee, by January 1, 2026, to approve, through a majority vote, a comprehensive set of recommended regulations establishing janitorial standards for the purpose of protecting the health and safety of workers.

3) Requires the advisory committee, in developing the proposed regulations to consider, weigh, and be guided by relevant municipal ordinances and collective bargaining agreements and determine the time it reasonably takes workers to properly clean a given space without a high risk of incurring repetitive motion injuries, considering all of the following factors:

    a. Standard of cleaning, such as daily, interim, or restorative.
    b. Type of facility.
    c. Tools and equipment.
    d. Level of training.

e. Square footage to be cleaned.
f. The combination of tasks assigned throughout the shift.

4) Requires the DLSE, no later than July 1, 2026, to submit proposed regulations to the Office of Administrative Law for review and approval that are consistent with the recommendations of the advisory committee.

5) Prohibits the DLSE from approving the registration of any janitorial employer until the janitorial employer has executed a written application, as specified, that contains, among other things, beginning in January 1, 2028, whether in the year immediately preceding the date of the application, the employer complied with any regulations adopted pursuant to the advisory committee process described in 1) to 4) above.

6) Expands the list of circumstances under which the DLSE is prohibited from registering a janitorial employer to include, among other things:

a. The janitorial employer or its agents have committed a crime involving moral turpitude, as specified;
b. Beginning January 1, 2028, the janitorial employer failed, refused, or was unable to attest under penalty of perjury that, in the preceding year, the employer complied with any regulations adopted pursuant to the advisory committee process described above.
c. The janitorial employer misrepresented or falsified one or more responses in their application; or
d. The janitorial employer failed or refused to comply with any provisions of existing property service workers protections, as specified.

7) Requires janitorial employers, until January 1, 2026, unless an alternative payment option has been agreed to under a collective bargaining agreement, to pay qualified organizations providing sexual harassment and violence prevention training (per existing law as noted above) as follows:

a. Eighty dollars ($80) per participant for training sessions having 10 or more participants.
b. Two hundred dollars ($200) per participant for training sessions having fewer than 10 participants.

8) Requires, on and after January 1, 2026, and each year thereafter, the rates the janitorial employer must pay the qualified organization for the sexual harassment and violence prevention training sessions to increase by the percentage reflected in the most recent annual average California Price Index Changes, as specified.

9) Allows the Labor Commissioner (LC) to adjust the fee per participant for the above-referenced training as needed.

COMMENTS

1. Background:

Janitorial workers serve an essential function to the operations of many businesses, both private and public. Unfortunately, janitors face many challenges on the job including low wages, misclassification, exposure to high rates of occupational injuries and illnesses, and

threats of sexual harassment on the job. The private sector janitorial industry is composed primarily of immigrant workers of color. According to the American Community Survey (ACS), in 2019, there were approximately 278,000 janitors in California.[1] According to a study by the UCLA Labor Center and the Maintenance Cooperation Trust Fund (MCTF), *Profile of Janitorial Workers in California*, about 83 percent of private sector janitors are Latinx, Asian American/Pacific Islander, or Black. Women make up over one-third (35 percent) of the private sector janitorial workforce. The proportion of women is much larger among subcontracted janitors, at 48 percent.[2] Additionally, 37 percent of these private sector janitors work for subcontractors and 62 percent are low-wage earners.[3]

Regarding occupational injuries, the UCLA and MCTF study found that, "more than one in four (27 percent) of private sector janitors in California are over the age of 55 and more prone to injury. This issue is exacerbated by MCTF's findings that many janitorial and building services companies do not carry sufficient workers' compensation insurance and janitors misclassified as independent contractors are unlikely to have workers compensation insurance."[4] Furthermore, a report commissioned by the Commission on Health and Safety and Workers' Compensation (CHSWC) found that, of the janitors surveyed, 56 percent are working with severe pain, 58 percent regularly use pain medication, 20 percent regularly miss work due to pain, 33 percent suffered one or more work injuries in the last year, and 17 percent have anxiety or depression.[5]

These statistics and revelations on working conditions have been the focus of Legislative action for several years. In 2016, California enacted AB 1978 (Gonzalez, Chapter 373, Statutes of 2016) to create a registration process for janitorial employers, and require sexual harassment and violence prevention training. In 2019, the state enacted AB 547 (Gonzalez, Chapter 715, Statutes of 2019), which improved this training by enabling peer counselors, known as "promotoras," to train other janitors to prevent workplace sexual harassment and assault.

This bill (AB 2364) would create an advisory committee to approve a comprehensive set of recommended regulations establishing janitorial standards that protect the health and safety of these workers. Specifically, the bill would require the advisory committee to take into consideration, when drafting the proposed recommendations, the types of facilities cleaned, the tools and equipment used, the level of training, and the square footage to be cleaned, among others, and the impact these have on the risks for workplace injuries.

2. Need for this bill?

According to the author:

"Overworked janitors often push past their physical limits to get through a day's work. Workers' compensation costs for employers continue to rise because repetitive motion injuries are inherent to the job. In a 2022 report by the UCLA Labor Center, the Profile of

[1] UCLA Labor Center and The Maintenance Cooperation Trust Fund, 2022, Profile of Janitorial Workers in California, https://labor.ucla.edu/publications/profile-of-janitorial-workers-in-california/
[2] Ibid.
[3] Ibid.
[4] Ibid.
[5] UC Ergonomics Program, December 8, 2023, California Janitor Workload Study, https://www.dir.ca.gov/chswc/Meetings/2023/CAJanitorWorkloadStudy-12-08-23.pdf

Janitorial Workers in California, provided a glimpse into the economic vulnerabilities of California's private sector janitors, particularly women, who face horrible working conditions. The report found cases of workplace abuse. AB 2364 seeks to end janitor exploitation by creating a 7 person advisory committee to develop proposed regulations establishing standards in the janitorial industry."

3. Proponent Arguments:

According to the sponsors, SEIU California, this bill "builds upon previous legislation that empowered janitorial service workers to take collective action and use peer counseling to change the culture of harassment and fear in the janitorial industry." Specifically, they argue that updating participant costs "will allow qualified organizations to bring the program up to scale and realize the original intent of the law which is to change the culture of harassment and fear in the janitorial industry, which for far too long has turned a blind eye to sexual harassment and assault."

Furthermore, they argue that this bill "addresses the pandemic's impact on the commercial real estate market which resulted in dangerous workloads that far exceed industry standards. We know that lower occupancy rates during and after the pandemic have created unreasonable expectations that janitors should clean more square footage than is safe to perform. These dangerous working conditions increase workplace injuries and create long-term health conditions, which can wreak havoc on an aging workforce.

The prevalence of injuries in the janitorial industry is supported by a report commissioned by the Commission on Health and Safety and Workers' Compensation (CHSWC) which found 'a high burden of workload and negative health outcomes in CA janitors in 2022.' This report stated that 33 percent of janitors suffered one or more work injuries in the last year, 58 percent regularly use pain medication, 56 percent are working with severe pain, 20 percent regularly miss work due to pain, and 17 percent have anxiety or depression."

4. Opponent Arguments:

According to opponents, this bill creates a new statewide council similar to the Fast-Food Council, which may lead to unrealistic janitorial cleaning quotas, higher training expenses, and reduced operational flexibility. It does not fully address the specific nature of janitorial work and could increase costs for businesses and their clients without providing clear benefits. Specifically, opponents note the following:

Council Regulation Concerns: "The amended bill proposes setting up a Council to regulate the janitorial industry, potentially creating a 'Fast Food Council 2.0.' This sets a precedent for regulations that will likely be enforced mainly against non-Union Employers due to the limited bandwidth of the Department of Labor Standards Enforcement (DLSE), which will likely result in additional claims in lawsuits (e.g., PAGA, sexual harassment) and does not provide a balanced regulatory environment."

Workload Bill Issues: "The composition of the Council created by the bill could very easily delve into janitorial workload which were just settled. This regulation limits janitorial work capacity without considering individual circumstances, building type, occupancy, or many other factors that come into play."

Criteria and Council Composition: "The six criteria in the amended bill, do not adequately demonstrate what constitutes a reasonable workload nor capture the complex variables agreed to by both the Union and Industry in statewide bargaining this month. Comprehensive evaluative criteria, including occupancy, density, usage, and foot traffic, are necessary for assessing workload reasonableness. The proposed Council composition dilutes management representation, reducing flexibility and increasing costs."

Increased Fees and New Tier Creation: Regarding existing training requirement, "Employers must provide suitable training locations, pay for work and travel time, and manage work completion, further limiting attendance. This occurs while the Center receives twice the amount of funding through Union Employer contributions and has not yet effectively trained the workforce or assessed costs."

5. Staff Comments:

The Division of Occupational Safety and Health (Cal/OSHA), within DIR, is the governmental entity tasked with protecting and improving the health and safety of working Californians through the following activities:

- *Setting and enforcing standards*
- Providing outreach, education, and assistance
- Issuing permits, licenses, certifications, registrations, and approvals

Existing law also establishes the Occupational Safety and Health Standards Board (Standards Board), within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. The Standards Board is a seven-member body appointed by the Governor, and is the standards-setting agency within the Cal/OSHA program.

The Division of Labor Standards Enforcement (DLSE), as noted above under existing law, ensures a just day's pay in every workplace through robust enforcement of labor laws, including the investigation of complaints of wage theft and other violations of labor law. DLSE specifically focuses on combating wage theft, protecting workers from retaliation, and educating the public on labor laws.

Although DLSE administers the registration of janitorial employers and ensures they are providing the statutorily required sexual harassment prevention training to their employees, Cal/OSHA is the entity tasked with ensuring workplace safety once the employee is on the job. Cal/OSHA is also the entity tasked with setting and enforcing workplace safety standards.

This bill directs DLSE to create an advisory committee to approve a comprehensive set of recommended regulations establishing janitorial standards that protect the health and safety of these workers. *Because Cal/OSHA is the state entity tasked with setting and enforcing safety standards, which this bill seeks to enact, the author may wish to consider directing Cal/OSHA and DLSE to jointly coordinate on this effort to ensure each division's relevant expertise is brought to the table during these discussions. Additionally, the author may wish to direct Cal/OSHA and DLSE to draft the recommended standards and submit these to the Standards Board for consideration and adoption following the existing rulemaking process.*

6. Prior/Related Legislation:

AB 2374 (Haney, 2024) revises the Displaced Janitor Opportunity Act to apply to contractors employing one or more janitors, increase the employee retention period from 60 to 90 days, and provide that the successor contractor shall maintain the same number of hours and pay the same wages and benefits as were provided by the prior contractor. *AB 2374 will be heard by this Committee at a subsequent hearing.*

AB 547 (Gonzalez, Chapter 715, Statutes of 2019) required the director of the DIR to convene a training advisory committee to assist in compiling a list of qualified organizations and peer trainers that janitorial employers would be required to use to provide a biennial in-person sexual violence and harassment prevention training.

AB 1978 (Gonzalez, Chapter 373, Statutes of 2016) created a registration process for janitorial employers and requires sexual harassment and violence prevention training for janitorial workers.

SUPPORT

SEIU California (Sponsor)
Alliance San Diego
American Friends Service Committee
Asian Pacific American Labor Alliance (APALA)
California Employment Lawyers Association (CELA)
California Immigrant Policy Center
California Labor Federation
California Nurses Association
Center for Community Action and Environmental Justice (CCAEJ)
Community Power Collective
Instituto de Educación Popular del Sur de California (IDEPSCA)
Justice Overcoming Boundaries
KIWA
LAANE
Legal Aid at Work
Lingua Health Consulting
National Employment Law Project
Pilipino Worker Center
SAJE
Santa Clara County Wage Theft Coalition
SEIU California
Social Justice Learning Institute
South Bay People Power
UFCW Western States Council
VALORUS
Warehouse Worker Resource Center
Working Partnerships USA
WORKSAFE

OPPOSITION

ABM Industries Incorporated
Bay Area Council
Building Owners & Managers Association of California
California Business Properties Association
California Business Roundtable
California Life Sciences
California Manufacturers & Technology Association
Institute of Real Estate Management (IREM)
Juniper Cleaning
NAIOP California
Orange County Business Council
Pegasus Building Services
Service by Medallion
Tuttle Family Enterprises, Inc.
1 Individual

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2738	**Hearing Date:**	June 12, 2024
Author:	Luz Rivas		
Version:	May 20, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Labor Code: alternative enforcement: occupational safety

KEY ISSUES

This bill (1) authorizes public prosecutor enforcement for violations of existing safety training requirements of entertainment events employees; (2) requires the court to award a prevailing plaintiff reasonable attorney's fees and costs in an action brought by a public prosecutor for the enforcement of specified labor laws; (3) restructures how moneys recovered under public prosecutor actions must be disbursed; and (4) adds a public events venue or a contracting entity to the entities that may be assessed a penalty for violating specified training requirements.

ANALYSIS

Existing law:

1) Establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code §50.5)

2) Establishes within the DIR, various entities including the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC with ensuring a just day's pay in every workplace through robust enforcement of labor laws, including the investigation of complaints. (Labor Code §79-107)

3) Authorizes, until January 1, 2029, a public prosecutor to prosecute an action, either civil or criminal, for a violation of certain provisions of the labor code or to enforce those provisions independently. (Labor Code §181(a) and (e))

4) Requires moneys recovered by public prosecutors to be applied first to payments, such as wages, damages, and other penalties, due to affected workers. All civil penalties recovered by a public prosecutor in actions, per the above, shall be paid to the General Fund, unless otherwise specified. (Labor Code §181(a))

5) Authorizes the court to award a prevailing plaintiff in these actions its reasonable attorney's fees and costs, including expert witness fees and costs to the extent the LC would be entitled to such fees, as specified. (Labor Code §181(c))

6) Establishes the Division of Occupational Safety and Health (Cal/OSHA) within the DIR to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6308)

7) Provides that a contracting entity shall require an entertainment events vendor to certify for its employees, and any subcontractors' employees, as part of the contract for production of any live event at its public events venue, that the employees and department heads or leads have taken specified Cal/OSHA or Occupational Safety and Health Administration (OSHA) trainings. (Labor Code §9251(a))

8) Establishes the Occupational Safety and Health Standards Board, within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. (Labor Code §140-147.6)

9) Requires Cal/OSHA to enforce the entertainment vendor training provisions described above through the issuance of a citation and civil penalty, as specified, and provides that penalties for violations shall only be assessed against an entertainment events vendor, and shall not be assessed against an employee of an entertainment events vendor or an employee of a subcontractor. (Labor Code §9252(b))

This bill:

Public Prosecutor Enforcement:

1) Expands the existing authority of public prosecutors to prosecute an action, either civil or criminal, to include any other provision of the Labor Code as specifically authorized.

2) Revises how moneys recovered by public prosecutors are paid to specify that after payments are made to affected workers (wages, damages and other penalties due to workers) they shall be applied to attorney's fees and costs if otherwise authorized by the labor code and funds remaining must be divided equally between the General Fund of the state and the public prosecutor's office to be used to support labor law enforcement, unless otherwise specified.

3) Makes it mandatory rather than permissive, for the court in these actions to award a prevailing plaintiff in that action its reasonable attorney's fees and costs, including expert witness fees and costs, as specified.

Entertainment Events Safety:

4) Requires, in an entertainment events contract, the contract between a contracting entity and an events vendor to provide in writing that the entertainment events vendor shall furnish, upon hiring for the live event pursuant to the contract, the contracting entity with both of the following:

    a. The names of the employees of the entertainment events vendor and the names of employees of any subcontractors.
    b. What training or certification the employee has completed and the date of certification.

5) Provides that the contract described above, and the records furnished to the contracting entity by the entertainment events vendor, shall be subject to the California Public Records Act.

6) Authorizes the contracting entity to use or disclose to third parties the information provided in the contract for the purpose of carrying out the contracting entity's duties under the contract, including, but not limited to, verifying an employee's training and certification, but shall not use or disclose the information for purposes unrelated to the contracting entity's duties under the contract.

7) Adds a public events venue or a contracting entity to the entities that may be assessed a penalty for violating training certification requirements of entertainment events employees.

8) Authorizes alternative enforcement of training certification requirements of entertainment events employees by public prosecutors.

9) Makes findings and declarations relevant to the disclosure of contracts pursuant to the California Public Records Act.

COMMENTS

1. Background:

In California, every employer has a legal obligation to provide and maintain a safe and healthful workplace for their employees. Among other things, employers are required to have a written Injury and Illness Prevention Program (IIPP) with specific elements set forth in the Labor Code and Cal/OSHA regulations including, among other things, providing employee training and instruction and procedures for correcting unsafe/ unhealthy conditions. Cal/OSHA has a duty and authority to investigate a workplace for safety and welfare of employees, on its own motion or upon complaints. Additionally, Cal/OSHA has various standards that employers must abide by in order to render employment safe for workers. Cal/OSHA is also required to annually compile data pertaining to complaints received and citations issued and post it on its website.

Entertainment Events Safety:
As noted by the Assembly Labor Committee analysis of this bill:
"As demonstrated in recent years by widely reported tragedies at concert festivals, live event workers face significant workplace hazards. Without the proper training and safety equipment, accidents can occur. In 2019, a lead rigger at the Coachella Music Festival died in a fall. According to eye witnesses, the worker, who was not wearing a safety harness, was climbing the stage scaffolding when he fell some 60 feet.

Bad weather is another workplace hazard. In 2011, seven people died and 58 were injured when strong winds knocked metal scaffolding and stage equipment into a packed crowd at the Indiana State Fair in Indianapolis. A storm with winds estimated between 60 and 70 miles per hour blew through the fairground, collapsing the stage just minutes after organizers urged the crowd to seek shelter. The disaster raised questions about safety inspections of outdoor stages and whether authorities should have canceled the show sooner.[1]"

[1] Rachel Treisman, NPR, "Astroworld Festival joins a list of historical concert tragedies," November 6, 2021.

AB 1775 (Ward, Chapter 759, Statutes of 2022):
In recognition of the dangers of this industry, and the need for ensuring proper training of entertainment events employees to reduce those risks, the Legislature adopted AB 1775 (Ward) in 2022 to set an industry-wide health and safety training standard for live events at publicly owned and operated venues. This law requires entertainment events vendors that produce live events at those venues to ensure all workers involved in the production have completed specified training workplace safety courses.

AB 594 (Maienschein, Chapter 659, Statutes of 2023):
According to a recent California State Auditor report on the California Labor Commissioner's office, *"Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers,"* in a review of several years' worth of claim, the auditor determined that the LC office is not providing timely adjudication of wage claims for workers primarily because of insufficient staffing to process those claims. According to the audit, the LC's office had 47,000 backlogged claims at the end of fiscal year 2022-23.[2]

In response to this problem, the Legislature enacted AB 594 in 2023 clarifying and expanding, until January 1, 2029, a public prosecutors' authority to enforce the violation of specified labor laws through civil or criminal actions without specific authorization from the Division of Labor Standards Enforcement (Labor Commissioner's office).

AB 2738 (Luz Rivas, 2024):
This bill seeks to protect entertainment events employees by increasing the transparency of contract agreements between entertainment vendors and public venues to ensure enforcement of existing safety requirements and to verify that stage crews being hired are properly trained. Additionally, the bill expands local public prosecutors existing authority to enforce labor law by including the provisions of AB 1775, specified training requirements, under this authorization and including the ability to recoup attorneys' fees and costs for these actions.

2. Need for this bill?

According to the author:

"Before an entertainment vendor can host live events at a public venue, they are contractually obligated to hire certified and trained stage crew to reduce the risk of accidents. However, mechanisms are needed to ensure public venues are verifying the certification of the stage production workers when contracting for services.

The temporary nature of these contracts and the lack of transparency for certification make enforcement difficult. While some events are weeklong, most live events are one night only. When a live event is over, the stage crew dismantles the stage and moves to other venues, making enforcement investigations nearly impossible. In addition, the high rate of vacancies at enforcement agencies means there are even fewer inspectors to ensure live event workplaces are safe.

[2] CA State Auditor, *The California Labor Commissioner, Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers,* May 29, 2024. Report Number 2023-104. https://www.auditor.ca.gov/reports/the-california-labor-commissioners-office/

AB 2738 strengthens enforcement tools by supporting local public prosecutors in bringing state wage theft and live event safety cases, without any additional cost to the state, by mandating awards of attorney's fees to public prosecutors when they prevail in defending the rights of vulnerable workers. The bill also extends this important authority of public prosecutors to enforce a recently passed law, AB 1775 (Ward), Chapter 759 of 2022 that set an industry-wide safety standard for workers that set up and tear down live events, like concerts, at public venues. Live events often are set up and torn down in 24 hours, making Cal/OSHA enforcement challenging. This bill allows local public prosecutors to monitor venues in their area to enforce the law more easily, helping with the backlog at Cal/OSHA."

3. Proponent Arguments:

According to the sponsors of the measure, including the California IATSE Council and the California Labor Federation:

"Workers that set up, operate, and tear down live events face serious workplace hazards. They work with complex systems in all types of weather conditions, and there is a history of accidents, injuries, and even fatalities of workers performing such work, often due to a lack of training or knowledge of best safety practices. A lack of safety training is not just dangerous for workers, but also for event attendees. Electrical failures, stage collapses, falling video screens, or many other accidents could harm or injure the public attending events when there is a failure to follow safety protocol.

The law offers adequate protections but lacks the enforcement mechanisms that reflect the nature of the transitory live event industry. The lack of transparency in contracting makes verification of compliance difficult, if not impossible, given the temporary nature of the industry. Most events are for only a night or a week, and after that workers move on to other venues, making enforcement investigations nearly impossible. A violation may occur in one venue in one city on a Friday, and then the entertainment vendor packs up and is in another city on the Saturday setting up a different event."

The sponsors argue that these challenges to enforcement come at a time when the live event industry is booming which can lead to failure to follow safety protocols and an increased chance of accidents. They write that,

"AB 2738 builds on AB 594's model to expand the existing authority of local public agencies to enforce AB 1775 and clarifies that all parties, including public venues, are accountable for ensuring worker and public safety at live events. It also allows local public prosecutors to retain fifty percent of civil penalties collected through labor law enforcement and requires courts to award a prevailing plaintiff reasonable attorney's fees and costs. This ensures a sustainable funding mechanism for labor local law enforcement so they can act to protect workers in their jurisdiction. The bill also increases transparency by requiring that entertainment vendors disclose specified information in their contracts for live events to aid in compliance and enforcement if necessary. The disclosure is also a reminder to entertainment vendors of their responsibility under the law."

4. Opponent Arguments:

According to a coalition of employer organizations, including the California Chamber of Commerce:

"Current law allows certain public prosecutors to bring forward Labor Code claims. Among other concerns, in enacting AB 594 (Maienschein) (2023) there was concern that public entities will likely contract out with private law firms for this litigation. March 18, 2024 amendments to AB 2738 would require courts to award a winning plaintiff's legal fees and associated costs. This legislation poses significant risks to the integrity of our legal system and could potentially lead to exploitation by private law firms who may contract with public prosecutors to pursue this litigation.

The current discretion given to courts to award fees to prevailing plaintiffs helps ensure that justice is served for legitimate grievances rather than financial gain. Due to the considerable expense associated with litigating Labor Code claims, most employers are prone to settle cases, much like they currently do with private attorneys. It's worth noting that over the past decade, for example, California employers have paid at least $10 billion in PAGA settlements. Mandating the award of prevailing plaintiff fees and costs creates a dangerous precedent that could financially incentivize the filing of meritless lawsuits."

5. Double referral:

This bill has been double referred and if approved by our committee today, will be sent to Senate Judiciary Committee for a hearing.

6. Prior Legislation:

AB 594 (Maienschein, Chapter 659, Statutes of 2023), until January 1, 2029, expanded enforcement labor laws, authorized local law enforcement agencies to seek injunctive relief, expedited oversight of these operations, and streamlined regulatory oversight.

AB 1775 (Ward, Chapter 759, Statutes of 2022) set an industry-wide health and safety training standard for live events at publicly owned and operated venues. It requires entertainment vendors that produce live events at those venues to ensure all workers involved in the production have completed a federal OSHA-10 workplace safety course.

SUPPORT

California IATSE Council (Co-Sponsor)
California Labor Federation (Co-Sponsor)
IATSE Local 44 (Co-Sponsor)
IATSE Local 728 (Co-Sponsor)
International Cinematographers Guild Local 600 (Co-Sponsor)
California Conference Board of The Amalgamated Transit Union
California Conference of Machinists
California School Employees Association
California Teamsters Public Affairs Council
San Francisco City Attorney David Chiu
Engineers and Scientists of California, IFPTE Local 20
UNITE HERE, AFL-CIO
Utility Workers Union of America

OPPOSITION

California Association for Health Services At Home
California Association of Health Facilities
California Attractions and Parks Association
California Business Properties Association
California Chamber of Commerce
California Farm Bureau
California Farm Labor Contractor Association
California Financial Services Association
California Food Producers
California League of Food Producers
California Lodging Industry Association
California Restaurant Association
California State Council of the Society for Human Resource Management
Civil Justice Association of California
Construction Employers' Association
Family Business Association of California
Housing Contractors of California
Independent Lodging Industry Association.
National Federation of Independent Business
Western Electrical Contractors Association
Western Growers Association

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2474	**Hearing Date:**	June 5, 2024
Author:	Lackey		
Version:	May 28, 2024		
Urgency:	No	**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: Retirement: County Employees Retirement Law of 1937: benefit payments and overpayments

KEY ISSUE

This bill amends the County Employees' Retirement Law of 1937 (CERL or 37 Act) relating to benefit payments and overpayments. AB 2474 would 1) require 37 Act retirement systems to deposit a retiree's pension payment in a trust account controlled by an eligible retiree, if requested by the retiree; 2) authorize the Los Angeles County Employees' Retirement Association (LACERA) to make payments to retirees through a prepaid debit card; and 3) provide 37 Act retirement systems greater flexibility on dealing with retired members who exceed the 960-hour limit when working for their former employer.

ANALYSIS

Existing law:

1) Establishes the 37 Act which governs 20 independent county retirement associations to administer retirement for county and district employees in those counties adopting its provisions. (Government Code (GC) § 31450 et seq.)

   Currently, 20 counties operate such associations, commonly referred to as "CERL systems," "1937 Act systems" or "37 Act systems." These systems are regulated by, and administer, the CERL that also is commonly referred to as the "1937 Act," or "'37 Act."

2) Declares the 37 Act's purpose to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefit**s** as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of public service without prejudice and without inflicting a hardship upon the employees removed. (GC § 31451)

3) Requires a 37 Act system to comply with and give effect to a revocable written authorization signed by a retired member or their beneficiary, as provided, to authorize the treasurer or other entity authorized by the system to deliver the monthly warrant, check, or electronic funds transfer (EFT) for the retirement allowance or benefit to be credited to their account or their survivor's account at a financial institution, as provided, and authorizes the person

entitled to receive the benefits to be directly deposited by EFT into the person's account at a financial institution of their choice, also as specified. (GC §§ 31452.6 and 31590)

4) Authorizes a person retired for service to be employed and paid in a position requiring special skills or knowledge for a period of time not to exceed 90 working days or 720 hours (whichever is greater) in any one fiscal year or any other 12-month period designated by the county board of supervisors. However, each county may extend, as specified, that period of time, not to exceed 120 working days or 960 hours (whichever is greater) in any one fiscal year or any other 12-month period, as prescribed. (GC §§ 31680.2 and 31680.6)

5) Authorizes a person retired for disability to be employed and paid in a position requiring special skills or knowledge for a period of time not to exceed 120 working days or 960 hours (whichever is greater) in any one fiscal year or any other 12-month period designated by the county board of supervisors, and each county. (GC § 31680.3)

6) Establishes the Public Employees' Pension Reform Act of 2013 (PEPRA) – a comprehensive reform of public employee retirement that, among other things, increased contributions towards retirement, decreased benefit formulas, and increased the age of retirement that apply to new members of the system first hired on or after January 1, 2013, and made changes that apply to all members towards resolving unfunded liabilities, manipulation of compensation for purposes of calculating a retirement allowance (i.e., pensions spiking), double-dipping, and a host of other long-term prescribed best practice public policy measures.

   Among its provisions, PEPRA prohibits a retired person from serving, or being employed by, as specified, a public employer in the same retirement system from which the retiree receives the benefit without reinstatement from retirement, unless an exception applies. In one of those exceptions, a retired person may serve without reinstatement if appointed during an emergency to prevent the stoppage of public business or because the person has special skills or knowledge to perform the work of limited duration. However, such appointments are limited to 960 hours in a calendar or fiscal year, depending on the administrator of the system. (GC § 7522.02 et seq.)

7) Requires the retirement board to cancel the retirement allowance of the member on the effective date of the member's reemployment, as specified. (GC § 31680.4)

This bill:

1) Requires all 37 Act retirement systems to pay retirement benefits, if directed by the member or beneficiary as specified, to an account held in a living trust or an income-only trust, also known as a Miller trust, that is controlled by the retired member or survivor of a deceased retired member or that is established for the retired member's or the survivor of a deceased retired member's benefit, in order to qualify for Medi-Cal, or comparable assistance. Currently, 37 Act systems interpret differently whether they can pay benefits to a trust rather than directly to a natural person.

2) Provides that a LACERA retired member or beneficiary may elect to have LACERA deliver their retirement allowance or benefit via a prepaid account (i.e., a debit card), as specified, as one of the revocable options by which a member may choose to receive their benefit. The bill also provides LACERA authorization related to processing transfers to a prepaid account as

specified, as well as recovering payments made to a prepaid account after the death of the retired member or beneficiary.

3) Requires LACERA to provide a report regarding its members' use of prepaid accounts to the Assembly and Senate pension policy committees, as specified, no later than November 30, 2027, but sunsets this provision on January 1, 2028.

4) Provides that any retired member employed in violation of specified statutes authorizing post-retirement employment shall do all of the following:

   a. Reimburse the retirement system for any retirement allowance received during the period or periods of employment that are in violation of law. The retirement allowance that was paid in violation of law shall be considered an overpayment subject to collection by the retirement system.
   b. Only if reinstated, pay to the retirement system an amount of money equal to the employee contributions that would otherwise have been paid during the period or periods of unlawful employment, plus interest thereon.
   c. Contribute toward reimbursement of the retirement system for reasonable administrative expenses incurred in responding to this situation, to the extent the member is determined by the retirement system administrator to be at fault.

5) Provides that any public employer that employs a retired member in violation of specified statutes authorizing post-retirement employment shall do all of the following:

   a. Only if the retired member is reinstated, pay to the retirement system an amount of money equal to employer contributions that would otherwise have been paid for the period or periods of time that the member is employed in violation of this article, plus interest thereon.
   b. Contribute toward reimbursement of the retirement system for reasonable administrative expenses incurred in responding to this situation, to the extent the employer is determined by the administrator of the retirement system to be at fault.

6) Authorizes the retirement board to assess the employer a fee of two hundred dollars ($200) per retired member per month until the employer enrolls for administrative recordkeeping purposes any retired member employed in any capacity, without reinstatement, within 30 days of the effective date of hire, as specified.

7) Authorizes the retirement board to assess the employer a fee of two hundred dollars ($200) per retired member per month if an employer fails to report the pay rate and number of hours worked of a retired member, as specified, until the information is reported.

8) Prohibits an employer from passing on any fees assessed by the retirement board to an employee, as specified.

9) Requires the employer to provide written notice to the employee, by an appropriate mechanism, including by first-class mail or email, before the employee is within 10 business days or 80 hours of the period specified that limits the employee's post-retirement employment.

COMMENTS

1. Need for this bill?

According to the author:

"The bill seeks to improve processes for the twenty counties statewide that manage their own county retirement systems. As times change and new technologies and practices are adopted, the County Employees' Retirement Law must be updated so that county retirement systems can operate efficiently and best serve their retirees."

2. Committee Recommended Amendments

In order to ensure robust protections for retired members and beneficiaries from possible errors or fraud, the committee recommends the following amendment to Section 2 of the bill (authorizing LACERA to make retirement allowance or benefit payments by electronic fund transfer to a prepaid account):

31452.61. (a)…

(4) Prior to implementing the option to receive a retirement allowance or benefit by electronic fund transfer to a prepaid account pursuant to this section, the board shall develop a procedure to provide a retired member or beneficiary who elects the option the following:

i. Access to a monthly statement detailing the retirement allowance or benefit amount and any deductions thereof;
ii. A reasonable process for the retired member or beneficiary to report and contest any error of the retirement allowance or benefit amount; and
iii. Contact information for a responsible system ombudsperson to assist the retired member or beneficiary in recovering any amounts deducted from the net retirement allowance or benefit amount once it has been deposited in the account, resulting from an error or by fraud.

3. Proponent Arguments

According to the State Association of County Retirement Systems (SACRS):

"AB 2474 provides direction for retirement systems to take certain actions when retired members exceed the 960-hour limit when working for their former employer, by treating the compensation for excess hours as an overpayment to be recovered by the retirement system. These changes are intended to ensure that retired members cannot receive a pension and a salary outside of the prescribed limit, while providing retirements systems with a less punitive option to deal with retirees who slightly exceed the 960-hour limit. Under current law, systems are required to reinstate the retiree to full employment and recover contributions and overpaid benefits for the period in violation. The bill as proposed to be amended more closely resembles language recently added to the CalPERS statutes for similar situations."

According to Los Angeles County Employees Retirement Association (LACERA):

"AB 2474, as amended, would allow LACERA to make payments to retirees through a prepaid debit card until January 1, 2028. We urge your leadership and support of this important bill that provides an efficient vehicle to deliver benefits to those of our members who are "unbanked" because they have challenges accessing traditional financial services that provide for direct deposit.

LACERA annually pays over $4 billion in benefits to over 73,000 members, over 80% of whom continue to reside in California. Having an electronic alternative to receiving paper checks will ensure that our members receive their promised benefits through the convenience of a prepaid account and not have their benefits interrupted by delays in mail service."

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 432 (Cortese, Chapter 215, Statutes of 2023) clarified certain provisions of AB 1667 (Cooper, Chapter 754, Statutes of 2022) related to the recovery of pension overpayments from the California State Teachers Retirement System (CalSTRS) to retired teachers due to errors in reported compensation.

AB 1667 (Cooper, Chapter 754, Statutes of 2022) protected CalSTRS retirees from system or employer errors in reporting compensation to CalSTRS that result in pension overpayments to retired teachers by requiring the state or the employer or both to pay to CalSTRS amounts necessary to recover the pension overpayments.

SUPPORT

Los Angeles County Employees Retirement Association (Co-sponsor)
State Association of County Retirement Systems (Co-sponsor)
Peace Officers Research Association of California (PORAC)

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2705	**Hearing Date:**	June 12, 2024
Author:	Ortega		
Version:	March 21, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Labor Commissioner

KEY ISSUE

This bill provides that, for violations of public works law, the statute of limitations (SOL) for the Labor Commissioner (LC) to enforce the liability on a payment bond shall be the same as the SOL for the LC issue civil wage and penalty assessments.

ANALYSIS

Existing law:

1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement (DLSE) under the direction of the LC, and empowers the LC to ensure a just day's pay in every work place and to promote justice through robust enforcement of labor laws. (Labor Code §79-107)

2) Requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a "public works" project costing over $1,000 dollars and imposes misdemeanor penalties for violation of this requirement. (Labor Code §1771)

3) Requires the LC to, with reasonable promptness, issue a civil wage and penalty assessment to the contractor or subcontractor, or both, if the LC or their designee determines after an investigation that there has been a violation public works laws. (Labor Code §1741(a))

4) Provides that the assessment shall be served not later than 18 months after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 18 months after acceptance of the public work, whichever occurs last. (Labor Code §1741(a))

5) Specifies that the assessment shall be in writing, and include the nature of the violation and the amount of wages, penalties, and forfeitures due, and shall include the basis for the assessment. The assessment shall also advise the contractor and subcontractor of the procedure for obtaining review. (Labor Code §1741(a))

6) Provides that the LC, to the extent practicable, shall ascertain the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and shall serve a copy of the assessment to the bonding company or surety at the same time service is made to the contractor, subcontractor, and awarding body. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the LC. (Labor Code §1741(a))

7) Requires the period of service of assessments to be tolled for the period of time required by the Director of Industrial Relations to determine whether a project is a public work, as specified. The body awarding the contract for a public work shall furnish, within 10 days after receipt of a written request from the LC, a copy of the valid notice of completion for the public work, as described. (Labor Code §1741.1(a) and (b)(1))

8) Requires the contractor and subcontractor to be jointly and severally liable for all amounts due pursuant to a final order or a judgment thereon. The LC shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor. (Labor Code §1743(a))

9) Requires, from the amount collected, the wage claim to be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers. (Labor Code §1743(b))

10) Requires a direct contractor that is awarded a public works contract involving an expenditure in excess of $25,000 to, before commencement of work, give a payment bond to and approved by the officer or public entity by whom the contract was awarded, as specified. (Civil Code §9550)

11) States that the payment bond shall provide that if the direct contractor or a subcontractor fails to pay any of the following, the surety will pay the obligation and, if an action is brought to enforce the liability on the bond, a reasonable attorney's fee, to be fixed by the court:

    a. A person authorized on Section 9100 of the Civil Code to assert a claim against a payment bond.
    b. Amounts due under the Unemployment Insurance Code with respect to work or labor performed pursuant to the public works contract.
    c. Amounts required to be deducted, withheld, and paid over to the Employment Development Department (EDD) from the wages of employees of the contractor and subcontractors under Section 13020 of the Unemployment Insurance Code with respect to the work and labor. (Civil Code §9554)

12) Authorizes, in public works, a claimant to commence an action to enforce the liability on the bond at any time after the claimant ceases to provide work, but no later than six months after the period in which a stop payment notice may be given. (Civil Code §9558)

This bill:

1) Applies the 18-month SOL and tolling provisions applicable to a civil wage and penalty assessment issued by the LC for violations of public works law to an action by the LC to enforce the liability on a payment bond.

COMMENTS

1. Background:

All awarding bodies and contractors working on "public works" projects are required to abide by a set of laws that ensure the responsible use of public funds. Among other things,

these laws require a direct contractor that is awarded a public works contract valued at $25,000 or more to file with the awarding body, prior to beginning work on a project, a payment bond to cover obligations owed to workers and reasonable attorney's fees if a suit is brought upon the bond. Covered obligations include paying workers' salaries and making payments to EDD, as specified. The payment bond must be in an amount not less than 100% of the total amount payable pursuant to the contract and must be executed by an admitted surety insurer. Should a direct contractor fail to pay any person working on a public works contract, a claimant can commence an action to enforce the liability on the bond. Existing law generally allows a claimant to commence an action at any time after they cease to provide work, but no later than six months after the period in which a stop payment notice may be given.

Separately, existing law empowers the LC the issue a civil wage and penalty assessment to a contractor, subcontractor, or both for violating public works law. The assessment must be served no later than 18 months after the filing of a valid notice of completion or after acceptance of the public work, whichever occurs last.

The variation in the timelines described above creates a situation where the LC may run out of time to sue a bonding company while assessing penalties. This bill applies the 18-month SOL the LC has to assess penalties to contractors for public works violations to instances where the LC files an action to enforce the liability on a payment bond. Claimants who are not the LC, such as an aggrieved worker, would still be limited to the six-month limitations period.

The committee notes that AB 2135 (Schiavo, 2024), if signed into law, would increase the SOL the LC has to issue a civil wage and penalty assessment from 18 months to 24 months, with the option to extend the deadline by another 18 months if an investigation is ongoing. AB 2135 proposes to amend Section 1741 of the Labor Code. This bill, AB 2705 specifies that the SOL for any action on a payment bond by the LC shall be the same as the SOL in Section 1741 of the Labor Code. In the event that both AB 2705 and AB 2135 become law, the LC will have 24 months, with the option to extend, to sue a bonding company.

For more information on AB 2135, please see the SLPER Committee's June 12th bill analysis.

2. Need for this bill?

According to the author:

"Wage theft is a persistent issue in the construction industry and on public works projects. In particular, contractors on these projects that skirt paying the prevailing wage harm workers and their families that their wages sustain. The Public Works Unit of the Labor Commissioner's (LC) Bureau of Field Enforcement, charged with investigating complaints arising from violations of prevailing wage and apprenticeship laws, opened nearly 2,000 cases for back wages owed to workers in 2020-2021 and assessed over $10.6 million in penalties for prevailing wage violations. The scope of wage theft on these projects cannot be underscored.

Under current law, when the LC finds a violation of prevailing wage requirements on a project, the LC has 18 months to determine the amount of fines and penalties to be assessed

but only 6 months to sue the company that bonded the project. This incongruity in the SOLs means the LC could be in the middle of an assessment and run out of time to recover the wages owed to workers from the bonding company. Workers should not suffer a potentially significant loss in wages due to an unintentional inconsistency in the law. This bill remedies this problem by aligning the two SOLs to 18 months."

3. Proponent Arguments:

The State Building and Construction Trades Council of California is supportive of the measure, arguing that:

"As it stands, the discrepancy in statute of limitations between the determination of fines and penalties by the Labor Commissioner (18 months) and the timeframe for suing the bonding company responsible for the project (6 months) poses a significant risk to workers' rights and fair compensation. This incongruity could potentially result in workers being denied their rightful wages due to procedural limitations rather than any fault of their own.

AB 2705 proposes a simple yet crucial fix to this issue by aligning both statutes of limitations to 18 months. This ensures that the Labor Commissioner has adequate time to complete assessments and pursue legal action against bonding companies, thus safeguarding workers from unjust wage losses.

It is imperative that our laws prioritize the protection of workers' rights and ensure fair compensation for their labor. AB 2705 represents a necessary step towards achieving this goal and rectifying an unintentional inconsistency in the law."

4. Opponent Arguments:

The American Subcontractors Association of California and Western Electrical Contractors Association Inc. are both opposed to the measure, stating:

"We recognize the importance of ensuring the timely payment of workers in the construction industry and penalizing employers who violate the law. However, ASAC and WECA regrettably disagree with the approach taken in AB 2705 and believe it is critical to first identify the obstacles to wage collection. Unfortunately, extending the period to make a demand on a public works payment bond from 6 to 18 months as proposed under the bill, would have unintended negative impacts on medium and small contractors and subcontractors, including minority-owned and Disabled Veteran Business Enterprises (DVBE).

Specifically, by aligning the limitations period for actions on payment bonds with the timeline for serving civil wage and penalty assessments, we are concerned this could drive up the cost of bonding and limit the supply of sureties willing to write such business. This will hurt contractors and subcontractors, as bonding requirements can currently be a barrier to entry for small businesses on public works projects."

5. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and the Senate Judiciary Committee.

6. Prior Legislation:

AB 2135 (Schiavo, 2024) would increase from 18 to 24 months the time period by which the LC or their designee may issue a civil wage and penalty assessment, as specified, to the contractor or subcontractor, or both, on a public work project for violating the law. *This bill is currently pending in the Senate Labor, Public Employment and Retirement Committee.*

AB 1336 (Frazier, Chapter 792, Statutes of 2013) extended the deadline from 180 days to 18 months, as specified, for the LC to serve a civil wage and penalty assessment against a public works contractor or subcontractor, or both.

SUPPORT

California State Association of Electrical Workers
California State Pipe Trades Council
International Union of Operating Engineers, Cal-Nevada Conference
State Building and Construction Trades Council
Western States Council Sheet Metal, Air, Rail and Transportation

OPPOSITION

American Subcontractors Association-California
Construction Employers' Association
Western Electrical Contractors Association INC.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2931	**Hearing Date:**	June 12, 2024
Author:	Mike Fong		
Version:	April 11, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Community colleges: classified employees: merit system: part-time student-tutors

KEY ISSUE

This bill exempts part-time students employed as student-tutors from the classified service at a merit California Community College (CCC) district.

ANALYSIS

Existing law:

1) Establishes the California Community College (CCC) under the administration of the Board of Governors of the CCC, as one of the segments of public postsecondary education in California. The CCC shall be comprised of community college districts. (Education Code (ED) § 70900)

2) Specifies that the governing board of a community college district (CCD) shall employ persons for non-academic positions, and that the governing board shall classify those employees and positions. The statute designates these employees and positions as the classified service, except as specified. (ED § 88003)

3) Establishes that CCDs must prescribe written rules and regulations, governing the personnel management of the classified service, which will be printed and made available to employees in the classified service, the public, and those concerned with the administration of these provisions, whereby these employees are, except as specified, designated as permanent employees of the district after serving a prescribed period of probation which shall not exceed *one year*, and specifies that these provisions only apply to districts not incorporating the merit system. (ED § 88013)

4) Establishes the merit system, and specifies that the classified employees of any district whose full-time equivalent student is 3,000 or greater, as specified, may petition the governing board to make the merit system applicable to their employer district. (ED § 88051)

5) Specifies that a person in a merit system CCD who has served an initial probationary period in a class not to exceed six months or 130 days of paid service, whichever is longer, as prescribed by the rules of the commission, will be deemed to be in the permanent classified service, except that the commission may establish a probationary period in a class not to

exceed one year for classes designated by the commission as executive, administrative, or police classes. (ED § 88120)

6) Establishes the classified service in community college districts that have adopted the merit system, and among other things, exempts the following from the classified service:

   a. Academic positions;
   b. Full-time students employed part time;
   c. Part-time students employed part time in a college work-study program or in a work experience education program conducted by a community college financed by state or federal funds;
   d. Apprenticeship positions;
   e. Positions established for the employment of professional experts on a temporary basis for a specific project by the community college district governing board or personnel commission when designated by the commission. (ED § 88076)

7) Existing law also provides that a student employed in the services mentioned above shall not displace classified personnel or impair existing contracts for service. (ED § 88076)

This bill:

1) Includes within the category of CCD employees that are exempt from the classified service, part-time students employed part time as student-tutors by their community college district of enrollment.

2) States that it is the intent of the Legislature that part-time students employed part time as student-tutors by their community college district of enrollment are hired to supplement, not supplant, existing classified staff within the community college district.

3) Provides that no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

COMMENTS

1. Background

Merit school and community college districts have personnel commissions that administer the district's personnel system for classified staff. Current law already exempts *full-time* CCD students who are student-tutors from the classified service. Existing law also exempts part-time students working in other college-related employment such as work-study from the classified service. This bill would extend the exemption from the classified service to part-time students employed as student-tutors.

2. Need for this bill?

According to the author;

"Part-time students at community college districts with merit systems are deprived of employment as student tutors because of the way districts are interpreting current law. Currently, [under the Education Code], districts with merit systems must classify all positions, including most part-time student positions. The law exempts the following positions from classification: academic positions, full-time students employed part time, part-time students employed part time in a work-study or work experience program, apprentice positions, and temporary employment of experts for specific projects. The list does not include part-time students employed part time as student tutors.

By making explicit this exemption, districts will be able to employ students and enhance their education experience without the legal concerns of not classifying these students. This bill removes confusion and addresses legal concerns. As districts employ students into these positions, community college campuses will gain valuable tutors who contribute to and enrich their campuses and educations."

According to the Los Angeles Community College District (LACCD);

"The current requirements of merit-system community college districts in California make it time and cost-prohibitive for those districts to hire part-time students as part-time employees to provide peer-to-peer tutoring. At LACCD it can take six to nine months (and depending on circumstances, sometimes longer) to hire employees through the Personnel Commission process. Peer tutors currently work less than ten hours per week and because they are students, their employment is temporary and inconsistent, which varies based on many factors such as class schedules, course offerings, and student tutor demand. These are a few barriers that make it difficult and not conducive to hiring part-time peer tutors through the existing Personnel Commission process."

3. Proponent Arguments

According to the LACCD:

"By exempting these students from the existing classification requirements for part-time employees, AB 2931 would significantly increase the learning power of all students enrolled at merit-system community college districts and increase the capacity for well-paying, on-campus student employment. Furthermore, this bill will only impact the eight merit-based community college districts statewide. Non-merit districts do not currently have this restriction."

According to the Community College League of California:

"The California Community Colleges are an integral part of our state's education system, providing accessible and affordable education to thousands of students. However, current law has created an administrative burden for merit districts by requiring them to classify part-time student-tutors, if hired, through a costly and complex process designed for full-time staff.

AB 2931 seeks to address this issue by exempting part-time student-tutors from the classification process, allowing them more flexibility in hiring practices. This change is particularly important as more than 65% of all community college students are enrolled as part-time students, and merit system colleges have over 200,000 total part-time students who can benefit from the financial and rewarding educational role of being a student-tutor."

3. Opponent Arguments:

None received.

4. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Labor, Public Employment and Retirement Committee and to the Senate Education Committee.

5. Prior Legislation:

AB 2160 (Thurmond, Chapter 488, Statutes of 2018) removed the exemption from classified service for part-time playground positions in both school districts and community colleges.

SUPPORT

Los Angeles Community College District (Sponsor)
Andrés y María Cárdenas Family Foundation
Center for Powerful Public Schools
Community College League of California
Junior Achievement of Southern California
Los Angeles Community College District Academic Senate

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2961	**Hearing Date:**	June 12, 2024
Author:	Addis		
Version:	June 10, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Employment of minors: training on sexual harassment

KEY ISSUE

This bill requires minors to complete a mandatory training on sexual harassment prevention, retaliation, and reporting resources using the online course available on the Civil Rights Department's (CRD) website prior to obtaining a work permit.

ANALYSIS

Existing law:

1) Prohibits any person, firm, or corporation from employing any minor under the age of 18 years to work in or in connection with any establishment or occupation without a permit to employ, issued by the proper educational officers, and in accordance with law. (Education Code §49160)

2) Authorizes specified school district, charter school, and private school officials to issue a minor a work permit if requested by the minor's parent, guardian, foster parent, or caregiver. (Education Code §49110)

3) Requires the employer of any minor to send to the officer authorized to issue the permit to work a written notification of intent to employ a minor. The form shall be prescribed by the Department of Education and be furnished to the employer by the officer. (Education Code §49162)

4) Requires the notification of intent to employ a minor to contain:

   a. The name, address, phone number, and social security number of the minor.
   b. The name, address, phone number, and supervisor at the minor's place of employment.
   c. The kind of work the minor will perform.
   d. The maximum number of hours per day and per week the student will be expected to work for the employer.
   e. The signatures of the parent or guardian, of the minor, and of the employer. (Education Code §49163)

5) Authorizes the provision of a work permit to a minor who has completed the equivalent of the 7th grade to work outside of school hours for not more than three hours per day on days when school is in session if the minor is 14 or 15 years of age; four hours per day if the

minor is 16 or 17 years of age; or for a minor who is 16 years or older, up to eight hours in any day which is immediately prior to a non-school day. (Education Code §49112)

6) Requires every person, or agent or officer thereof, employing minors, either directly or indirectly through third persons, to keep on file all permits and certificates, either to work or to employ, as specified. The files shall be open at all times to the inspection of the school attendance and probation officers, the State Board of Education, and the officers of the Division of Labor Standards Enforcement. (Labor Code §1299)

7) Provides that any person employing either directly or indirectly through third persons, or who employs, or permits any minor to be employed in violation of the law, is guilty of a misdemeanor, and subject to a fine of $1,000 to $5,000 or imprisonment in the county jail for not more than six months, or both. (Labor Code §1303)

8) Requires, prior to the issuance of an entertainment work permit to a minor, a parent or guardian ensure the minor completes training in sexual harassment prevention, retaliation, and reporting using the online training course available on the website of the Civil Rights Department and certifies to the Labor Commissioner that the training has been completed. (Labor Code §1700.52)

9) Requires, by January 1, 2021, an employer having five or more employees to provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees and at least one-hour of classroom or other effective interactive training and education regarding sexual harassment to all nonsupervisory employees in California. (Government Code §12950.1(a)(1))

    a. Thereafter, each employer covered by this section shall provide sexual harassment training and education to each employee in California once every two years.

10) Requires the Civil Rights Department (CRD) to develop or obtain two online training courses on the prevention of sexual harassment in the workplace in accordance with 9) above. The course for nonsupervisory employees shall be one hour in length and the course for supervisory employees shall be two hours in length. (Government Code §12950.1(j))

This bill:

1) Expands the "intent to employ a minor" notification that a prospective employer must send to the school official who issued the work permit to include certification that the minor has completed a mandatory training on sexual harassment prevention, retaliation, and reporting resources using the online training course made available on CRD's website.

2) Requires the minor's parent or legal guardian to certify that the training has been completed.

3) Requires the training for the minor to be in the language understood by that person, whenever reasonably possible.

COMMENTS

1. Background:

CRD defines sexual harassment as a form of discrimination based on sex/gender (including pregnancy, childbirth, or related medical conditions), gender identity, gender expression, or sexual orientation. Unlawful sexual harassment does not have to be motivated by sexual desire and it may involve harassment of a person of the same gender as the harasser, regardless of either person's sexual orientation or gender identity. Unfortunately, employees across California encounter sexual harassment on the job. Teenage employees may be particularly susceptible due to their limited work experience, insufficient knowledge of workplace rights, and power imbalance with their fellow employees. Many teens are reluctant to attract negative attention in the workplace and forgo reporting their harassers. A 2024 article by the Wall Street Journal reported that around 25 percent of working adolescents experience unwanted comments, advances, or assault while on the job[1].

Exposure to sexual harassment disrupts a minor's life, often causing higher levels of stress, academic withdrawal, school absences, and depressive symptoms. Some young workers may abandon certain career paths due to harassing behaviors they experienced or may accept sexual harassment and violence as a "normal" part of work. This bill would require minors seeking a work permit to complete a training on sexual harassment prevention using the online course provided by CRD. These trainings are available in English, Spanish, Korean, Chinese, Vietnamese, and Tagalog. In doing so, minors will be better equipped to identify harassing behaviors and report them.

2. Need for this bill?

According to the author:

"AB 2961 looks to increase awareness about sexual harassment to minors who are entering the workforce through the application for a work permit. The provided training has information about sexual harassment prevention, retaliation, and reporting techniques, which will give individuals the necessary tools to decrease the impact of sexual harassment in the workplace, as well as preventing it's occurrence through early identification."

3. Author Amendments:

To address concerns that some school districts already provide sexual harassment training to students and do not need to use the CRD training course, the author plans to take the following amendment in committee.

49163…

(e) Certification that the minor has completed a mandatory training on sexual harassment prevention, retaliation, and reporting resources using the online training course made available on the internet website of the Civil Rights Department **or other training and materials that comply with** ~~pursuant to~~ Section 12950.1 of the Government Code. The parent or legal guardian shall certify that the training has been completed **and present a**

[1] Lauren Weber, "The Surge in Young Workers Has a Dark Side: Sexual Harassment of Teens on the Job," Wall Street Journal, May 16, 2024, https://www.wsj.com/business/teen-sexual-harassment-workplace-43d71242

certification of completion from the training. Training for the minor shall be in the language understood by that person, whenever reasonably possible.

4. Proponent Arguments:

None received.

5. Opponent Arguments:

None received.

6. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Education and the Senate Labor, Public Employment and Retirement Committees.

7. Prior Legislation:

AB 800 (Ortega, Chapter 271, Statutes of 2023), among other things, designated the week of each year that includes April 28 as "Workplace Readiness Week" and required schools to provide students seeking a work permit with a document that clearly explains basic labor rights.

AB 3175 (Levine, Chapter 176, Statutes of 2020) required, prior to the issuance of an entertainment work permit to a minor, the parent or legal guardian of the minor to ensure that the minor completes training in sexual harassment prevention, retaliation, and reporting resources using the online training course made available on the internet website of the Department of Fair Employment and Housing.

AB 2338 (Levine, Chapter 967, Statues of 2018), required, prior to the issuance of an entertainment work permit to a minor, the parent or legal guardian and the minor to complete training in sexual harassment prevention, retaliation, and reporting resources provided by a third-party vendor.

SUPPORT

None received.

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 2971	**Hearing Date:**	June 12, 2024
Author:	Maienschein		
Version:	April 25, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Classified Employee Staffing Ratio Workgroup: community college districts

KEY ISSUE

This bill adds community college districts to the California Department of Education (CDE)'s Classified Employee Staffing Ratio Workgroup, which current statute tasks with studying and making recommendations to the Legislature on classified employee staffing ratios.

The bill also changes the date that the workgroup must report its recommendations to the Legislature from December 31, 2025, to July 31, 2026.

ANALYSIS

Existing law:

1) Requires the California Department of Education (CDE) to convene the Classified Employee Staffing Ratio Workgroup on or before December 31, 2024, in consultation with the Division of Occupational Safety and Health (CalOSHA), the Department of Industrial Relations (DIR), the Labor Commissioner (LC), representatives of employee organizations, and representatives of voluntary local educational agencies, including, but not limited to, members of governing boards of school districts. (Education Code (ED) § 45118 (a) (1))

2) Defines "voluntary local educational agencies" to mean school districts, county offices of education, and special education local plan areas electing to participate in the workgroup. (ED § 45118 (a) (2))

3) Requires the workgroup to group classified assignments in a manner that reflects the environmental setting of the assignment, the type of work to be completed, the impact on the assignment made by enrollment at a schoolsite, specialized needs, including certifications or licenses, and other reasonable factors. (ED § 45118 (b) (1) (A))

4) Permits the workgroup to include in the groupings of classified assignments the categories of food service, maintenance and operations, office and technical services, para-educators, special services, including law enforcement, and transportation services. (ED § 45118 (b) (1) (B))

5) Requires the workgroup to recommend staffing ratios per identified grouping of classified assignments. (ED § 45118 (b) (2))

6) Requires the workgroup to take into account the physical, mental, and emotional impact of a pandemic or other emergency environment on workers. (ED § 45118 (b) (3))

7) Requires the staffing ratios to compare the number of classified staff needed for each group with the number of pupils. The staffing ratio may compare other factors, as relevant to the group of classified workers. (ED § 45118 (b) (4))

8) Requires the workgroup, on or before December 31, 2025, to report recommendations on appropriate staffing ratios for classified school employees to the Legislature, as specified. (ED § 45118 (c))

9) Provides that this bill becomes operative July 1, 2024. (ED § 45118 (d))

This bill:

1) Adds community college districts to the definition of "voluntary local education agencies" with which CDE must consult as part of a workgroup to study and make recommendations on classified employee staffing ratios.

2) Clarifies that the workgroup must group classified assignments for both K-12 and community colleges, as specified.

3) Makes related conforming technical changes to reference community college districts, campuses, and students.

4) Changes the date that the workgroup must report its classified staffing ratio recommendations to the Legislature from December 31, 2025, to July 31, 2026.

5) Deletes the statute's existing reference to a July 1, 2024, operative date.

COMMENTS

1. Need for this bill?

According to the sponsor:

"Prior to AB 1273 (Bonta, 2023), no state policy assessed or quantified how many classified employees are reasonably required to meet the needs of the health and safety of students and staff at school sites. Classified school employees perform a myriad of jobs that keep schools clean, safe, and operative and ensure that janitorial, para-education service, and maintenance needs are met. Hundreds of classifications perform this work; from trades workers to clerical staff, custodial and the list goes on. Unfortunately, not every school site is staffed with adequate personnel to meet the needs of each school site.

AB 1273 (Bonta) created a process by which stakeholders will develop optimal classified staffing ratios for schools, and the group conducting this research is currently being formed. However, this bill omitted community colleges from the discussion, despite the fact that community colleges require the work of classified staff just as much as any other type of education institution. AB 2971 (Maienschein) simply adds community colleges into the existing process created by AB 1273, with no other changes to current law. With this

addition, our community college system can join all other areas of our education infrastructure in also benefitting from the work of this group."

2. Proponent Arguments

According to the American Federation of State, County and Municipal Employees:

"AB 1273 (Chapter 364, Statutes of 2023) established the Classified Employee Staffing Ratio Workgroup to consider the physical, mental, and emotional impact of a pandemic or other emergency environment on workers. AB 2971 makes the simple change of adding classified employees at community colleges to this workgroup so that a more robust, informed, and productive discussion can occur."

According to the California School Employees Association:

"Classified employees are the backbone of our TK-12 schools and community colleges. They ensure schools are clean, that students are fed and get to school safely. Unfortunately, not all schools are staffed with enough classified school employees to successfully meet the needs of students."

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 1273 (Bonta, Chapter 364, Statutes of 2023) requires the California Department of Education (CDE) to convene a workgroup on or before December 31, 2024, for the purpose of reporting recommendations to the Legislature on or before December 31, 2025, on appropriate staffing ratios for classified school employees. The bill becomes operative July 1, 2024.

AB 185 (Committee on Budget, Chapter, 571, Statutes of 2022), the Education Finance budget trailer bill, clarified that Transitional Kindergarten (TK) class size requirements are not subject to collectively bargained kindergarten class size alternative requirements (14); and also clarified how class size and the adult-to-pupil ratio should be defined for purposes of calculating the TK Local Control Funding Formula (25).

SUPPORT

California Federation of Teachers (Sponsor)
American Federation of State, County and Municipal Employees
California School Employees Association
California Teachers Association

OPPOSITION

None received.

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SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 3025	**Hearing Date:**	June 12, 2024
Author:	Valencia		
Version:	May 2, 2024		
Urgency:	No	**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: County employees' retirement: disallowed compensation: benefit adjustments.

KEY ISSUE

This bill would require employers subject to the County Employees Retirement Law (CERL) to do the following:

1) Reimburse their pension systems for pension overpayments made to retired members, survivors, or beneficiaries in violation of PEPRA[1] and *Alameda*[2] prohibitions on disallowed compensation;
2) Pay those retirees, survivors, or beneficiaries, an amount equal to 20 percent of the actuarial equivalent present value of their "lost" pension benefit due to recalculating the benefit without the disallowed compensation;
3) Cease reporting disallowed compensation for active members, as specified, and require CERL retirement systems to credit employer contributions and return member contributions on the disallowed compensation; and
4) Other related activities to facilitate the above objectives.

ANALYSIS

Existing law:

1) Provides, among other things under the California Constitution that, "the members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administrating the system." (Section 17, Art. XVI, Cal. Const.)

2) Establishes the County Employees Retirement Law (CERL) that governs 20 independent county retirement associations and provides for retirement systems for county and district employees in those counties adopting its provisions. The CERL is also commonly referred to as the 1937 Act or the 37 Act. Currently, 20 counties operate retirement systems under the CERL and these systems are commonly referred to as CERL, 1937 Act, or 37 Act systems or associations. (Government Code (GC) § 31450 et seq.)

3) Establishes that the purpose of the CERL is to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment

[1] Public Employees' Pension Reform Act of 2013, see Government Code § 7522 et seq.
[2] Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (2020) 9 Cal.5th 1032

and its accompanying physical disabilities by making provision for retirement compensation and death benefit as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of public service without prejudice and without inflicting a hardship upon the employees removed. (GC § 31451)

4) Establishes the Public Employees' Pension Reform Act of 2013 (PEPRA) – a comprehensive reform of public employee retirement that, among other things, increased contributions towards retirement, decreased benefit formulas, and increased the age of retirement that apply to new members of the system first hired on or after January 1, 2013, and made changes that apply to all members towards resolving unfunded liabilities, the manipulation of compensation for purposes of calculating a retirement allowance (i.e., pensions spiking), double-dipping, and other prescribed best practice measures. (GC § 7522.02 et seq.)

5) Defines, under the CERL, "compensation" to mean the remuneration paid in cash out of county or district funds, plus any amount deducted from a member's wages for participation in a deferred compensation plan, as provided, but does not include the monetary value of board, lodging, fuel, laundry, or other advantages furnished to the member. (GC § 31460)

6) Defines, pursuant to the CERL, "compensation earnable" by a member to mean the average compensation as determined by the board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and the same rate of pay. Among other things, "compensation earnable" expressly does not include certain types or forms of compensation paid to, and when they were paid that, enhance a member's retirement benefit under the system. (GC § 31461)

7) Establishes that when a county or district reports compensation to the system, it must identify the pay period in which the compensation was earned regardless of when it was reported or paid, and prescribes the reporting requirements and limitations on compensation earnable. (GC § 31542.5)

8) Establishes that "compensation earnable" must not include overtime premium pay other than premium pay for hours worked within the normally scheduled or regular working hours that are in excess of the statutory maximum workweek or work period applicable to the employee under federal law, as specified, and provides that the definition of "compensation earnable" must not apply to a PEPRA member. (GC § 31461.6)

9) Defines "final compensation" to mean the average annual compensation earnable by a member during any three years elected by a member at or before the time they file an application for retirement, or, if they fail to elect, during the three years immediately preceding their retirement. If a member has less than three years of service, their final compensation must be determined by dividing their total compensation by the number of months of service credited to them and multiplying by 12. In addition, for these purposes, the definition of final compensation here does not apply to a PEPRA member. (GC § 31462)

10) Prescribes how a '37 Act system determines final compensation, including final compensation based on compensation for one year (if adopted by a county), and in relation to intermittent members, subject to certain conditions where applicable. (GC §§ 31462.05, 31462.1, and 13462.2)

This bill:

1) Defines the following terms for purposes of the bill's provisions:

   a. "Agreement" means a memorandum of understanding or collective bargaining agreement between the employer and an exclusive representative pursuant to the Meyers-Milias-Brown Act.
   b. "*Alameda*" means the Supreme Court case of Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (2020) 9 Cal.5th 1032 and its holding.
   c. "Disallowed compensation" means non-pensionable compensation reported for a member of the retirement system that the system subsequently determines is not in compliance with PEPRA, the holding in *Alameda*, other provisions of this part, or the system's administrative regulations or policies, through no fault of the member.
   d. "Employer" means the appropriate applicable county, county agency, or special district standing in relationship between the employee and the system.
   e. "Initiated a process" means a system has formally adopted a resolution for a correction process on identified disallowed compensation that has required or will require collecting any portion of an overpayment from, or refunding member contributions to, any affected active member, retired member, survivor, or beneficiary, or adjusting the retirement allowance of any affected retired member, survivor, or beneficiary due to the determination of disallowed compensation by the system, including a determination by the system that is consistent with PEPRA, the holding in *Alameda*, and other provisions of this part.
   f. "PEPRA" means the California Public Employees' Pension Reform Act of 2013 (Article 4 (commencing with Section 7522) of Chapter 21 of Division 7 of Title 1).
   g. "System" means a retirement association or system established pursuant to the County Employees Retirement Law of 1937 (commencing with Section 31450).

2) Mandates a CERL retirement system require a system-participating employer to discontinue reporting disallowed compensation if the system determines that the compensation the employer reported for a member is disallowed compensation.

3) In the case of an *active* member, requires the system to credit all employer contributions made on disallowed compensation against future contributions to the benefit of the employer or agency that reported the disallowed compensation, and to return any member contribution paid by, or on behalf of, that member to the member directly or indirectly through the employer or agency that reported the disallowed compensation, except as specified.

4) Allows a system that has initiated a process prior to January 1, 2024, to recalculate an active member's compensation earnable to exclude disallowed compensation and return contributions, either directly to the member, or indirectly through the employer, to continue to use that process to ensure compliance with PEPRA, and that is consistent with, and pursuant to, the holding in *Alameda*, in lieu of the process provided by this bill.

5) In the case of a *retired* member, survivor, beneficiary, whose final compensation at the time of retirement was predicated upon the disallowed compensation, requires the system to credit the employer contributions made on the compensation against future contributions, to the

benefit of the employer that reported the disallowed compensation; return any member contributions paid by, or on behalf of, that member, to the member directly; and permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation.

6) Applies the bill's repayment and notice requirements, as specified below, only if the following conditions are met:

   a. The employer reported the compensation to the system and made contributions on that compensation while the member was actively employed;
   b. The system determined after the date of retirement that the compensation was disallowed; and
   c. The member was not aware that the compensation was disallowed at the time the employer reported it.

7) If the disallowed compensation meets the above conditions, requires the employer that reported the disallowed compensation to do the following:

   a. Pay to the system, as a direct payment, or through recognition in the actuarial accrued liability, as determined by the system, the full cost of any overpayment of the prior paid benefit made to an affected retired member, survivor, or beneficiary resulting from the disallowed compensation.
   b. Pay to the affected retired member, survivor, or beneficiary, as appropriate, an amount that is 20 percent of the amount calculated by the system, representing the actuarial equivalent present value of the difference between the monthly allowance that was predicated on the disallowed compensation and the adjusted monthly allowance calculated excluding the disallowed compensation for the duration the system projects to pay that allowance to the retired member, survivor, or beneficiary.
   c. Begin payment within six months of notice from the system; however, the bill permits the employer up to four years to complete the payment and allows the system to charge the employer the actual costs of actuarial services provided.

8) Requires the system to provide a written notice to the employer that reported contributions on the disallowed compensation and to the affected retired member, survivor, or beneficiary, including, at a minimum, all of the following:

   a. The overpayment amount that the employer shall pay to the system;
   b. The actuarial equivalent present value that the employer owes to the retired member, survivor, or beneficiary; and
   c. Written disclosure of the employer's obligations to the retired member, survivor, or beneficiary pursuant to this section.

9) Allows a system that has initiated a process prior to January 1, 2024, to permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation to continue to use that process provided that it is consistent with PEPRA, and with the holding in Alameda, in lieu of the process provided by this bill.

10) Requires the system to provide the employer, upon the employer's request, with contact information data in its possession of a relevant retired member, survivor, or beneficiary, so that the employer or agency can fulfill its obligations to those individuals; additionally

requires the recipient of this contact information data to keep the data confidential and to use the data only to the extent necessary to carry out its duties as prescribed.

11) Allows an employer or authorized employee representative to submit to the system for review an additional compensation item that a party to a proposed agreement requests be included, contained, adopted, or a entered into that agreement, on and after January 1, 2025, that is intended to form the basis of a pension benefit calculation, in order for the system to review consistency of the proposal with PEPRA; the holding in Alameda; Section 31461; other CERL and related county retirement provisions; and the system's administrative regulations or policies.

12) Requires the submitting parties to include with the submission all supporting documents or requirements the system deems necessary to complete its review.

13) Requires the system to provide guidance regarding the submission within 90 days of the receipt of all information required to make a review.

14) Authorizes, but does not require, the system to periodically publish a notice of the proposed compensation language submitted to the system pursuant to this section for review and the guidance it provided.

15) Clarifies that the bill does not alter or abrogate an employer's responsibility to meet and confer in good faith with the employee organization regarding the impact of the disallowed compensation or the effect of any disallowed compensation on the rights of the employees and the obligations of the employer to its employees, including any employees who, due to the passage of time and promotion, may have become exempt from inclusion in a bargaining unit, but whose benefit was the product of collective bargaining.

16) Provides that the bill does not affect or otherwise alter a party's right to appeal any determination regarding disallowed compensation made by the system after July 30, 2020.

17) Permits the board of retirement or board of supervisors, as authorized pursuant to CERL, to enter into any contracts for administrative purposes or as may be necessary and appropriate to carry out this bill's provisions.

18) States the Legislature's intent in enacting this bill's provisions, to comply with federal tax law and federal compliance systems to maintain and ensure the federal income tax exempt status of the county employees' retirement systems.

19) Authorizes systems that have initiated a process that was or is intended to comply with federal tax law and federal compliance systems to revise the process as necessary to the extent required to comply federal tax law and federal compliance systems to maintain the system's tax-exempt status.

20) Makes legislative findings and declarations relating to the necessity of limiting public access to information shared among public agencies in order to maintain the current confidentiality of personal contact information held by a county retirement system regarding retired members of the system, and their survivors and beneficiaries.

COMMENTS

1. Background

Since this bill is substantially similar to AB 2493 (Chen, 2022) the background information and many of the concerns addressed in our committee policy analysis of AB 2493 still apply to this bill. While AB 2493 applied only to firefighters and peace officers, this bill applies more broadly to all CERL members, both safety and miscellaneous. This bill is yet another attempt to hold harmless those CERL retirees who received pension overpayments because their employers reported disallowed compensation to their retirement systems. [3]

The bill's supporters are encouraged by the Legislature's recent decisions to address similar issues for retirees of the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS). Here, as in those cases, the proponents seek to place an express obligation on the employers (or the state in certain aspects related to CalSTRS retirees) to reimburse retirement systems for overpayments made to the retirees, free the retirees from having to repay those overpayments, recognize the obligation of the retirement systems to recalculate the retirees' pensions without the disallowed compensation going forward, and require the employers to compensate the retirees for their lost expectation in an amount equal to 20 percent of the present value of that expectation.

Those two systems, unlike the CERL systems, are generally uniform in their benefits for and regulatory treatment of their respective members. CERL, on the other hand, consists of twenty different systems run by twenty different boards that have implemented diverse approaches to both the provision of benefits and the reconciliation of past practices with the regulatory reform of PEPRA and *Alameda.*

This bill appears to attempt to bridge those differences by allowing CERL systems that immediately complied with PEPRA or did so after the California Supreme Court's holding in *Alameda,* the flexibility to continue those approaches, provided that their retirement boards adopted a resolution to do so prior to January 1, 2024. For all others, this bill's provisions would apply.

The bill's opposition may well view these attempts as hollow, since the bill effectively allows CERL retirees to keep a good portion of pension benefits to which the law, under PEPRA and *Alameda* says they simply are not entitled. Moreover, the burden for funding those overpayments may fall on counties just as the state's economic condition deteriorates and available resources to local government begins to decrease while demands on their services begin to increase. [4]

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[3] Pension overpayments occur when employers report employee compensation to the retirement systems improperly; causing the systems to calculate and pay larger pension benefits than the employee is entitled to receive upon retirement. Disallowed compensation is compensation the retirement systems have determined to be not pensionable, i.e., pension that they cannot use in calculating a pension benefit. PEPRA limited the types of compensation that public employers can include for purposes of calculating their employees' pension allowance. PEPRA, as upheld by *Alameda*, excluded certain items of pay - to legacy employees as well as PEPRA employees – as part of efforts to end pension spiking (i.e., the practice of padding compensation at the end of the employee's career to inflate the life-long pension benefit the employee would get upon retirement).

[4] See, BMO State Monitor, California Economic Outlook – April 2024 (https://economics.bmo.com/en/publications/detail/f89aca03-d4ef-44fa-bd4c-df105fb2b98e/); see also Public Policy Institute of California Statewide Survey: Californians and Their Economic Well-Being (https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-economic-well-being-november-

Proponents counter that retirees are not getting everything their employers promised them in their Memoranda of Understanding (MOUs) because 20% of an amount today is no guarantee of 100% of a lifetime benefit (although, well-invested, it may get pretty close). They also rehash old arguments that members paid contributions on compensation, disallowed or not, which should entitle them, if not legally, than certainly morally to the promised benefit.

Lost in detail, is that PEPRA, as upheld by *Alameda*, sought to end practices that transferred unfunded pension liability (i.e., debt) onto future generations and damaged the long-term stability of pension systems, whose function is supposedly to collect and invest contributions that *accurately* correspond to the expected accruing liability from the member's benefit during the *entirety* of the member's career. In doing so, the systems "pre-fund" the pension benefit with the contributions and investment return. The member and employer pay for the benefit before the member gets the benefit. *Alameda* defended the rationale that a functioning pension system requires the member and the employer not pass that cost on to future generations.

Members who manage to significantly boost their compensation the year before retirement, deserve no moral accolades for paying a few months of contributions while substantially increasing their lifelong benefit and the system's unfunded liability. Nor do employer and employee representatives always come to the table with clean hands when they focus more on overcoming immediate labor or budget negotiations than ensuring that the pension systems are healthy and sustainable.

PEPRA sought, in part, to impede the tendency for those representatives to avoid hard choices around balancing budgets, rationalizing workforces, or employing bureaucratic disciplinary processes by cutting short-term labor costs in exchange for agreeing to more costly, long-term, deferred employee compensation enhancements or encouraging problem employees to leave with enhanced retirements.

Nevertheless, most members are not deviously plotting how to cheat the system. They make life-altering decisions based on the information provided to them by their employers, their unions, and their retirement systems (if they are lucky enough to have one). Once retired, they may have limited opportunities to return to work even if they are physically able. Nor are most government officials and union representatives avidly seeking ways to push costs into the future. They are generally just trying to balance complicated, competing societal demands against current economic conditions.

Recently, the Legislature has generally approved of policies that ensure retirement systems are repaid; require employers to hold harmless or shield retirees from repaying pension overpayments; and provide retirees partial compensation for their changed circumstances. This bill follows that trend. It seeks to soften the blow to employers somewhat by allowing employers to pay for the overpayments through adjustments to their actuarial rates and by

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2023/); but Cf. UCLA Andersen School of Management Forecast (https://www.anderson.ucla.edu/news-and-events/press-releases/ucla-anderson-forecast-sees-restrained-2024-growth-no-recession).

giving them up to four years to pay the retirees the 20 percent present value compensatory payments.

The employers may consider the bill a bitter pill nevertheless. One way, perhaps, to make the medicine go down, would be to provide an explicit release to the employers from any potential remaining liability arising out of their MOUs or other contracts that presumably included the disallowed compensation and expressly curtailing the aggrieved parties from pressing any further legal claims on their expected or promised pension allowances. Currently, nothing in the bill appears to prevent retirees from taking the 20 % amount and continuing to sue the employers to ensure they get 100% of their expected or promised allowance. That idea, however, seems to veer into the jurisdiction of the Judiciary Committee, where this bill will next be heard should it pass out from this Committee.

2. Need for this bill?

According to the author:

"Reported disallowed compensation to CERL retirement systems significantly impacts retirees and active members. Retirees often rely on a fixed monthly pension which can be their only source of retirement income. When compensation is disallowed, retirees have to take a significant reduction in their monthly retirement distribution and pay the system back. This puts a massive burden on employees who dedicate their careers to public service with the promise of a secure retirement. This bill looks to create parity with CalPERS practices which balance the burden of disallowed compensation items between the employer and the employees."

3. Proponent Arguments

According to the California Professional Firefighters:

"AB 3025 would protect the promised and paid for pensions of our retirees through a number of mechanisms, as well as putting in place steps to ensure that similar issues do not happen again in the future. This bill would require that the employer to immediately stop reporting the disallowed compensation to the system. For active employees, the retirement system must credit the contributions made on the disallowed compensation to the employer against future contributions and the employer is required to refund the employee contributions made on the disallowed compensation to the active employee."

4. Opponent Arguments:

According to the California State Association of Counties:

"Following the passage of the Public Employees' Pension Reform Act of 2013 (PEPRA), county retirement systems took varying approaches to comply with the provisions of PEPRA related to which types of compensation may be included in retirement benefit calculations. On July 30, 2020, the California Supreme Court issued a decision in the case *Alameda County Deputy Sheriff's Assn. v Alameda County Employees' Retirement Assn.,* otherwise known as the "*Alameda* decision," in which the Court upheld provisions [of] PEPRA related to disallowed forms of compensation for retirement calculations. Over the last four years, the

impacted ’37 Act systems have been working to comply with *Alameda* and recalculate retirement benefits for members who retired after January 1, 2013.”

“AB 3025 unfairly places the financial consequences of the Court’s decision on counties and other agencies by requiring ’37 Act system employers to pay a “penalty” equal to 20 percent of the current actuarial value of retiree benefits deemed unlawful. The penalty, which will result in affected agencies owing millions of unbudgeted dollars to retirees for what the Court found to be an illegal benefit, implies those agencies made the decision to misapply the law. In reality, they simply complied with the pension agreements established between employees, employers, and retirement systems.”

5. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Public Employment and Retirement Committee and to the Senate Judiciary Committee.

6. Prior Legislation:

AB 1997 (McKinnor, 2024) makes changes to the Teachers’ Retirement Law (TRL), administered by CalSTRS, relating to creditable compensation, creditable service, and the reporting of compensation to the system by CalSTRS employers for purposes of retirement, among other provisions. *This bill is currently in the Senate Labor, Public Employment and Retirement Committee*.

AB 2284 (Grayson, 2024) would authorize a CERL retirement system to define “grade,” as specified, for purposes of compensation and calculating a retirement benefit. *This bill is currently in the Senate Labor, Public Employment and Retirement Committee.*

SB 432 (Cortese, Chapter 215, Statutes of 2023) clarified certain Education Code provisions as amended by AB 1667 (Cooper, Chapter 754, Statutes of 2022) relating to the recovery of pension overpayments from retired teachers by CalSTRS due to errors in reported compensation.

AB 2493 (Chen, 2022) was substantially similar to this bill. AB 2493 would have made several changes to CERL provisions regarding pension calculation adjustments arising from erroneous inclusion of disallowed compensation. The bill would have required CERL county employers to: (1) reimburse their respective retirement system for pension overpayments made to peace officer and firefighter retirees arising from erroneous employer reporting of disallowed compensation, and (2) pay affected retirees a lump sum amount equal to 20 percent of the actuarial equivalent present value of a retiree’s “lost” pension going forward due to the system’s recalculation of the retiree’s benefit to exclude the disallowed compensation, among other provisions. *The bill died on the Assembly Inactive File.*

AB 1667 (Cooper, Chapter 754, Statutes of 2022) prescribed various requirements in connection with audits by CalSTRS; CalSTRS' interpretation and clarification of rules relating to creditable compensation; CalSTRS' review of compensation items included in a memorandum of understanding or collective bargaining agreement; errors relating employer reporting of compensation to the system; and, the recovery of payments, among other provisions.

SB 278 (Leyva, Chapter 331, Statutes of 2021) required that when a retiree's CalPERS pension is reduced post-retirement, due to the inclusion of compensation agreed to under a collective bargaining agreement that is later determined to be non-pensionable, the public employer must cover the difference between the pension as originally calculated and as reduced by CalPERS.

SUPPORT

California Professional Firefighters (Co-sponsor)
California Fraternal Order of Police (Co-sponsor)
American Federation of State, County and Municipal Employees
Association of Orange County Deputy Sheriffs
California Labor Federation
California Teachers Association
Contra Costa County Professional Firefighters Local 1230
Elderly Care Everywhere
Kern County Firefighters Local 1301 Union
Long Beach Police Officers Association
Los Angeles County Firefighters Local 1014
Marin Professional Firefighters Local 1775
Orange County Employees Association
Orange County Professional Firefighters Association, Local 3631
Sacramento Area Firefighters Local 522
Sacramento County Deputy Sheriff's Association
San Bernardino County Firefighters Local 935
San Bernardino County Sheriff's Employees' Benefit Association
Ventura County Professional Firefighters Association Local 1364

OPPOSITION

California Special Districts Association
California State Association of Counties
League of California Cities
Rural County Representatives of California
Urban Counties of California

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2023 - 2024 Regular

Bill No:	AB 3258	**Hearing Date:**	June 12, 2024
Author:	Bryan		
Version:	June 3, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Refinery and chemical plants

KEY ISSUE

This bill expands the scope of the California Refinery and Chemical Plant Worker Safety Act of 1990 by revising the definition of "refinery" to mean an establishment that produces gasoline, diesel fuel, aviation fuel, or biofuel through the processing of crude oil or alternative feedstock.

ANALYSIS

Existing law:

1) Under the California Occupational Safety and Health Act, assures safe and healthful working conditions for all California workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health. (Labor Code §6300)

2) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the Department of Industrial Relations (DIR) to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)

3) Establishes the Occupational Safety and Health Standards Board (Board), within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. (Labor Code §140-147.6)

4) Directs the Board and Cal/OSHA, in accordance with the California Refinery and Health Standards Board Act of 1990 (Act), to promote worker safety through implementation of training and process safety management practices in petroleum refineries and chemical plants and other facilities deemed appropriate. (Labor Code §7852(a))

5) Defines, for purposes of the Act, "process safety management" as the application of management programs, which are not limited to engineering guidelines, when dealing with the risks associated with handling or working near hazardous chemicals.

6) Directs the Board to adopt, by March 31, 2014, process safety management standards for refineries, chemical plants, and other manufacturing facilities, as specified.

7) Directs refinery employers to, among other things, develop and maintain a compilation of written safety information, develop and implement operating procedures, train employees, and implement inspection and testing procedures. (Labor Code §7858-7868)

8) Defines, for purposes of the Act, a "turnaround" as a planned, periodic shutdown, total or partial, of a refinery process unit or plant to perform maintenance, overhaul, and repair operations and to inspect, test, and replace process materials and equipment.

9) Requires, every September 15, petroleum refinery employers to submit to Cal/OSHA a full schedule of planned turnarounds for all affected units for the following calendar year. (Labor Code §7872(b))

    a. At the request of the Cal/OSHA, at least 60 days prior to the shutdown of a process unit or plant as part of a planned turnaround, a petroleum refinery employer shall provide access onsite and allow Cal/OSHA to review specified documentation. (Labor Code §7872(c))

This bill:

1) Removes references in the Act to "petroleum refineries" and "petroleum refinery employers" and instead refers to "refineries" and "refinery employers."

2) Defines "refinery" as an establishment that produces gasoline, diesel fuel, aviation fuel, or biofuel through the processing of crude oil or alternative feedstock.

3) Defines "biofuel" as biodiesel, renewable diesel, renewable aviation fuel, or other liquid products derived from alternative feedstock if the alternative feedstock is refined through coprocessing or at a refinery that was converted from petroleum to alternative feedstock.

COMMENTS

1. Process Safety Management (PSM):

The PSM Unit within Cal/OSHA is responsible for inspecting refineries and chemical plants that handle large quantities of toxic and flammable materials. The first safety standards enforced by the PSM Unit were adopted in 1990 under the Act and were substantially similar to federal ones. Following a 2012 incident at the Chevron U.S.A. Inc. Refinery in Richmond, however Cal/OSHA and the Legislature moved to strengthen safety standards. Reports by Cal/OSHA, the U.S. Chemical Safety and Hazard Investigation Board, and the U.S. Environmental Protection Agency identified serious concerns about Chevron's process safety management procedures and expressed the need for stronger preventative safeguards. On May 18, 2017 the Board unanimously adopted updated PSM standards that, among other things, require petroleum refinery employers to conduct damage mechanism reviews, develop written safety procedures, implement a human factors program, and perform and document a process hazard analysis. The new rules make California petroleum refineries safer for workers and surrounding communities.

Existing law under the Act references "petroleum refineries," but does not provide a specific definition. The California Code of Regulations does offer a definition of "refinery" for purposes of PSM regulations. A "refinery" is a plant for the separation, refining, or processing of petroleum, natural gas, and products thereof. A refinery may include numerous processing units or groups of activities.

This bill would strike references to "petroleum refineries" and "petroleum employers" and instead define "refinery" as an establishment that produces gasoline, diesel fuel, aviation fuel, or biofuel through the processing of crude oil or alternative feedstock. As California moves away from petroleum based refining, it should be clear that the existing PSM standards are applicable to all refineries regardless of the exact products or methods involved.

2. Need for this bill?

According to the author:

"Throughout history, refinery workers have fought tireless battles to secure their rights and protections. They have faced hazardous working conditions, often risking their well-being in the pursuit of livelihoods. In 2012, a pivotal moment occurred when a pipe failure and fire erupted at the Richmond Chevron refinery. As a result, The Process Safety Management (PSM) regulations were updated to protect petroleum refinery workers. Over a decade later, our industrial landscape has evolved. Technological advancements and process innovations now drive production, yet the risks remain unchanged. The PSM framework fails to encompass the newer processes that utilize the same machinery.

AB 3258 seeks to redefine the term 'refinery.' This definition explicitly includes processes like crude oil refinement, alternative feedstock utilization, redistillation of unfinished petroleum derivatives, and cracking. By broadening the definition, we take a significant stride toward addressing the core issue. Regardless of the specific products or methods involved, all refineries must adhere to existing PSM regulations. This crucial safeguard ensures the well-being of communities and every worker employed at refineries."

3. Proponent Arguments:

The California Labor for Climate Jobs coalition is in support of the measure;

"Absent proper process safety management procedures and worker training, refineries are hazardous and deadly worksites. AB3258 will ensure that no refinery falls below our California's mandated standards.

California Labor for Climate Jobs is a statewide coalition of labor unions organizing for a worker-led transition to a climate-safe and just economy. Our labor unions represent oil and gas workers, public sector workers in oil and gas dependent counties and across the state, as well as teachers, domestic workers, healthcare workers, farmworkers, janitors and many more. Together we are workers leading on solutions that protect working people, create family-sustaining jobs, and improve our collective health and well-being. As workers we have witnessed companies exploit the shifting economic conditions and new technologies emerging in the low carbon economy to evade life-saving safety regulations. The current labor code is outdated for our 21st century refining economy, especially as California moves away from petroleum refining, toward biofuel and other 'renewable' and/or alternative fuel production. We must act now to close the loophole that exempts newer refining technologies from the safety regulations that protect our workers and their neighboring families. AB3258 aims to close that gap in workplace safety for the entire refining and chemical plant industry."

4. Opponent Arguments:

None received.

5. Prior Legislation:

SB 1300 (Hancock, Chapter 519, Statutes of 2014) required every petroleum refinery employer to, every September 15, submit to the Cal/OSHA a full schedule for the following calendar year of planned turnarounds, and to inspect, test, and replace process materials and equipment, as specified. The bill also required a petroleum refinery employer, upon the request of the Cal/OSHA, to provide access onsite and provide Cal/OSHA with specified documentation.

AB 3672 (Elder, Chapter 1632, Statutes of 1990) established the California Refinery and Chemical Plant Worker Safety Act of 1990 including process safety management standards to prevent or minimize the consequences of catastrophic releases of toxic, flammable or explosive chemicals.

SUPPORT

350 Bay Area Action
Asian Pacific Environment Network
Bluegreen Alliance
California Environmental Voters (formerly CLCV)
California Labor for Climate Jobs
California Nurses for Environmental Health & Justice
California Nurses for Environmental Health and Justice
Center for Race, Poverty, and The Environment
Center on Race, Poverty & the Environment
Cleanearth4kids.org
Communities for A Better Environment
Greenpeace USA
Jobs With Justice San Francisco
Labor Network for Sustainability
Natural Resources Defense Council
San Francisco Bay Physicians for Social Responsibility
Sunflower Alliance
The Climate Center
United Steelworkers District 12
United Steelworkers Local 675

OPPOSITION

None received.

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