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

Bill No:	AB 1239	**Hearing Date:**	June 26, 2024
Author:	Calderon		
Version:	June 10, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Workers' compensation: disability payments

KEY ISSUE

This bill extends by two years, from January 1, 2025 to January 1, 2027, the authorization for employers to deposit workers' compensation disability indemnity payments, with employee written consent, in a prepaid card account rather than a paper check or electronic deposit.

ANALYSIS

Existing law:

1) Establishes a workers' compensation system that provides benefits to an employee who suffers from an injury or illness that arises out of, and in the course of, employment, irrespective of fault. This system requires all employers to secure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by securing insurance against liability from an insurance company duly authorized by the state. (California Constitution Article XIV §4, Labor Code §3200-6002)

2) Requires that, if an injury causes temporary disability, the first payment of temporary disability indemnity must be made no later than 14 days after knowledge of the injury and disability. Each additional payment of temporary disability indemnity benefits must be made as due every two weeks on the day designated with the first payment. (Labor Code §4650)

3) Requires the payment of disability indemnity benefits by a written instrument but authorizes an employer to electronically deposit payments in an account in any bank, savings and loan association, or credit union of the employee's choice, provided the employee has voluntarily authorized the deposit, as specified. (Labor Code §4650)

4) Authorizes employers, until January 1, 2025, to begin a program where disability indemnity benefits may be deposited on a prepaid card account, with written consent from the injured worker to receive benefits this way, and provided the program meets all of the following:
   a. Allows the employee to withdraw the entire balance on the card in one transaction without incurring fees.
   b. Allows the employee reasonable access to in-network ATMs.
   c. Allows the employee to make point-of-sale purchases without incurring fees from the financial institution.
   d. Prohibits a link to any form of credit, including a loan against future payments or a cash advance on future payments. (Labor Code §4651)

5) Requires the fees associated with the use of the prepaid card to be disclosed to the employee in writing and provides that the only permissible fees are those for a replacement card provided through expedited delivery, out-of-network ATM fees, and foreign transaction fees. (Labor Code §4651)

6) Authorizes the employee or employer to opt to change the method of payment by providing 30 days' written notice to the other party. (Labor Code §4651)

7) Requires the Commission on Health and Safety and Workers Compensation (CHSWC), on or before December 1, 2022, to issue a report to the Legislature on payments made to prepaid card accounts and requires employers to provide all necessary aggregated data on their prepaid account programs to CSHWC, upon request, for purposes of this report. (Labor Code §4651)

This bill:

1) Extends by two years, from January 1, 2025 to January 1, 2027, the authorization for employers to deposit disability indemnity payments in a prepaid card account, rather than a paper check or electronic deposit.

COMMENTS

1. Background: Unbanked and Underbanked Individuals

Unbanked individuals do not have a checking or savings account with a Federal Deposit Insurance Corporation (FDIC) insured financial institution. Underbanked means the household had an account with an FDIC insured financial institution, but regularly used alternative financial services. According to the 2021 FDIC National Survey of Unbanked and Underbanked Households, 5 percent of all California households are unbanked.[1] Additionally, the FDIC survey found that unbanked rates varied considerably across the U.S. population with unbanked rates being higher among lower-income households, less-educated households, Black households, Hispanic households, working-age households with a disability, and single-mother households.[2]

Additionally, differences in unbanked rates between Black and White households and between Hispanic and White households in 2021 were present at every income level. For example, among households with income between $30,000 and $50,000, 8.0 percent of Black households and 8.4 percent of Hispanic households were unbanked, compared with 1.7 percent of White households.[3]

2. Pilot Program for the Issuance of Disability Indemnity Payments Using Prepaid Cards:

Workers' compensation benefits provide employees with the medical treatment needed to recover from work related injury or illnesses, partially replace the wages lost while they recover, and help them return to work. The Division of Workers' Compensation (DWC)

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[1] Federal Deposit Insurance Corporation, https://household-survey.fdic.gov/survey-map?year=2021
[2] FDIC 2021 National Survey of Unbanked and Underbanked Households. https://www.fdic.gov/analysis/household-survey/
[3] Ibid.

monitors the administration of workers' compensation claims, and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits.

The Commission on Health and Safety and Workers' Compensation (CHSWC) is a joint labor-management body created by the workers' compensation reform legislation of 1993. CHSWC is charged with examining the health and safety and workers' compensation systems in California and recommending administrative or legislative modifications to improve their operation. The Commission was established to conduct a continuing examination of the workers' compensation system and of the state's activities to prevent industrial injuries and occupational illnesses and to examine those programs in other states.

Senate Bill 880 (Pan, Chapter 730, Statutes of 2018), modelled after the Employment Development Department's program that utilizes prepaid cards to issue unemployment insurance and disability insurance payments, authorized employers to conduct a pilot program (until January 1, 2023) to transmit workers' compensation disability indemnity benefits via prepaid cards, rather than a paper check or electronic deposit. SB 880 also required the Commission on Health and Safety and Workers Compensation to compile a report to Legislature by December 1, 2022 noting the following information:

- Number of employees who elected to receive their benefits via prepaid card;
- Cash value of benefits sent via prepaid card, and;
- Number of employees who opted to change their method of payment from prepaid card to either a written instrument or electronic deposit.

The January 1, 2023 sunset date on these provisions has since been extended twice:

- AB 2148 (Calderon, Chapter 120, Statutes of 2022) extended it to January 1, 2024; &
- AB 489 (Calderon, Chapter 63, Statutes of 2023) extended it to January 1, 2025.

The CHSWC report required by SB 880 has not yet been submitted to the Legislature. According to the author, "CHSWC is still working on the report but hasn't yet received sufficient data. This bill's sponsor is working with CHSWC to try and get additional data provided."

3. Need for this bill?

According to the author:

"The prepaid debit card program is needed, because transmitting indemnity benefits to injured workers by either a paper check or direct deposit both pose unique challenges for households where no one in the household has a bank account. For unbanked workers, direct deposit would generally not be available. Without a relationship with financial institutions, cashing a check without significant fees would also prove challenging. Providing payments to unbanked workers by prepaid debit cards alleviates these challenges.

The pilot program is set to expire on January 1, 2025, but a report on the program that was expected to be issued on December 1, 2022 is still in process. As such, without a proper review of the program, the current end date will result in an interruption of the program. This program is totally elective – workers can still opt to receive payment by paper check or direct

deposit. But providing the option of a prepaid debit card is particularly helpful for unbanked workers that do not have access to a checking account."

4. Proponent Arguments:

According to the proponents of the measure, the American Property Casualty Insurance Association, the California Association of Joint Powers Authorities, and the California Coalition on Workers Compensation:

"SB 880 [the 2018 bill that authorized the use of prepaid card accounts for disability indemnity payments]… addressed a challenge for many injured workers because temporary disability could only be transmitted to injured workers by either a paper check or direct deposit, which presented unique challenges for 'unbanked' households -- households where no one in the household has a bank account. For unbanked workers, direct deposit would generally not be available. Without a relationship with a financial institution, cashing a check without significant fees would also prove challenging. The bill was designed to assist these households by starting the process of regularizing the use of prepaid card accounts for temporary disability payment, similar to one of the authorized methods for delivering unemployment insurance benefits. AB 1239 simply seeks to extend the sunset on this authorization until January 1, 2027."

5. Opponent Arguments:

None received.

6. Prior Legislation:

AB 489 (Calderon, Chapter 63, Statutes of 2023) extended the sunset date for the pilot program that allows employers to transmit workers' compensation disability indemnity benefits by a prepaid card from January 1, 2024 to January 1, 2025.

AB 2148 (Calderon, Chapter 120, Statutes of 2022) extended the sunset date for the pilot program from January 1, 2023, to January 1, 2024.

SB 880 (Pan, Chapter 730, Statutes of 2018) created original pilot program authorizing the use of prepaid cards for indemnity payments with a sunset date of January 1, 2023.

SUPPORT

American Property Casualty Insurance Association
California Association of Joint Powers Authorities (CAJPA)
California Coalition on Workers Compensation

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 1832	**Hearing Date:**	June 26, 2024
Author:	Blanca Rubio		
Version:	May 20, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Civil Rights Department: Labor Trafficking Task Force

KEY ISSUE

This bill establishes the Labor Trafficking Task Force (LTTF) within the Civil Rights Department (CRD) and requires the LTTF to coordinate with various specified entities to take steps to prevent labor trafficking as well as receive and investigate complaints alleging labor trafficking.

ANALYSIS

Existing law:

1) Establishes the Division of Occupational Safety and Health (Cal/OSHA) within the Department of Industrial Relations (DIR), and gives Cal/OSHA the power, jurisdiction, and supervision over every place of employment in this state which is necessary to enforce and administer all laws requiring places of employment to be safe, and requiring the protection of the life, safety, and health of every employee. (Labor Code §175-176)

2) Establishes the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC) and authorizes the LC to investigate employee complaints and enforce labor laws, as specified. (Labor Code, §79 et seq.)

3) Establishes the Labor Enforcement Task Force (LETF) under the direction of DIR to combat the underground economy in order to ensure safe working conditions and proper payment of wages for workers; to create an environment in which legitimate businesses can thrive; and to support the collection of all California taxes, fees, and penalties due from employers. (Budget Act of 2012, AB 1464, Chapter 21, Statutes of 2012)

4) Establishes the Joint Enforcement Strike Force on the Underground Economy (JESF), under the direction of the Employment Development Department (EDD), to combat the underground economy by combining resources and sharing information among the state agencies that enforce tax, labor, and licensing laws. (Unemployment Insurance Code §329)

5) Requires the Department of Justice (DOJ) to maintain, at a minimum, two multi-agency Tax Recovery in the Underground Economy (TRUE) Criminal Enforcement Program investigative teams to combat underground economic activities through a multi-agency collaboration and recover state revenue lost to the underground economy. (Government Code §15926)

6) Establishes and authorizes the Civil Rights Department (CRD) to receive, investigate, conciliate, mediate, and prosecute complaints alleging, and to bring civil actions for a violation of the crime of human trafficking, as specified. (Government Code §12930)

7) Provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished in the state prison for 5, 8, or 12 years and a fine of not more than $500,000. (Penal Code §236.1(a))

8) Provides that a victim of human trafficking may bring a civil action for damages, compensatory damages, punitive damages, injunctive relief, and combination thereof, or any other appropriate relief. (Civil Code §52.5)

This bill:

1) Establishes the Labor Trafficking Task Force (LTTF) within the Civil Rights Department to do all of the following:

    a. Take steps to prevent labor trafficking.
    b. Coordinate with the Labor Enforcement Task Force, the Department of Justice, and the Division of Labor Standards Enforcement to combat labor trafficking.
    c. Make information on the legal rights of victims available to survivors.
    d. Provide a list of pro bono victim's rights attorneys to survivors.
    e. Receive and refer complaints alleging labor trafficking to the department or other agencies, as appropriate, for potential investigation, civil action, or criminal prosecution.
    f. Follow protocols to ensure survivors are not victimized by the process of prosecuting traffickers and are informed of the services available to them.

2) Requires the LTTF to be comprised of experienced investigators, mediators, attorneys, outreach workers, support staff, and other staff deemed appropriate by the department.

3) Authorizes the LTTF to do any of the following:

    a. Coordinate with other relevant agencies to combat labor trafficking, including, but not limited to, the California Victim Compensation Board, the Agricultural Labor Relations Board, the Department of Cannabis Control, and the State Department of Public Health;
    b. Investigate criminal actions related to labor trafficking and when investigating coordinate with any of the following:

        i. Local law enforcement agencies;
        ii. Federal law enforcement agencies; or
        iii. District Attorney's offices.

    c. Coordinate with state or local agencies to connect survivors with available services.

4) Requires the Division of Occupational Safety and Health to notify the LTTF when, upon investigating businesses under their purview, there is evidence of labor trafficking.

5) Requires CRD to include all of the following in their annual report, until January 1, 2036:

a. The activities of the LTTF, including coordination with other agencies;
b. The number of complaints referred to the department;
c. The number of complaints referred to the DOJ and other agencies;
d. The status or outcome of the complaints to CRD, DOJ, and other agencies; and,
e. A discussion of the major challenges to addressing labor trafficking complaints, the ongoing efforts to address those challenges, and options to improve the state's claim process.

6) Provides that the LTTF is not subject to the requirements of the Bagley-Keene Open Meeting Act, as specified.

7) Specifies that these provisions shall only become operative upon appropriation by the Legislature in the annual Budget Act or another measure, as specified.

COMMENTS

1. Background on Labor Trafficking:

The United States remains one of the widely regarded destination countries for human trafficking; federal reports estimate that 14,500 to 17,500 victims are trafficked into the US annually. This does not include trafficking victims within the United States itself and, due to the clandestine nature of the underground economy, is almost certainly an underestimate. Human trafficking can take a number of forms, but generally involves compelling or coercing a person to provide labor or services, or to engage in commercial sex acts. As highlighted by the Attorney General's website on human trafficking, "the coercion can be subtle or overt, physical or psychological, and may involve the use of violence, threats, lies, or debt bondage."[1]

The Attorney General's website additionally notes, "Labor trafficking involves the recruitment, harboring, or transportation of a person for labor services, through the use of force, fraud, or coercion. It is modern day slavery. Labor trafficking arises in many situations, including domestic servitude, restaurant work, janitorial work, factory work, migrant agricultural work, and construction. It is often marked by unsanitary and overcrowded living and working conditions, nominal or no pay for work that is done, debt bondage, and document servitude. It occurs in homes and workplaces, and is often perpetrated by traffickers who are the same cultural origin and ethnicity as the victims, which allows the traffickers to use class hierarchy and cultural power to ensure the compliance of their victims. Labor traffickers often tell their victims that they will not be believed if they go to the authorities, that they will be deported from the United States, and that they have nowhere to run. Traffickers teach their victims to trust no one but the traffickers, so victims are often suspicious of genuine offers to help; they often expect that they will have to give something in return."[2]

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[1] "What is Human Trafficking?" Office of the Attorney General of California, https://oag.ca.gov/human-trafficking/what-is.
[2] Office of the Attorney General of California, https://oag.ca.gov/human-trafficking/what-is.

Though existing law provides for training, workplace postings advising employees of their rights, and harsh penalties for human trafficking, the incentives to coerce people into servitude still exist.

2. Little Hoover Commission Reports:

In 2020, the Little Hoover Commission released three reports reviewing the state's response to labor trafficking. The Commission noted that in California and elsewhere, much of the focus of law enforcement has appropriately been on combatting sex trafficking, particularly among minors, but believes that the state can and must do more to respond to labor trafficking.

In one of the reports, *Labor Trafficking: Strategies to Uncover this Hidden Crime*, the Commission found that while several state agencies play a role in combatting human trafficking, there is no coordinated strategy to target the crime statewide. Government agencies operate in silos, and no state agency has a mandate to look for labor trafficking.[3] The Commission noted that while issues related to labor exploitation in California fall under the jurisdiction of the DIR, the agency does not proactively look for labor trafficking cases, in part because it does not have the authority to investigate labor trafficking cases. However, members of the Labor Enforcement Task Force – a multi-agency effort led by DIR to combat the underground economy – have observed signs of potential trafficking during inspections or received labor trafficking complaints and made 11 referrals of potential cases to the Department of Justice to investigate.[4]

While California enacted anti-trafficking laws to support victims and increase penalties, more than 15 years since the first antihuman trafficking landmark legislation was enacted, no state agency currently has a mandate to combat, prevent and address labor trafficking. Two state agencies that do have jurisdiction to prosecute trafficking crimes are the Department of Justice (DOJ) and the Civil Rights Department (CRD). Both DOJ and CRD coordinate with DIR when encountering labor trafficking cases on an as needed basis. To help bring traffickers to justice, the Commission recommended that the state empower the DIR to lead efforts to pursue labor trafficking alongside its other work to combat the underground economy.

3. Legislative Efforts to Combat Labor Trafficking in Recent Years:

A couple of bills have been introduced in recent years to address the issue of labor trafficking and move forward some of the recommendations by the Little Hoover Commission.

AB 1820 (Arambula) of 2022 would have established the Labor Trafficking Unit within the Division of Labor Standards Enforcement (within DIR) to coordinate with the Labor Enforcement Task Force, the Criminal Investigation Unit, the Department of Justice, and the Civil Rights Department to combat labor trafficking. Specifically, the bill would have required the unit to receive and investigate complaints alleging labor trafficking and take steps to prevent labor trafficking. AB 1820 was vetoed by the Governor who stated the following:

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[3] Little Hoover Commission (September 2020, pages 3-4). *Labor Trafficking: Strategies to Uncover this Hidden Crime.*
[4] Little Hoover Commission (September 2020, pages 6-9). *Labor Trafficking: Strategies to Uncover this Hidden Crime.*

While I am strongly supportive of efforts to combat labor trafficking, the California Civil Rights Department (CCRD) (formerly DFEH) is the appropriate state entity to take the lead in this effort per the amendments offered by my office. DLSE does not have authority to criminally or civilly prosecute these types of cases nor have the tools and resources necessary to assist labor trafficking survivors. CCRD is already active in this space and could seamlessly expand its efforts to more aggressively combat labor trafficking provided it is given new resources in the budget.

AB 380 (Arambula) of 2023 was nearly identical to AB 1820 of 2022 and was held under submission in the Senate Appropriations Committee. Also in 2023, AB 235 (B. Rubio) was introduced to establish a Labor Trafficking Unit within the CRD, nearly identical to this bill (AB 1832). AB 235 was held on the Assembly Appropriations Committee suspense file.

In 2024, this bill (AB 1832) and AB 1888 (Arambula, pending before this Committee) propose to target the issue in similar but, it appears, complementary ways. AB 1888 proposes to establish the Labor Trafficking Unit (LTU) within the Department of Justice (DOJ) and requires the LTU to coordinate with various departments and agencies to investigate and combat labor trafficking. This bill (AB 1832) would require that the LTTF coordinates with the DOJ and AB 1888 requires DOJ to collaborate with CRD. It would appear that these bills could work together.

4. Need for this bill?

According to the author:

"The International Labour Organization estimates that approximately 28 million individuals are trafficked globally, with 17.3 million people experiencing forced labor in private sector industries and 6.3 million experiencing forced commercial sexual exploitation. As a heavily populated border state, California has one of the highest rates of human trafficking in the nation. Despite this, there is no specific California State entity responsible for labor trafficking according to state statute. Although certain State entities often respond to labor trafficking claims, often time's jurisdictional issues or lack of communication occurs between the various entities. Unfortunately due to this, nothing is done to assist those being trafficked. This bill will remedy the lack of communication and enhance enforcement from the State. While doing this, AB 1832 will ensure survivors are not victimized and are made aware of their rights and the tools available to them."

5. Proponent Arguments:

According to the sponsors of the measure, the Coalition to Abolish Slavery and Trafficking:

"Despite high rates of human trafficking in our state, there is no specific California State entity that is responsible for responding to labor trafficking. Although certain State entities can respond to labor trafficking claims, oftentimes jurisdictional issues or lack of communication between the various entities means that survivors are not protected while they navigate the criminal legal system and cases slip through the cracks. Human traffickers purposefully prey on vulnerable communities such as immigrants, undocumented or formerly incarcerated individuals, low-income workers, and people of color. This bill will position the state to take a coordinated approach to the prevention and investigation of labor trafficking

while working to protect these survivors from criminalization by informing them of their rights and connecting them to appropriate social and legal services."

6. Opponent Arguments:

None received.

7. Double Referral:

This bill has been double referred and was previously heard and passed by the Senate Public Safety Committee.

8. Prior/Related Legislation:

AB 380 (Arambula, 2023) would have established the Labor Trafficking Unit (LTU) within DIR's DLSE. *AB 380 was held on the Senate Appropriations Committee suspense file.*

AB 235 (B. Rubio, 2023) was substantially similar to this bill and would have established a Labor Trafficking Unit within the CRD. *AB 235 was held on the Assembly Appropriations Committee suspense file.*

AB 1149 (Grayson, 2023) would have established, until July 1, 2026, the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to review collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking, among other related duties. *AB 1149 was held on the Assembly Appropriations Committee suspense file.*

AB 1820 (Arambula, 2022, Vetoed) would have established the Labor Trafficking Unit within DIR's DLSE. *AB 1820 was vetoed by the Governor.*

AB 2553 (Grayson, 2022) would have established the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to examine collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking. *AB 2553 was held on the Senate Committee on Appropriations suspense file.*

AB 2034 (Kalra, Chapter 812, Statutes of 2018) required businesses and establishments that operate in transportation or handle high volumes of traffic to train their employees in recognizing the signs of human trafficking and reporting suspected human trafficking.

SB 970 (Atkins, Chapter 842, Statutes of 2018) required that hotels and motels provide human trafficking education to employees who interact with the public.

AB 1684 (Stone, Chapter 63, Statutes of 2016) authorized the Department of Fair Employment and Housing (now the Civil Rights Department) to receive, investigate, mediate, and prosecute civil complaints on behalf of a victim of human trafficking.

SUPPORT

Coalition to Abolish Slavery and Trafficking (Sponsor)

California State Association of Electrical Workers
California State Pipe Trades Council
County of Santa Clara
Freedom Calling
Los Angeles County District Attorney's Office
Western States Council Sheet Metal, Air, Rail and Transportation

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 1888	**Hearing Date:**	June 26, 2024
Author:	Arambula		
Version:	June 19, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Department of Justice: Labor Trafficking Unit

KEY ISSUE

This bill establishes the Labor Trafficking Unit (LTU) within the Department of Justice (DOJ) to receive labor trafficking reports or complaints from law enforcement agencies and other governmental entities and refer them to appropriate agencies for investigation, prosecution, or other remedies.

ANALYSIS

Existing law:

1) Establishes the Division of Occupational Safety and Health (Cal/OSHA) within the Department of Industrial Relations (DIR), and gives Cal/OSHA the power, jurisdiction, and supervision over every place of employment in this state which is necessary to enforce and administer all laws requiring places of employment to be safe, and requiring the protection of the life, safety, and health of every employee. (Labor Code §175-176)

2) Establishes the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC) and authorizes the LC to investigate employee complaints and enforce labor laws, as specified. (Labor Code §79 et seq.)

3) Establishes the Labor Enforcement Task Force (LETF) under the direction of DIR to combat the underground economy in order to ensure safe working conditions and proper payment of wages for workers; to create an environment in which legitimate businesses can thrive; and to support the collection of all California taxes, fees, and penalties due from employers. (Budget Act of 2012, AB 1464, Chapter 21, Statutes of 2012)

4) Establishes the Joint Enforcement Strike Force on the Underground Economy (JESF), under the direction of the Employment Development Department (EDD), to combat the underground economy by combining resources and sharing information among the state agencies that enforce tax, labor, and licensing laws. (Unemployment Insurance Code §329)

5) Requires the Department of Justice (DOJ) to maintain, at a minimum, two multi-agency Tax Recovery in the Underground Economy (TRUE) Criminal Enforcement Program investigative teams to combat underground economic activities through a multi-agency collaboration and recover state revenue lost to the underground economy. (Government Code §15926)

6) Establishes and authorizes the Civil Rights Department (CRD) to receive, investigate, conciliate, mediate, and prosecute complaints alleging, and to bring civil actions for a violation of the crime of human trafficking, as specified. (Government Code §12930)

7) Provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of human trafficking and shall be punished in the state prison for 5, 8, or 12 years and a fine of not more than $500,000. (Penal Code §236.1(a))

8) Provides that a victim of human trafficking may bring a civil action for damages, compensatory damages, punitive damages, injunctive relief, and combination thereof, or any other appropriate relief. (Civil Code §52.5)

This bill:

1) Finds and declares, among other things, that:

   a. In California, no coordinated strategy exists to address labor trafficking. Because of this, there is little authoritative information on where and how frequently labor trafficking occurs, and indicators of labor trafficking often go unreported or uninvestigated.
   b. Coordination among and between local, state, federal, and tribal entities will enable the state to identify labor trafficking and act to stop the cycle of extortion and abuse.

2) Defines the following terms, for the purposes of these provisions:

   a. "Forced labor or services" means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, coercion, or equivalent conduct that would reasonably overbear the will of the person.
   b. "Labor trafficking" means depriving or violating the personal liberty of another person with the intent to obtain forced labor or services.

3) Establishes the Labor Trafficking Unit (LTU) within the Department of Justice (DOJ) to receive labor trafficking reports or complaints from law enforcement agencies and other governmental entities and refer them to appropriate agencies for investigation, prosecution, or other remedies.

4) Requires the LTU to coordinate with the Department of Industrial Relations, the Civil Rights Department, the Employment Development Department, the State Department of Health Care Services, the State Department of Social Services, the Department of Food and Agriculture, the Department of Fish and Wildlife and other relevant state agencies, law enforcement agencies, tribal law enforcement agencies, and district attorneys' offices.

5) Requires the LTU and coordinating entities to use a victim-centered approach when receiving, processing, and reporting victim reports or complaints of labor trafficking and ensure that victims are informed of the services and options available to them.

6) Authorizes the LTU to coordinate with local, state, and tribal entities to connect victims to available services.

7) Requires DIR and CRD to do all of the following:

   a. Collaborate with the LTU to develop policies, procedures, and protocols to track, record, and report potential labor trafficking activity to the unit.
   b. Report suspected labor trafficking to the LTU immediately when, upon investigating businesses under their purview, they suspect labor trafficking is or has occurred.
   c. On a quarterly basis, report specified statistics of demographic characteristics of victims, accused labor traffickers, industries where trafficking occurred and agencies of referral.

8) Requires the LTU to develop a tracking and reporting system to collect labor trafficking reports and complaints that can be aggregated and analyzed to identify potential cases for further investigation by the DOJ or appropriate federal, state, local, or tribal law enforcement agency, or district attorney's office for civil action, criminal prosecution, or other remedy.

9) Requires the LTU, on or before April 1, 2027 and annually thereafter, to submit a report to the Legislature that includes the following information pertaining to the prior calendar year:

   a. The number and type of reports or complaints received, including the date of receipt by the reporting agency and the date they were referred to the DOJ.
   b. The number and type of reports or complaints investigated by the DOJ.
   c. The number and type of referrals by the DOJ to law enforcement agencies.
   d. Descriptive statistics of demographic characteristics about labor trafficking victims correlated with the industry where the trafficking occurred, the services or support received and the agencies where they were referred, as specified.
   e. Descriptive statistics of demographic characteristics about persons accused of labor trafficking correlated with the industry where the trafficking occurred.
   f. A discussion of the major challenges to addressing labor trafficking reports and the ongoing efforts to address those challenges.

10) Sunsets the LTU reporting requirements on January 1, 2036.

11) Specifies that the operation of these provisions is contingent upon adequate appropriation by the Legislature and if adequate funding is not appropriated by January 1, 2030, these provisions shall be repealed unless a later enacted statute deletes or extends that date.

COMMENTS

1. Background on Labor Trafficking:

The United States remains one of the widely regarded destination countries for human trafficking; federal reports estimate that 14,500 to 17,500 victims are trafficked into the US annually. This does not include trafficking victims within the United States itself and, due to the clandestine nature of the underground economy, is almost certainly an underestimate. Human trafficking can take a number of forms, but generally involves compelling or coercing a person to provide labor or services, or to engage in commercial sex acts. As highlighted by the Attorney General's website on human trafficking, "the coercion can be

subtle or overt, physical or psychological, and may involve the use of violence, threats, lies, or debt bondage."[1]

The Attorney General's website additionally notes, "Labor trafficking involves the recruitment, harboring, or transportation of a person for labor services, through the use of force, fraud, or coercion. It is modern day slavery. Labor trafficking arises in many situations, including domestic servitude, restaurant work, janitorial work, factory work, migrant agricultural work, and construction. It is often marked by unsanitary and overcrowded living and working conditions, nominal or no pay for work that is done, debt bondage, and document servitude. It occurs in homes and workplaces, and is often perpetrated by traffickers who are the same cultural origin and ethnicity as the victims, which allows the traffickers to use class hierarchy and cultural power to ensure the compliance of their victims. Labor traffickers often tell their victims that they will not be believed if they go to the authorities, that they will be deported from the United States, and that they have nowhere to run. Traffickers teach their victims to trust no one but the traffickers, so victims are often suspicious of genuine offers to help; they often expect that they will have to give something in return."[2]

Though existing law provides for training, workplace postings advising employees of their rights, and harsh penalties for human trafficking, the incentives to coerce people into servitude still exist.

2. Little Hoover Commission Reports:

In 2020, the Little Hoover Commission released three reports reviewing the state's response to labor trafficking. The Commission noted that in California and elsewhere, much of the focus of law enforcement has appropriately been on combatting sex trafficking, particularly among minors, but believes that the state can and must do more to respond to labor trafficking.

In one of the reports, *Labor Trafficking: Strategies to Uncover this Hidden Crime*, the Commission found that while several state agencies play a role in combatting human trafficking, there is no coordinated strategy to target the crime statewide. Government agencies operate in silos, and no state agency has a mandate to look for labor trafficking.[3] The Commission noted that while issues related to labor exploitation in California fall under the jurisdiction of the DIR, the agency does not proactively look for labor trafficking cases, in part because it does not have the authority to investigate labor trafficking cases. However, members of the Labor Enforcement Task Force – a multi-agency effort led by DIR to combat the underground economy – have observed signs of potential trafficking during inspections or received labor trafficking complaints and made 11 referrals of potential cases to the Department of Justice to investigate.[4]

While California enacted anti-trafficking laws to support victims and increase penalties, more than 15 years since the first antihuman trafficking landmark legislation was enacted, no state

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[1] "What is Human Trafficking?" Office of the Attorney General of California, https://oag.ca.gov/human-trafficking/what-is.
[2] Office of the Attorney General of California, https://oag.ca.gov/human-trafficking/what-is.
[3] Little Hoover Commission (September 2020, pages 3-4). *Labor Trafficking: Strategies to Uncover this Hidden Crime.*
[4] Little Hoover Commission (September 2020, pages 6-9). *Labor Trafficking: Strategies to Uncover this Hidden Crime.*

agency currently has a mandate to combat, prevent and address labor trafficking. Two state agencies that do have jurisdiction to prosecute trafficking crimes are the Department of Justice (DOJ) and the Civil Rights Department (CRD). Both DOJ and CRD coordinate with DIR when encountering labor trafficking cases on an as needed basis. To help bring traffickers to justice, the Commission recommended that the state empower the DIR to lead efforts to pursue labor trafficking alongside its other work to combat the underground economy.

3. Legislative Efforts to Combat Labor Trafficking in Recent Years:

A couple of bills have been introduced in recent years to address the issue of labor trafficking and move forward some of the recommendations by the Little Hoover Commission.

AB 1820 (Arambula) of 2022 would have established the Labor Trafficking Unit within the Division of Labor Standards Enforcement (within DIR) to coordinate with the Labor Enforcement Task Force, the Criminal Investigation Unit, the Department of Justice, and the Civil Rights Department to combat labor trafficking. Specifically, the bill would have required the unit to receive and investigate complaints alleging labor trafficking and take steps to prevent labor trafficking. AB 1820 was vetoed by the Governor who stated the following:

> *While I am strongly supportive of efforts to combat labor trafficking, the California Civil Rights Department (CCRD) (formerly DFEH) is the appropriate state entity to take the lead in this effort per the amendments offered by my office. DLSE does not have authority to criminally or civilly prosecute these types of cases nor have the tools and resources necessary to assist labor trafficking survivors. CCRD is already active in this space and could seamlessly expand its efforts to more aggressively combat labor trafficking provided it is given new resources in the budget.*

AB 380 (Arambula) of 2023 was nearly identical to AB 1820 of 2022 and was held under submission in the Senate Appropriations Committee. Also in 2023, AB 235 (B. Rubio) was introduced to establish a Labor Trafficking Unit within the CRD. AB 235 was held on the Assembly Appropriations Committee suspense file.

In 2024, this bill (AB 1888) and AB 1832 (B. Rubio, pending before this Committee) propose to target the issue in similar but, it appears, complementary ways. AB 1888 proposes to establish the Labor Trafficking Unit within the DOJ and requires the LTU to coordinate with various departments and agencies to investigate and combat labor trafficking. AB 1832 would establish the Labor Trafficking Task Force (LTTF) within the CRD and requires the LTTF to coordinate with various specified entities to take steps to prevent labor trafficking as well as receive and investigate complaints alleging labor trafficking. Because AB 1832 would require that the LTTF coordinates with the DOJ and AB 1888 requires DOJ to collaborate with CRD, it would appear that these bills could work together.

4. Need for this bill?

According to the author:

"In 2005, California enacted the first anti-trafficking laws to make human trafficking a felony in the state and to assist victims in transforming their lives. Currently, the Department of Justice (DOJ) has the jurisdiction to prosecute crimes related to human trafficking while the Civil Rights Department (CRD) has the authority to prosecute civil complaints of human trafficking. Unfortunately, the current fragmented enforcement structure has meant that no single entity acts as a centralized referring entity with a mandate specific to labor trafficking. Coordination among local, state, and federal entities strengthens victim identification and holds traffickers accountable.

This bill ensures that the state prioritizes labor trafficking survivors through more efficient and comprehensive enforcement of existing labor trafficking laws. This bill ensures that coordination among various state entities will identify labor trafficking and address labor trafficking in order to stop the cycle and abuse of labor trafficking."

5. Proponent Arguments:

According to the California Federation of Teachers:

"While labor trafficking is already without question illegal under California state law, enforcement remains a challenge. Numerous agencies maintain jurisdiction over labor trafficking and related crimes, which when added to staffing struggles among state agencies, create a situation in which too many labor trafficking crimes go undetected or inadequately punished. AB 1888 (Arambula) would create a special unit, among the affected agencies, that would specialize in enforcing these laws. The bill would also outline how the agencies work together and requires the unit to report relevant information to the legislature. We believe these reforms will move California much closer to where it needs to be to be in terms of fighting the extreme harms created by labor trafficking."

6. Opponent Arguments:

None received.

7. Double Referral:

This bill has been double referred and was previously heard and passed by the Senate Public Safety Committee.

8. Prior/Related Legislation:

AB 380 (Arambula, 2023) would have established the Labor Trafficking Unit (LTU) within DIR's DLSE. *AB 380 was held on the Senate Appropriations Committee suspense file.*

AB 235 (B. Rubio, 2023) would have established the Labor Trafficking Unit (LTU) within the CRD. *AB 235 was held on the Assembly Appropriations Committee suspense file.*

AB 1149 (Grayson, 2023) would have established, until July 1, 2026, the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to review collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking, among other related duties. *AB 1149 was held on the Assembly Appropriations Committee suspense file.*

AB 1820 (Arambula, 2022, Vetoed) would have established the Labor Trafficking Unit within DIR's DLSE. *AB 1820 was vetoed by the Governor.*

AB 2553 (Grayson, 2022) would have established the California Multidisciplinary Alliance to Stop Trafficking Act (California MAST) to examine collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking. *AB 2553 was held on the Senate Committee on Appropriations suspense file.*

AB 2034 (Kalra, Chapter 812, Statutes of 2018) required businesses and establishments that operate in transportation or handle high volumes of traffic to train their employees in recognizing the signs of human trafficking and reporting suspected human trafficking.

SB 970 (Atkins, Chapter 842, Statutes of 2018) required that hotels and motels provide human trafficking education to employees who interact with the public.

AB 1684 (Stone, Chapter 63, Statutes of 2016) authorized the Department of Fair Employment and Housing (now the Civil Rights Department) to receive, investigate, mediate, and prosecute civil complaints on behalf of a victim of human trafficking.

SUPPORT

California Federation of Teachers, AFT, AFL-CIO
California Labor Federation
California Nurses Association/National Nurses United
California State Association of Electrical Workers
California State Pipe Trades Council
Community Legal Services in East Palo Alto
Consumer Attorneys of California
Little Hoover Commission
Los Angeles County District Attorney's Office
Loyola Law School, the Sunita Jain Anti-trafficking Initiative
Reclaim Foundation
San Diego County District Attorney's Office
Thai Community Development Center
Western States Council Sheet Metal, Air, Rail and Transportation

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 2068	**Hearing Date:**	June 26, 2024
Author:	Ortega		
Version:	June 5, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Employment protections: call centers

KEY ISSUE

This bill requires on and after January 1, 2025, a state agency that enters into a contract with a private entity specifically for call center work to provide a report to the Labor Commissioner (LC), as specified, and requires the LC to maintain a master list of state agency call center contracts.

ANALYSIS

Existing law:

1) Establishes within the Department of Industrial Relations (DIR) the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (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) Authorizes the LC to enforce certain notice requirements concerning a mass layoff, relocation, or termination of employees, including call center employees. (Labor Code §1406(b))

3) Defines "call center" to mean a facility or other operation where employees, as their primary function, receive telephone calls or other electronic communication for the purpose of providing customer service or other related functions. (Labor Code §1409(b)(1))

4) Prohibits a call center employer from ordering a relocation of its call center, or one or more of its facilities or operating units within a call center, unless notice of the relocation is provided to the affected employees and the Employment Development Department, local workforce investment board, and the chief elected official of each city and county government within which the termination, relocation, or mass layoff occurs, as specified. (Labor Code §1410(a))

5) Prohibits a call center employer from ordering the relocation of its call center, as defined, unless 60 days before the order takes effect, the employer gives written notice of the order to affected employees. (Labor Code §1410(a))

6) Prohibits, with specified exemptions, a state agency authorized to enter into contracts relating to public benefit programs, as defined, from contracting for services provided by a call center that directly serves applicants for, recipients for, or enrollees in, those public benefit programs with a contractor or subcontractor unless that contractor or subcontractor certifies

in its bid for the contract that the contract, and any subcontract performed will be performed solely with workers employed in California. (Public Contract Code §12140)

7) Defines "public benefit programs," for the provision in 6) above to mean California Work Opportunity and Responsibility to Kids (CalWORKS), CalFresh, Medi-Cal, Healthy Families, and the California Healthcare Eligibility, Enrollment, and Retention System. (Public Contract Code §12140(b)(2))

8) Provides an exception to 6) above for contracts between a state agency and a health care service plan or a specialized health care service plan regulated by the Department of Managed Health Care and for contracts between a state agency and a disability insurer or specialized health insurer regulated by the Department of Insurance. (Public Contract Code §12140(e)(3))

This bill:

1) Requires, on and after January 1, 2025, a state agency that enters into a contract with a private entity specifically for call center work to provide public or customer service for that state agency or another state agency to provide a report to the Labor Commissioner (LC) that contains all of the following:

    a. The number of total jobs, including call center jobs, and the overall percentage that shall be located within the state, as well as the number and percentage of jobs, including call center jobs, that shall be located in any other state or states as well as identifying the state and type of jobs located in those states.
    b. For call center jobs, the projected percentage of initial calls that shall be routed to workers within the state, and the percentage of initial calls that shall be routed and handled by workers located in any other state or states.

2) Provides that the information reported shall include calls and jobs that are contingent upon an overflow or other condition that is outside of typical requirements.

3) Requires the reporting requirements to include the initial projections as well as the projections for the end of the contract term.

4) Requires the LC to maintain a master list of contracts pursuant to the provisions of this bill and an aggregate number of call center jobs, including how many are located in another state and the financial cost of these out-of-state jobs.

5) Requires the LC to make the list available, upon request, to any member of the public.

6) Authorizes the LC to disclose the aggregated data required by this bill upon request of any member of the public.

7) Defines "state agency" to mean any agency, department, division, commission, board, bureau, officer, or other authority of the State of California.

COMMENTS

1. Background:

According to the U.S. Bureau of Labor Statistics, there are over 200,000 customer service representatives (equivalent to call center representatives) in California. Their median hourly wage is $21.34 an hour.[1] This occupation generally requires short term on-the-job training, a high school diploma or equivalent, and no similar prior job experience. Nationally, these jobs are projected to decline over the next decade.

Recently, the Legislature has passed several laws to discourage moving call center work outside of California. AB 2508 (Bonilla, 2012) requires call centers that serve people enrolled in five specific public benefit programs to be staffed solely by workers employed in California:

1) CalWORKs;
2) CalFresh;
3) Medi-Cal;
4) Healthy Families; and
5) California Healthcare Eligibility, Enrollment, and Retention System.

In 2022, the Legislature passed AB 1601 (Weber) which, among other things, requires call center employers to include at the top of their required written notice of relocation the phrase, "this notice is for the relocation of a call center." The bill also prohibits private companies from receiving any state grants or loans for five years, as specified, after they outsource their call center work.

Comments
Earlier versions of the bill required state agencies to provide the LC with a report containing proposals to reduce the percentage of out-of-state jobs if less than 90 percent of the agency's total call center jobs were located within the state or less than 90 percent of the overall volume of calls were handled within the state. Before a call center contract could be renewed, the agency's proposals would need to be reviewed.

Now that above provisions have been amended out, this bill would only require each state agency that enters into a contract with a private entity for call centers to submit a report to the LC, as specified. While this bill does not require a contract to be changed to include more in-state jobs, the bill does add a new requirement on all state agencies that enter into contracts for customer service calls.

The Senate Governmental Organization Committee raises the following point in its analysis: "Such a requirement will undoubtedly increase the cost to the state and put additional pressure to the General Fund. Given the current and projected budget deficit, the committee may wish to consider whether additional requirements on state agencies to report on contracts that agencies are legally allowed to enter into is the most prudent use of state resources."

The author may wish to amend the bill to provide more detail on when and how state agencies are required to furnish their reports to the LC. For example, *how soon must an agency complete the report upon entering into a contract for call center work?*

[1] Data taken from May 2021.

2. Need for this bill?

According to the author:

"California State Agencies and Departments often contract out their public call center services via third-party venders without any guarantee that the call centers and their workers are located in California. As a result, California residents who contact a state agency and department may be routed to someone based outside of California. The author as well as stakeholder organizations have attempted to collect information about how many jobs and how much California taxpayer dollars are being spent on out-of-state call centers to no avail. The information is neither centralized nor available for review. As a result of increased out-of-state contracts, California workers have lost their jobs."

3. Proponent Arguments:

The sponsors of the measure, the Communications Workers of America, District 9, state:

"[AB 2068] will catalogue the contracts California state agencies and departments currently have with private companies for public call center services and outline how many out-of-state jobs are being funded via California taxpayer dollars. Despite a variety of efforts over the years this information is not readily available, which hinders any potential to determine whether there are more cost effective in-state alternatives…

In recent years it has become increasingly clear that California State agencies and departments are expanding their use of call centers outside of California to serve the public.

Not only is it a questionable policy to route California residents who call California agencies and departments to other states, for many reasons including privacy concerns, it is also an unacceptable fiscal policy. California should prioritize its taxpayer's money on creating jobs within the state. Earlier this month it was reported that California has the highest unemployment percentage in the country. Yet, California is spending millions of dollars of taxpayer funds to create jobs in other states.

CWA D9 workers have witnessed their call centers -- those that support state agencies and departments -- shrink considerably in recent years, some offices being reduced from over 200 call center workers, to just over 20.

In order to lay the groundwork to reverse this trend, AB 2068 requires the State of California to create a master list of contracts involving State agencies and departments for out of state call center services."

4. Opponent Arguments:

None received.

5. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Governmental Organization Committee, which heard and passed the bill on June 5th, 2024 and the Senate Labor, Public Employment and Retirement Committee.

6. Prior Legislation:

SB 1220 (Limon, 2024) would require any state agency authorized to provide or enter into contracts relating to public benefit programs, or any local agency, as specified, to provide services through, or contract for services provided by, a call center that directly employs workers in California. The bill would also prohibit a state agency or specified local agency from contracting with a call center that uses artificial intelligence (AI) or automated decision systems (ADS) that would eliminate or automate core job functions of a worker, as specified. The bill would require an agency that utilizes AI or ADS in ways that impact core job functions of workers to satisfy specified requirements, including developing an impact assessment report, as prescribed. *This bill is pending in the Assembly Privacy and Consumer Protection Committee.*

AB 1381 (Weber, 2023) would require each state agency that enters into a contract with a private entity for call center work to ensure that no later than January 1, 2026, at least 90% of the call center work is conducted in California with specified exemptions. In addition, the bill would provide that state contracts with a private entity for programs or services in which call center work is included to prioritize the work being conducted in California, as specified. *This bill is pending in the Senate Governmental Organization Committee.*

AB 1601 (Weber, Chapter 752, Statutes of 2022) prohibited a call center employer from ordering the relocation of its call center, as defined, unless 60 days before the order takes effect, the employer gives written notice of the order to affected employees.

AB 1677 (Weber, 2019, Vetoed) would have required that call center employees seeking to relocate jobs to another country give the Commissioner 120 days' notice and would prohibit employers appearing on the Commissioner's compiled list from receiving any state grants, guaranteed loans, or tax credits for five years.

AB 2508 (Bonilla, Chapter 824, Statutes of 2012) prohibited a state agency authorized to contract for public benefits programs from contracting for services provided by a call center that directly serves applicants for, recipients of, or enrollees in those programs, and that the work will be performed solely by workers employed in California.

SUPPORT

Communications Workers of America, District 9 (Sponsor)
California Labor Federation
California State Council of Service Employees International Union

OPPOSITION

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	AB 2088	**Hearing Date:**	June 26, 2024
Author:	McCarty		
Version:	May 16, 2024		
Urgency:	No	**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: K–14 classified employees: part-time or full-time vacancies: public postings

KEY ISSUE

Requires school and community college employers, in both merit and non-merit districts, to notice any vacancies for part-time and full-time classified positions to current regular non-probationary classified employees, and offer them first refusal over all applicants, except those on reemployment or voluntary demotion lists, during a 10-day notice period. Requires current classified employee candidates to meet the position's minimum job qualifications at the time of their application and to apply within the specified 10-day notice period to qualify for the right of first refusal. Prohibits the employer from offering, but not advertising, the position to an external candidate until the 10-day notice period expires and no eligible employee candidate has applied.

ANALYSIS

Existing law:

1) Requires the governing board of a school or community college district to employ persons for positions not requiring certification qualifications and classify those employees and positions, as specified. The employees and positions shall be known as the classified service. (Education Code (ED) § 45103 and § 88003)

2) Authorizes school and community college districts to adopt, as specified, a civil service merit system to regulate personnel through a three-member personnel commission (college districts may have five members) and a personnel director. (ED § 45221 et seq. and ED § 88051 et seq.)

3) Applies certain sections of the Education Code related to classified employees to all classified employees of a school or community college district, whether a merit or nonmerit district, unless the section specifically limits its application to nonmerit districts, except as specified. (ED § 45100 and 88000)

4) Requires, where a district adopts a merit system, the personnel commission to classify all employees and positions within the district's jurisdiction and designate them as the classified service. However, specified employees, including certificated employees, are exempt from the classified service. (ED § 45256 and § 88076)

5) Provides for the appointment process of a personnel commission should a school or community college district adopt a merit system election. (ED § 45240 et seq. and § 88060 et seq.)

6) Establishes the Educational Employment Relations Act (EERA) of 1976 providing for collective bargaining in California's public schools (K-12) and community colleges, as specified. (Government Code (GC) § 3540 et seq.)

7) Limits the scope of representation for bargaining to matters relating to wages, hours of employment, and other terms and conditions of employment. (GC § 3543.2 (a))

This bill:

1) Requires education employers, whether in merit or non-merit districts, to offer any vacancies for part-time and full-time positions with priority over any other applicant, except applicants on reemployment or voluntary demotion lists, to current regular non-probationary classified employees who meet the minimum job qualifications of the position.

2) Requires an education employer to provide all of its classified employees and their exclusive representatives notice of, and instructions for applying for, any new classified position at least 10 business days before the education employer may offer the position to an external candidate.

3) Requires an employee to apply for the position within 10 business days of the notice in order to qualify for the right of first refusal.

4) Does not prohibit the employer from posting the new position to the general public during the 10-day period.

5) Requires that the employer grant the new position as a right of first refusal to a current regular nonprobationary classified employee who applies for the position and who meets the minimum job qualifications of the position at the time of their application for the position.

6) Requires that the employer grant the position, if there is more than one eligible applicant, to a qualified, internal applicant selected according to the collectively bargained method of selection. If no such method is set forth in a valid collective bargaining agreement, then priority among those applicants shall be determined as follows:

    a. First, by seniority, as specified, if the applicants currently work in the same class as the new position; or
    b. By the employer's standard method of selection, among applicants in other classifications for whom the new position would represent an increase in hours or wages, if there are no qualified applicants from the same classification as the position.

7) Prohibits the employer from selecting someone (except an applicant on a reemployment or voluntary demotion list) for an open position who is not currently employed by the employer if there is at least one current regular nonprobationary classified employee who has applied for and would accept the position, and who meets the minimum job qualifications of the position at the time of their application for the position.

8) Permits an employee who accepts a new assignment to elect to add the new assignment hours to their current assignment or replace their current assignment with the new assignment, as specified.

9) If a new part-time assignment requires a certain number of years of service, requires the employer to accept the employee's number of years of service with the employer, regardless of the number of hours worked each year while employed.

10) Requires the employer to provide the same benefits to classified employees who work part-time assignments for the same employer equal to the number of hours for a full-time assignment, as employees who work a full-time assignment.

11) Prohibits the employer from retaliating against classified employees for either refusing a vacancy or accepting a vacancy.

12) Prohibits the employer from offering a vacancy to applicants if the total of the regular hours of the two positions would require overtime pay or otherwise violate the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.) or any other state or federal law.

13) Specifically applies the bill's provisions to county offices of education, school districts, and joint powers authorities comprising county offices of education or school districts, regardless of whether the county office of education, school district, or joint powers authority comprising county offices of education or school districts has adopted the merit system.

14) Defines "education employer", in parallel provisions that apply to school and community college employers respectively, to mean: for school employers, a county office of education, school district, or joint powers authority comprised of county offices of education or school districts; and for community college employers, a community college district or joint powers authority comprising community college districts.

15) Provides that the bill's provisions do not apply to the following:

    a. An employee who is in the process of completing a written performance improvement plan, who was previously involuntarily demoted from the same position as the vacancy, who has been suspended, or who is the subject of a pending disciplinary action for suspension or dismissal.
    b. Confidential or management employees, as specified, nor to vacancies for confidential or management position

16) Clarifies that its provisions do not supersede the rights of persons laid off or voluntarily demoted, as specified.

17) Provides that its provisions shall not apply until the expiration or renewal of a collective bargaining agreement, to the extent that the provisions conflict with a provision of a valid collective bargaining agreement that is in effect as of January 1, 2025, as specified.

18) Permits the parties to waive or modify this bill's requirements by mutual agreement pursuant to a valid collective bargaining agreement, if the agreement explicitly states the waiver and directly references the corresponding code section.

COMMENTS

1. **Need for this bill?**

According to the author:

"The majority of classified employees work part-time, and over half of CSEA members earn less than $30,000 per year. They are not provided enough hours to make ends meet and do not qualify for benefits like health insurance. Classified employees are the backbone of our TK-14 schools and community colleges, and many are leaving public education due to a lack of support, low pay, and no benefits. A survey conducted by the National Center for Education Statistics: Forty-nine percent of public schools reported having at least one non-teaching staff vacancy as of January 2022. Of schools reporting at least one vacancy, custodial staff was identified as the staff position with the most vacancies, with 28 percent of schools-reporting this vacancy. Transportation staff and nutrition staff positions were each reported as vacant by 14 percent of schools."

"AB 2088 will require all public local education agencies, county offices of education, community colleges, and joint power authorities to offer any new part- or full-time classified assignments to existing, qualified, and classified employees. If no existing, classified employees choose to apply for the position within 10 days, then the job may be offered to an external applicant. Not only will this bill help classified employees sustain themselves and their families, it will also ensure that more employees have access to health insurance and retirement benefits."

2. Proponent Arguments

According to the California School Employees Association:

"Not only will this bill help classified employees make ends meet, but it will also ensure that more employees have access to health insurance and retirement benefits. It will also facilitate filling open positions quickly and efficiently with existing staff. Fully staffed schools will create a positive learning environment for our students."

"AB 2088 is the reintroduction of AB 1699 (McCarty), which was vetoed late last year by the Governor. Based on conversations with the Newsom Administration as well as education employer groups, AB 2088 includes amended language to attempt to address concerns articulated by the opposition without compromising the spirit of the bill."

According to the California Federation of Teachers:

"AB 2088 is significantly different from AB 1699 (McCarty, 2023), similar legislation that was vetoed last year. 2088 specifies that an employee must be qualified at the time of their application, creates a new process for selecting between two or more qualified candidates that uses the selection criteria determined through collective bargaining, and clarifies that LEAs and unions can negotiate alternative agreements to the process specified in the bill, rather than superseding collective bargaining. We believe these amendments address the primary concerns raised last year and over the interim by the opposition while protecting the critically important intent of the bill."

3. Opponent Arguments:

A coalition of several school employers, including the Los Angeles Unified School District, argue that AB 2088 would do the following: 1) create a precedent that a candidate's time spent with an employer means more than a candidate's experience and suitability; 2) impede timely hiring and prolong vacancies by creating a ten-business day restriction when only internal candidates may apply for and be offered a position; 3) create an unnecessary delay before schools may fill a position; 4) exasperate retention and morale issues as employees struggle to find a promotional pathway that aligns with their career goals; and 5) require school employers to revamp their hiring process less than three months after the bill becomes law.

4. Dual Referral:

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

5. Prior Legislation:

AB 1273 (Bonta, 2023) would require the California Department of Education (CDE) to convene a 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 for the purpose of reporting recommendations to the Legislature on or before December 31, 2025, on appropriate staffing ratios for classified school employee. *This bill is currently in the Senate Appropriations Committee.*

AB 1699 (McCarty, 2023) would require school and community college employers to offer any vacancies for part-time and full-time positions with priority to current regular non-probationary classified employees who meet the minimum job qualifications of the position, or who could meet the minimum job qualifications after 10 or fewer hours of training paid by the employer unless otherwise negotiated by the employer and the applicable union. *The Governor vetoed the bill.* His veto message stated the following:

> "This bill provides current non-probationary classified TK-12 and community college classified staff the right of first refusal for certain new classified positions at their education employer. The bill requires an educational employer to provide its classified employees and their union at least 10 business days' notice of a job vacancy before the general public is authorized to apply for the position. This bill only authorizes the employer to offer the new position to an external applicant if no qualified, internal candidate applies for or accepts the new position within the employer notice period."
>
> "While I support the author's goal of seeking to provide opportunities for current classified staff to apply for other open positions, this bill may have unintended consequences that are not in the best interest of students. Educational employers and classified staff already have the ability to bargain this issue, and many already have agreements that meet the goals of this bill. Unfortunately, this bill also prohibits future bargaining agreements from implementing their own locally determined process."

SUPPORT

California Federation of Teachers (Co-sponsor)
California School Employees Association (Co-sponsor)
Service Employees International Union, California (Co-sponsor)
American Federation of State, County and Municipal Employees
California Labor Federation
California Teachers Association
California Teamsters Public Affairs Council

OPPOSITION

Alameda County Office of Education
Allan Hancock College
Association of California Community College Administrators
Association of California School Administrators
Berkeley Unified School District Personnel Commission
Buellton Union School District
California Association of School Business Officials
California Association of Suburban School Districts
California County Superintendents
California School Boards Association
Campbell Union School District
Capistrano Unified School District
Carlsbad Unified School District
Castaic Union School District
Castro Valley Unified School District
Central Valley Education Coalition
Chabot Las Positas Community College District
Charter Oak Unified School District
Citrus College
Community College League of California
Cooperative Organization for the Development of Employee Selection Procedures
El Segundo Unified School District
Foothill-De Anza Community College District
Fresno Unified School District
Gavilan College
Huntington Beach City School District
Kern County Superintendent of Schools
Keyes Union Elementary School District
LA Habra City School District
Long Beach Community College District
Long Beach Unified School District, Personnel Commission
Los Angeles County Office of Education
Los Angeles County Superintendent of Schools
Los Angeles Unified School District
Marin County Superintendent of Schools
Menlo Park City School District
MiraCosta Community College District
Mt. San Antonio College
Newport-Mesa Unified School District

North Orange County Community College District
Orange County Department of Education
Palo Verde Community College District
Peralta Community College District
Personnel Commissions Association of Southern California
Pleasant Valley School District
Redondo Beach Unified School District
Riverside Community College District
Riverside County Office of Education
Riverside County Superintendent of Schools
Rowland Unified School District Personnel Commission
San Bernardino Community College District
San Bernardino County Superintendent of Schools
San Joaquin County Office of Education
San Jose-evergreen Community College District
San Mateo County Superintendent of Schools
San Mateo Union High School District
Santa Barbara County Education Office
Santa Maria Joint Union High School District
Santa Rosa Junior College
Savanna School District
School Employers Association of California
Shasta College
Sierra Community College District
Silver Valley Unified School District
Small Schools Districts' Association
South Orange County Community College District
Sulphur Springs Union School District
Sunnyvale School District
Tehama County Department of Education
Temple City Unified School District
Thermalito Union Elementary School District
Tulare Joint Union High School District
Yosemite Community College District

-- END --

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

Bill No:	AB 2284	**Hearing Date:**	June 26, 2024
Author:	Grayson		
Version:	June 10, 2024		
Urgency:	No	**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: County employees' retirement: compensation

KEY ISSUE

This bill authorizes, for purposes of determining what compensation can be included in "compensation earnable" used to calculate a County Employee Retirement Law (CERL) system pension, that a CERL retirement system that has not defined "grade," may define it to mean a number of employees considered together because they share similarities in job duties, schedules, unit recruitment requirements, work location, collective bargaining unit, or other logical work-related grouping.

ANALYSIS

Existing law:

1) Establishes the County Employees Retirement Law of 1937 Act (referred to as "37 Act" or "CERL") consisting of twenty county retirement systems to provide defined benefit pension benefits to public county or district employees, as specified. (Government Code § 31450 et seq.)

2) Provides that CERL retirement system members are entitled, upon retirement for service, to receive a retirement allowance consisting of their service retirement annuity, their current service pension, and their prior service pension, as specified. (GC § 31673)

3) Establishes benefit provisions for the general defined benefit plan that each member county can adopt by resolution. Existing law also provides specific plan elements by statute to particular systems, as specified. Thus, while CERL retirement systems have similar characteristics each has its own particular benefit structure and requirements. (e.g., GC § 31461.1)

4) Defines "compensation earnable" and "pensionable compensation"[1], as specified, in the CERL, and as amended by PEPRA, which is the member's compensation that a pension system may include in calculating the member's pension benefit. Existing law also specifically excludes certain forms of compensation from pension benefit calculations in

[1] Compensation earnable is the terminology used in the CERL and "pensionable compensation" is the terminology used in PEPRA. Specifically, in relevant part, GC § 31461(a) defines compensation earnable as 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 at the same rate of pay.

order to prevent manipulation of pension benefits in contravention of the theory and successful operation of a pension system. (GC § 31461 and GC § 7522.34)

5) Establishes PEPRA, a comprehensive reform of public pension law designed to stabilize public pension systems while preserving the objective of ensuring that public employees who dedicate a lifetime of service to California receive retirement security in their old age (GC § 7522 et seq.).

6) Excludes the following forms of compensation from compensation earnable:

   a. Any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system, including:

      i. Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.
      ii. Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.
      iii. Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period regardless of when reported or paid.

   b. Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid.

   c. Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

   d. Payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each 12-month period during the final average salary period, regardless of when reported or paid. (GC § 31461)

This bill:

1) Amends the definition of "compensation earnable" in the CERL to allow a CERL retirement system, to the extent it has not defined "grade," to define "grade" to mean a number of employees considered together because they share similarities in job duties, schedules, unit recruitment requirements, work location, collective bargaining unit, or other logical work-related group or class. A single employee shall not constitute a group or class.

2) Provides that nothing in this bill shall change the holding in *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032, and to the extent that there is any conflict between this bill and the holding in that case, the latter shall prevail.

COMMENTS

1. Background:

This bill treads on long and sensitive history arising out of several legislative initiatives, court cases, and a CA Supreme Court decision about what can and cannot be included in the calculation of a public employee's retirement benefit.[2] The bill seeks to permit a CERL retirement system to calculate pension benefits using compensation that employers pay to some, but not all, employees in the same grade.

Under PEPRA, this is impermissible. PEPRA sought to control pension spiking through several mechanisms[3]. One way is to prohibit retirement systems from including compensation in pension calculations unless the employer paid the reported compensation to all the employees in the same grade or class. Thus, if all Sheriff Deputy - Grade 1 employees receive a pay item, it is more likely to be includable. If only some of the Sheriff Deputy – Grade 1 employees receive that pay item, a retirement system probably must exclude it from compensation earnable.[4]

However, a sheriff's department (or other county employer) may well have groups of people in the same position classification who their employer assigns to very different work duties and activities, with different corresponding pay items. The sponsors provide such rationale in arguing that the retirement system should be able to differentiate between a Sheriff Deputy - Grade 1 who is a patrol officer and one who is a county jail bailiff. Both have the same title and the same grade but their pay, duties, and their hours may be substantially different.

By authorizing CERL retirement systems to define "grade", this bill would allow the retirement system to treat those deputies differently so that pay items received by one subset but not all of the deputies, could be included in their pension calculations. Under the revised "grade" definition, the retirement system could include the special pay items received by some employees, but not all, in compensation earnable.

The sponsor makes an equity argument that the Legislature should treat CERL systems like CalPERS and points out that the law for CalPERS does define grade and class in a way that

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[2] Please see our committee policy analysis for AB 826 (Irwin, 2021) for an overview of the issues behind this and other legislation involving amendments to compensation earnable in the CERL system.

[3] Pension spiking occurs when employers and employees inflate compensation with special pay prior to retirement in order to boost an employee's pension. It is disfavored because it avoids the pension system design of collecting contributions over the course of an employee's career that correspond with the expected liability of the employee's pension benefit. Effectively, pension spiking passes costs on to the next generation, who may well have less generous pension benefits than current employees.

[4] Nomenclature for example's sake only and not intended to represent an actual grade or class. Also, for clarity, the employee still receives the pay item from the employer but the retirement system cannot use that pay item in calculating the employee's eventual pension benefit.

permits it to look to the substantive duties and responsibilities of the class of employees for whom the employer is reporting the pay item.

What they do not say, is that CalPERS also has several criteria that are not in the CERL system that place further controls on what is includable. For example, CalPERS defines "payrate" and requires that payrate be limited to "employment for services rendered on a full-time basis during normal working hours." This rule effectively excludes overtime pay, a pay item which presumably this bill would enable CERL retirement systems to include by regrouping some employees who get overtime pay because of their different work schedule than other employees in the same grade.

The CalPERS equity argument also seems vulnerable to the fact that CalPERS is a much more uniform system than CERL, which has twenty different systems whose boards apply CERL in different ways through their various, discrete administrative interpretations and, in some instances, CERL provisions that apply only to specific systems.

A further concern is that although the bill's language is permissive (i.e., the bill doesn't require a retirement system to define "grade" if it doesn't want to), this bill may well result in further pressure and further litigation against all CERL systems to define grade in a manner that allows inclusion of pay items to compensation earnable that heretofore, PEPRA and many systems have determined are not includable.

The opposition makes a strong additional point that this bill grants authority to define grade and class to the retirement system when the authority for classifying positions traditionally and legally rests with the county employer. One wonders whether the problem going forward could be resolved by the county simply creating discrete grades or classes for functionally discrete job positions.

On the other hand, supporters make a strong argument that the bill is necessary through their examples of employees in the same grade who receive different pay items because the employer pays for skill sets that really do distinguish one group of employees from another. It is unclear why those positions cannot be re-classified so that the two groups are in different classifications.

In any event, the committee recommends the amendments below to require that the bill's provisions only apply to a CERL system after its county board of supervisors adopts the bill's provisions, as specified. These amendments partially address the opposition's concerns that the supervisors and not the systems are the appropriate authority to determine grade and class. Additionally, the CERL commonly uses this language throughout its provisions to provide flexibility among the 20 different systems.

The proposed committee amendments also re-order the clarifying language that this bill shall not supersede the *Alameda* decision by placing the language in the appropriate provision.

2. Need for this bill?

According to the author:

"In California, there are two primary public employee retirement systems: the County Employees Retirement Law of 1937 (CERL) and the Public Employment Retirement Law

(PERL). CERL oversees retirement systems for county and district employees in counties that adopt its provisions under Government Code Section 31500. However, CERL lacks a precise definition of 'grade' for determining pensionable compensation. On the other hand, PERL provides a clear definition of 'grade' as 'a grouping of employees who share job duties, schedules, work locations, collective bargaining units, or other logical classifications related to their work.' The absence of a clearly defined definition under CERL has led to ambiguity regarding retirement benefits, resulting in public servants receiving reduced pensionable compensation for the work they have performed." [5]

3. Proponent Arguments:

According to the California Professional Firefighters:

"While the Public Employees Retirement Law (PERL) that governs the California Public Employee Retirement System (CalPERS) provides a clear definition of 'group or class of employment' that is utilized as part of its definition of pensionable compensation, CERL does not contain a mirrored definition to provide clarity to that aspect of compensation earnable."

"This ambiguity has caused a number of issues for retirees as well as for the systems that are working to provide their retirements. This is particularly applicable to safety positions within agencies who contract with 1937 Act Retirement systems where there are multiple special types of occupations and training standards to meet unique challenges in the field. AB 2284 addresses this ambiguity by creating a definition of 'grade' similar to the one found in PERL for 'group' in order to provide lasting clarity. A 37 Act system that has not already implemented a definition of 'grade' may do so in a manner similar to the definition in PERL by grouping employees in logical manners consistent with the performance of their employment. This measure will create parity and consistency between the two retirement systems and eliminate the ambiguity that exists on whether certain pay items are pensionable."

"This consistency will also create stability and certainty for the employees and retirees who rely on their pensions after a career of public service to the people of California. By ensuring that both employers and employees are able to understand the terms of the retirements offered by their 1937 Act systems, it will create clarity for all parties and allow for dignified and secure retirements."

According to a coalition of peace officer associations, including the Association of Orange County Deputy Sheriffs:

"While 'grade' is not clearly defined under CERL, a similar term is defined within the Public Employee Retirement Law (PERL), a law which oversees the administration of the California Public Employee Retirement System (CalPERS). The definition provided by PERL relates to 'group or class employment,' and describes employees who share similarities in job duties, work location, collective bargaining unit, or other logical work-

[5] Apologies to the California State Teachers' Retirement System (CalSTRS), which is indeed one of the "primary" public employee retirement systems in California, the University of California Retirement System, as well as other independent, charter city retirement systems. The committee interprets the author to mean systems that cover the majority of peace officers and firefighters.

related categorizations. AB 2284 (Grayson) would remedy the lack of clarity that exists within CERL by aligning the definition for the word 'grade' to that of the definition for the word 'group' within PERL.

"This clarification is necessary in order to prevent retirees, who depend on an accurate, complete administration of their CERL benefits, from having those benefits reduced. These retirees, who have spent their careers in service of their communities, deserve to retire with security, and with the entirety of the benefits they have earned."

4. Opponent Arguments:

According to the San Bernardino County Employees' Retirement Association:

" (This bill) would conflate the role of retirement systems with the role of the employers they serve, likely leading to extensive litigation over members' compensation earnable determinations—a primary factor in calculating members' guaranteed lifetime pension allowance."

"AB 2284 seeks to give County Employee Retirement Law (CERL) systems the authorization to define 'grade' as it relates to members' job duties, schedules, unit recruitment requirements, work location, collective bargaining unit, or logical work-related group or class. CERL systems that adopt the change could 'reclassify' members without an employer's consent so certain members could—despite the bill's assurances—claim compensation items that would otherwise be excluded by the Public Employees' Pension Reform Act of 2013 (PEPRA) and/or the California Supreme Court's decision in *Alameda County Deputy Sheriff's Assn. v. Alameda County Employees' Retirement Assn.* (2020) 9 Cal.5th 1032 (Alameda) in their pension calculations."

"This alone would undermine the Legislature's pension reform efforts and subsequent court decisions. The legislation would also blur the lines between employers and retirement systems by allowing county retirement systems to determine what employment grade their members fall under. Retirement systems are not—and should not be—parties to labor negotiations between member agencies and their employees."

5. Recommended Committee Amendments

We recommend the following amendments (1) to be consistent with the structure of the CERL and in order to clarify that the responsibility of defining grade and class of positions falls on the county not on the county retirement system and (2) to emphasize that this change not be relied on for any argument that would seek to overturn or modify the holding in *Alameda:*

Government Code § 31461 …

(a) (3) Paragraph (2) of subdivision (a) of this section shall not be operative in any county until the board of supervisors, by resolution adopted by majority vote, makes the provision applicable in that county. Furthermore, nothing in this paragraph (2) shall change the holding in Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (2020) 9 Cal.5th 1032, and to the extent that there is any conflict between this section and the holding in that case, the latter shall prevail.

…

~~***(d) Nothing in this section shall change the holding in Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (2020) 9 Cal.5th 1032, and to the extent that there is any conflict between this section and the holding in that case, the latter shall prevail.***~~

6. Prior Legislation:

AB 3025 (Valencia, 2024) would require CERL system employers to (1) reimburse their pension systems for pension overpayments made to retired members, survivors, or beneficiaries in violation of PEPRA and Alameda 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. *This bill is currently pending in the Senate Judiciary Committee.*

AB 2493 (Chen, 2022) was substantially similar to AB 3025. 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 826 (Irwin, 2021) originally would have, for all CERL systems, amended the definition of "compensation earnable" to include any form of remuneration, as specified, including if the employer made the remuneration available to any person in the same grade or class of positions and would have defined "Grade or class of positions" to mean a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical, work-related grouping. The author narrowed the bill to apply only to Ventura County's retirement system. *Nevertheless, the Governor vetoed the bill.* His veto message stated the following:

> "This bill expands the definitions of 'compensation' and 'compensation earnable' in the County Employees Retirement Law of 1937 (1937 Act or CERL) that are applicable to legacy members of the Ventura County Employee Retirement Association (VCERA) who retire on or before December 31, 2025, to include an employee's flexible benefit allowance.
>
> While I am sympathetic to workers who may see a reduction in their anticipated pension because of prior misinterpretations of what constitutes 'compensation' and 'compensation earnable,' this bill would inappropriately incentivize noncompliance with the Public Employees' Pension Reform Act (PEPRA). The provisions, while more narrow

than prior iterations, attempt to circumvent recent court decisions, undermine the intent of the PEPRA, and expose the local governments to increased costs and litigation."

SUPPORT

California Fraternal Order of Police (Co-sponsor)
California Professional Firefighters (Co-sponsor)
Association of Orange County Deputy Sheriffs
Long Beach Police Officers Association
Orange County Employees Retirement System
Sacramento County Deputy Sheriffs Association
Sacramento County Deputy Sheriffs' Association
San Bernardino County Sheriff's Employees' Benefit Association

OPPOSITION

San Bernardino County Employees' Retirement Association

-- END --

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

Bill No:	AB 2335	**Hearing Date:**	June 26, 2024
Author:	McKinnor		
Version:	May 16, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public employment: compensation and classification

KEY ISSUE

This bill requires the state to do the following: (1) pay like salaries for comparable duties and responsibilities within State Civil Service to address state employee pay inequities; (2) maintain or restore the historic salary relationship among State Civil Service classifications and bargaining units to ensure that the state provides comparable pay for work that is fundamentally the same; (3) close any gender pay inequities that may exist between state civil service jobs and classifications performing like work.

ANALYSIS

Existing law:

1) States that the purpose of the State Civil Service act is the following:

    a. To facilitate the operation of the constitutional requirement that the state civil service consist of all state officers and employees, as specified, and be based on merit.
    b. To promote and increase economy and efficiency in the state service.
    c. To provide a comprehensive personnel system for the state civil service, in which:
        i. Positions involving comparable duties and responsibilities are similarly classified and compensated.
        ii. Appointments are based upon merit and fitness ascertained through practical and competitive examination.
        iii. State civil service employment is made a career by providing for security of tenure and the advancement of employees within the service insofar as consistent with the best interests of the state.
        iv. The rights and interests of the state civil service employee are given consideration insofar as consistent with the best interests of the state.
        v. Applicants and employees are treated in an equitable manner without regard to political affiliation, race, color, sex, religious creed, national origin, ancestry, marital status, age, sexual orientation, disability, political or religious opinions or nonjob-related factors.
        vi. Tenure of civil service employment is subject to good behavior, efficiency, the necessity of the performance of the work, and the appropriation of sufficient funds. (Government Code (GC) § 18500)

2) Requires each state agency to develop, as specified, an equal employment opportunity plan to identify the areas of significant underutilization of specific groups based on race, ethnicity, and gender, within each department by job category and level, contain an equal employment

opportunity analysis of all job categories and levels within the hiring jurisdiction, and include an explanation and specific actions for removing any non-job-related employment barriers. (GC § 19797)

3) Requires the California Department of Human Resources (CalHR) to establish and adjust salary ranges for each class of position in the state civil service, as specified, based on the principle that the state shall pay like salaries for comparable duties and responsibilities. (GC § 19826)

4) Requires CalHR to evaluate all state civil service classifications in the Personnel Classification Plan (PCP) and prepare a detailed report on gender and ethnicity pay equity in each classification and bargaining unit where there is an underrepresentation of women and minorities. Current law also requires CalHR to review and analyze existing information, including studies from other jurisdictions that are relevant to setting salaries for state civil service jobs that employ a higher proportion of females than males and report this information to the Legislature and the employer and employee representatives, as specified. (GC § 19827.2 (b))

5) Requires the PCP pay equity report to include at least the following:

    a. CalHR's efforts that are consistent with existing state and federal law toward meeting the goals of pay equity for women and minorities.
    b. Statistical information for each state civil service classification. (GC § 19827.2 (d))

6) Defines "salary" to mean the amount of money or credit received as compensation for service rendered, exclusive of mileage, traveling allowances, and other sums received for actual and necessary expenses incurred in the performance of the state's business, but including the reasonable value of board, rent, housing, lodging, or similar advantages received from the state and makes reference to an exception as otherwise provided in GC § 18539.5, which does not exist in current code. (GC § 19827.2 (e) (1))

This bill:

1) Specifies that the Civil Service Act's purpose includes the requirement that the compensation relationship between state civil service positions with comparable duties and responsibilities be maintained.

2) Requires that state agencies' equal employment opportunity plans also identify the areas of significant overutilization of specific groups, as specified.

3) Requires CalHR to consider the following factors when adjusting salary ranges, as specified:

    a. The origins and history of the work, including the manner in which wages have been set.
    b. Any social, cultural, or historical considerations.
    c. The extent to which classifications perform functionally related services or work toward established common goals.
    d. The extent to which classifications have common skills, working conditions, job duties, or similar educational or training requirements.
    e. The extent to which the employees have common supervision.
    f. The effect of classifications on the efficiency of operations of the employer.

g. Any systemic undervaluation of the work as a result of any of the following:
   i. Failure by the parties to properly assess or consider the remuneration that should have been paid to properly account for the nature of the work, the levels of responsibility associated with the work, the conditions under which the work is performed, and the degree of effort required to perform the work.
   ii. Lack of effective bargaining in the relevant market, industry, sector, or occupation.
   iii. Occupational segregation or occupational segmentation in respect to the work.

h. Prevailing rates for comparable service between classifications, occupational groups, or bargaining units within state civil service and other public employment.

4) Requires CalHR to ensure that the principle that like salaries be paid for comparable duties and responsibilities for classifications between bargaining units within state civil service is maintained when determining the distribution of appropriations used for salary adjustment purposes.

5) Authorizes CalHR to make expenditures in excess of existing appropriations that may be used for salary increase purposes to make salary adjustments if the adjustments are to maintain or restore historical equitable salary relationships between comparable classifications within state civil service.

6) Requires CalHR, if any salary adjustments are required to maintain or restore equitable salary relationships, to make a change in salary range retroactive to the date of application of this change.

7) Requires CalHR to submit to the state and to employee representatives, as specified, a report containing its findings relating to the salaries of employees in comparable classifications, occupational groups, or bargaining units within state civil service, in private business, and other public employment. The report shall separate findings related to the salaries of rank-and-file employees from supervisors and managerial classifications within each bargaining unit. The report shall be made as follows:

   a. For Bargaining Units 2, 5, 6, 7, 9, 10, 12, 13, 16, 18, and 19, on February 1, 2025, and biennially thereafter.
   b. For Bargaining Units 1, 3, 4, 5, 8, 11, 14, 15, 17, 20, and 21, on February 1, 2026, and biennially thereafter.

8) Requires CalHR to also evaluate all state civil service classifications in the Personnel Classification Plan and prepare a detailed report on gender and ethnicity pay equity in each classification and bargaining unit where there is an *overrepresentation* of women and minorities.

9) Requires CalHR to negotiate salaries to close any gaps found based upon the comparability of the value of the work between state civil service jobs that employ a higher proportion of females than males and state civil service jobs that employ a higher proportion of males than females.

   a. Requires the state to implement an increase in total compensation resulting from this provision through a memorandum of understanding negotiated pursuant to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1).

b. Provides that a failure of the bargaining parties to reach agreement for a memorandum of understanding does not relieve the state of the duty to adjust total compensation as identified in the review and evaluation required by this section.
c. Requires CalHR to provide the information mandated by this provision on an annual basis to the appropriate policy committee of the Legislature and to the parties meeting and conferring, as specified.

10) Requires CalHR to consider any relevant factor, including, but not limited to, all of the following in determining whether compensation and classification inequities exist between bargaining units within state civil service and whether work is currently undervalued or has historically been undervalued:

a. The origins and history of the work, including the manner in which wages have been set.
b. Any social, cultural, or historical considerations.
c. The extent to which classifications perform functionally related services or work toward established common goals.
d. The extent to which classifications have common skills, working conditions, job duties, or similar educational or training requirements.
e. The extent to which the employees have common supervision.
f. The effect of classifications on the efficiency of operations of the employer.
g. Any systemic undervaluation of the work as a result of any of the following:
    i. Failure by the parties to properly assess or consider the remuneration that the state should have paid to account properly for the nature of the work, the levels of responsibility associated with the work, the conditions under which the employees perform the work, and the degree of effort required to perform the work.
    ii. Lack of effective bargaining in the relevant market, industry, sector, or occupation.
    iii. Occupational segregation or occupational segmentation in respect to the work.

11) Requires CalHR's PCP pay equity report to also include statistical information for each bargaining unit, separating out the associated supervisory and managerial classes from the rank-and-file classes.

12) Deletes an apparent obsolete reference to GC § 18539.5 which provided an exception to the current definition of "salary", for purposes of implementing the Personnel Compensation Plan and the pay equity report.

COMMENTS

1. Background:

This bill appears to have two fundamental objectives: (1) require the state to adjust salary ranges within the state civil service to account for pay inequities among positions that do similar work and originating in historic discrimination against women and minorities and (2) require the state to retroactively adjust salary ranges of positions that historically held some relative parity based on their similar work functions but that have significantly diverged over time (eg., state scientists and state engineers).

The bill also appears to provide subtle but specific appropriation authority to carry out its objective by authorizing CalHR to make expenditures in excess of existing appropriations for

salary increase purposes to make salary adjustments if the adjustments are to maintain or restore historical equitable salary relationships between comparable classifications within state civil service (See paragraph 5 above in the This Bill section).

2. Need for this bill?

According to the author:

"(AB 2335) aims to strengthen existing laws related to public employment by addressing gender-based pay disparities, broadening equal opportunity plans, refining salary range adjustments, and improving evaluation and reporting mechanisms for greater transparency and accountability in addressing employment inequities."

3. Proponent Arguments:

According to the California Association of Professional Scientists:

"AB 2335 will restore the historical pay equity between State Scientists and their engineering colleagues who perform nearly identical job duties. State Scientists' salaries lag their local government and federal counterparts, and other state employees that do substantially similar work, by upwards of 40 percent. This is inconsistent with this administration's declared priority of establishing equity."

"As the State's largest employer, it's critical for the State of California, to lead by example and work to create a California where all employees are valued, respected, and paid equitably. Providing equitable pay is essential for promoting gender equality, attracting and retaining state employees, and enhancing the State's ability to be the employer of choice."

4. Opponent Arguments:

None received.

5. Prior/ Related Legislation:

AB 2872 (Calderon, 2024) would require that sworn members of the California Department of Insurance (CDI) who are rank-and-file members of State Bargaining Unit 7 (BU 7 – Protective Services and Public Safety) be paid the same compensation as rank-and-file sworn peace officer employees of the California Department of Justice (DOJ). *This bill is currently pending in the Senate Committee on Labor, Public Employment and Retirement.*

AB 1677 (McKinnor, 2023) would have required the University of California, Berkeley Labor Center (UCB Labor Center) to undertake a study of the existing salary structure of rank-and-file scientists in State Bargaining Unit 10 (BU 10), and provide recommendations, if applicable, for alternative salary models for state BU 10. *The Governor vetoed the bill*. His veto message stated the following:

> "This bill's requirements to implement any increase in compensation resulting from the study effectively circumvents the collective bargaining process and limits the state's ability to consider various economic factors that impact the state or BU 10 members when proposing compensation packages during negotiations."

AB 1254 (Flora, 2023) would require comparative pay for rank-and-file state Bargaining Unit (BU) 8 firefighters employed by the California Department of Forestry and Fire Protection (CAL FIRE) similar to those of other California fire departments, as specified. *The Senate Appropriations Committee has held this bill on its suspense file*.

AB 1604 (Holden, Chapter 313, Statutes of 2022) established the Upward Mobility Act of 2022, to modify state civil service examination and appointment practices for the purpose of increasing diversity of applicant pools on employment lists, determining areas of compliance for nonmerit-related audits; and promoting successful achievement of upward mobility goals for underrepresented state employees, as specified.

AB 105 (Holden, 2021) proposed to establish the Upward Mobility Act of 2021 relating to state civil service, among other provisions. This bill was similar to AB 1604 (Holden, 2022). *The Governor vetoed AB 105.*

AB 316 (Cooper, Chapter 312, Statutes of 2022) requires CalHR to prepare and submit a report to appropriate committees of the Legislature, as provided, on gender and ethnicity pay equity in each classification under the Personnel Classification Plan (PCP) where there is an underrepresentation of women and minorities, among other provisions.

SUPPORT

California Association of Professional Scientists (Sponsor)

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 2408	**Hearing Date:**	June 26, 2024
Author:	Haney		
Version:	May 16, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Firefighter personal protective equipment: perfluoroalkyl and polyfluoroalkyl substances

KEY ISSUE

This bill 1) prohibits, commencing July 1, 2026, any person from manufacturing, selling, distributing, or purchasing for future use, any firefighter personal protective equipment containing intentionally added perfluoroalkyl and polyfluoroalkyl (PFAS) substance chemicals; and 2) requires the California Occupational Safety and Health Standards Board, within one year of the National Fire Protection Association (NFPA) updating their standards to include PFAS-free turnout gear, to align their standards on PFAS-free turnout.

ANALYSIS

Existing law:

1) Authorizes the State Fire Marshal to make such changes as may be necessary to standardize all existing fire protective equipment throughout the state, and requires the State Fire Marshal to notify industrial establishments and property owners having equipment for fire protective purposes of the changes necessary to bring their equipment into conformity with standard requirements. (Health and Safety Code (HSC) §13026-13027)

2) Requires, commencing January 1, 2022, a person that sells firefighter personal protective equipment (PPE) to provide a written notice to the purchaser, if the firefighter PPE contains intentionally added per-/poly-fluoroalkyl substances (PFAS) chemicals. (HSC §13029 (b)(1))

3) Prohibits, commencing January 1, 2022, a manufacturer of class B firefighting foam from manufacturing, or knowingly selling, offering for sale, distributing for sale, or distributing for use, and a person from using, class B firefighting foam containing intentionally added PFAS chemicals. (HSC §13061 (b)(1))

4) Requires the Occupational Safety and Health Standards Board (OSHSB), every five years, to complete a comprehensive review of all revisions to the National Fire Protection Association (NFPA) standards pertaining to firefighter PPE and maintain alignment with the NFPA safety orders. (Labor Code §147.4)

5) Requires that, if the review described in 4) above finds the revisions provide a greater degree of personal protection than the safety orders, OSHSB must consider modifying existing safety orders and render a decision regarding changing safety orders or other standards and regulations to maintain alignment of the safety orders with the NFPA standards no later than July 1 of the subsequent year. (Labor Code §147.4(c))

This bill:

1) Makes various findings and declarations related to the toxic and carcinogenic nature of PFAS and the risk of exposure to PFAS and other chemicals from the firefighting profession.

2) Prohibits, commencing July 1, 2026, any person from manufacturing, knowingly selling, offering or distributing for sale, distributing for use in California, or purchasing or accepting for future use, any firefighting PPE containing intentionally added PFAS chemicals.

3) Requires the Occupational Safety and Health Standards Board, within one year of the NFPA 1971 Standard for firefighter PPE to include PFAS-free turnout gear, to update the applicable safety orders, or other standards or regulation, to maintain alignment with the NFPA standard.

COMMENTS

1. Background:

Perfluoroalkyl and Polyfluoroalkyl (PFAS)

PFAS are a diverse group of thousands of chemicals that resist grease, oil, water, and heat. Chemically, individual PFAS can be very different; however, all have a carbon-fluorine bond[1]. Due to the strength and stability of this carbon-fluorine bond, PFAS are long lasting and are exceedingly difficult to destroy, making them highly persistent in the environment and resulting in their classification as "forever chemicals." The usage of PFAS has grown immensely across multiple industries since their invention in the 1950s. PFAS are now widely used in food packaging, cookware, electronics, medical products, carpeting, cosmetics, building materials, and apparel. In the textile industry, fabrics, including turnout gear outer shells for firefighters, have been historically finished with PFAS due to their high level of repellency to water and oils and durability.

PFAS pose high risks for human, environmental, and animal health. PFAS exposure occurs mainly through ingestion of contaminated food or liquids. Exposure can also occur through inhalation of indoor air or contact with contaminated media. The Agency for Toxic Substances and Disease Registry (ATSDR) identifies the following health effects as potential outcomes from exposure to PFAS: changes in cholesterol, changes in infant birth weight, changes in the immune system, increased risk of high blood pressure during pregnancy, and increased risk of certain cancers.

PFAS and Turnout Gear

Firefighters use heavy-duty personal protective equipment (PPE) to fulfill their responsibilities safely and efficiently. PPE gear includes turnout jackets and pants, gloves, boots, helmets, hoods, and self-contained breathing apparatus. This PPE protects firefighters from different thermal, physiological, physical, chemical, and biological hazards on the job.

[1] "Per- and Polyfluoroalkyl Substances (PFAS)," FDA, April 29, 2024, https://www.fda.gov/food/environmental-contaminants-food/and-polyfluoroalkyl-substances-pfas

The turnout gear used by firefighters, however, contains significant levels of cancer-causing PFAS[2]. The turnout ensemble consists of three layers, the outer shell, the moisture barrier, and the thermal liner, all of which are standardized by the NFPA. The outer shell is usually finished with a PFAS-based durable water and oil-repellent (DWR) to protect the wearer from hazardous liquids. This DWR can cause various health problems if absorbed into the body through ingestion, inhalation, and/or dermal absorption.

A study by the Centers for Disease Control and Prevention and the National Institute for Occupational Safety & Health found that firefighters have higher risks of certain types of cancer than the general population, and that firefighters have a higher rate of cancer-related deaths.[3] According to the International Association of FireFighters, 66 percent of firefighter deaths between 2002 and 2019 were caused by cancer. Across the nation and in California, there are existing efforts to protect firefighters by banning the use of PFAS. In May 2024, San Francisco became the first major American city to ban PFAS from PPE gear, requiring the city's fire department to provide PFAS-free gear to its firefighters by June 30, 2026.

The National Fire Protection Association (NFPA) and FPAS

The NFPA is the entity in charge of setting the performance, durability, and safety standards for firefighter PPE. The NFPA 1971 Standard on Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting sets the minimum levels of protection from thermal, physical, environmental, and blood borne pathogen hazards. The NFPA 1971 standard is in the process of being updated, with a final version likely to be adopted in 2024.

According to the Senate Environmental Quality Committee:

"Currently, the NFPA Standard requires that firefighter PPE meet a 48-hour ultraviolet (UV) light degradation resistance test that, to date, can only be met with the addition of PFAS materials. However, given that the materials inside the fabric of firefighter turnout gear are never exposed to direct sunlight, the upcoming revision of the NPFA standard proposes removing the UV light test. The revision to the NFPA standard also proposes to add restrictions on PFAS substances in turnout gear and establishes a labeling standard for PFAS-free turnout. This bill would bring California into conformance with the new federal standard once approved, by banning PFAS from being used in firefighter gear and directing the OSHSB to revise its regulations to meet the latest safety standard within a year after it has been updated."

Comments

AB 2408 would prohibit, commencing July 1, 2026, any person from manufacturing, knowingly selling, offering or distributing for sale, distributing for use in California, or purchasing or accepting for future use, any firefighting PPE containing intentionally added PFAS chemicals. The "purchase or accept for future use" provision will allow fire departments to continue using their existing stock of turnout gear and only mandate the purchase of new PFAS-free gear upon replacement (typically every 5-10 years).

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[2] Maizel AC, et al. (2023) Per- and Polyfluoroalkyl Substances in New Firefighter Turnout Gear Textiles. (National Institute of Standards and Technology, Gaithersburg, MD), NIST Technical Note (TN) NIST TN 2248. https://doi.org/10.6028/NIST.TN.2248

[3] National Institute for Occupational Safety and Health. (2016). Findings from a study of cancer among U.S. fire fighters.

2. Need for this bill?

According to the author:

"Firefighters risk their lives every day in order to selflessly save others. To prevent firefighters from suffering serious health problems it's important to ensure the gear they wear doesn't contain dangerous chemicals that will put them at a higher risk to chronic health problems.

AB 2408 will protect our firefighters from cancer by ensuring their gear will be free of cancer causing chemicals. Specifically, it will ban per-fluoroalkyl and polyfluoroalkyl substances (PFAS) from being used in California's firefighting gear beginning July 1, 2026. This will be after the federal government adopts new standards for testing the moisture resistance of firefighting gear. This ensures that the moment a safe alternative is made available for making fire fighter gear water resistant, PFAS will be banned from being used. Additionally, the bill directs the Occupational Safety and Health Standards Board to revise its regulations to meet the latest testing safety standard within a year after it has been updated."

3. Proponent Arguments:

The sponsors of the measure, the California Professional Firefighters, state:

"While firefighting is an inherently dangerous profession, it is critical for the health and safety of California's firefighters that all unnecessary exposures are eliminated. Every exposure brings with it an additional risk of developing a deadly cancer, and to experience daily exposure to a known carcinogenic and toxic substance through the protective gear that they wear is simply unacceptable…

The proposed elimination of the light degradation resistance test from the upcoming revision of the NPFA standard acknowledges the fact that an overly stringent requirement for light resistance is not a necessary safety feature for a material that makes up the interior of the fabric composite and will never be exposed to direct light. As meeting the requirements of this test is the only reason that PFAS is still included in turnout gear, once that test has been removed, we as a state owe it to the men and women who put their lives on the line for our communities every day to move quickly to eliminate this threat.

The scientific community and the State of California has acknowledged the danger posed by PFAS and its many derivatives. By working to ensure that PFAS is no longer included in firefighter turnouts the moment a safe alternative is made available, California will continue to lead the way in enhancing firefighter health and safety and protect the men and women of the fire service."

4. Opponent Arguments:

None received.

5. Dual Referral:

The Senate Rules Committee referred this bill to the Senate Environmental Quality Committee, which heard and passed the bill on June 19, 2024, and the Senate Labor, Public Employment and Retirement Committee.

6. Prior Legislation:

SB 903 (Skinner, 2024) would prohibit, commencing January 1, 2030, a person from distributing, selling, or offering for sale in the state a product that contains intentionally added PFAS unless the use of PFAS is currently unavoidable, as defined. Would authorize the Department of Toxic Substances Control to establish regulations to administer the prohibition. *This bill was held in Senate Appropriations Committee*.

AB 2515 (Papan, 2024) would prohibit a person from manufacturing, distributing, selling, or offering for sale a menstrual product that contains regulated PFAS. *This bill is pending in Senate Judiciary Committee.*

SB 1044 (Allen, Chapter 308, Statutes of 2020) prohibited the manufacture, sale, distribution, and use of class B firefighting foam containing PFAS chemicals by January 1, 2022, with some exceptions. Required notification of the presence of PFAS in the protective equipment of firefighters.

AB 2146 (Skinner, Chapter 811, Statutes of 2014) required the Occupational Safety and Health Standards Board, every five years, to complete a comprehensive review of all revisions to the National Fire Protection Association (NFPA) standards pertaining to firefighter PPE and maintain alignment with the NFPA safety orders.

SUPPORT

California Professional Firefighters (Sponsor)
A Voice for Choice Advocacy
American College of Obstetricians and Gynecologists District Ix
Breast Cancer Prevention Partners
Cal Fire Local 2881
California Fire Chiefs Association
California Labor Federation
California Special Districts Association
Clean Water Action
Cleanearth4kids.org
El Dorado County Professional Firefighters Association
Environmental Working Group
Fire Districts Association of California
Natural Resources Defense Council
Orange County Fire Authority

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 3190	**Hearing Date:**	June 26, 2024
Author:	Haney		
Version:	May 20, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Public works

KEY ISSUE

This bill 1) applies public works law to certain affordable housing projects by expanding the definition of "paid for in whole or in part out of public funds" to include specified low-income housing tax credits and 2) requires private residential projects built on private property to abide by public works law if the project receives specified low-income housing tax credits or a below-market interest rate loan, as specified.

ANALYSIS

Existing law:

1) 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)

2) Requires the Director of the Department of Industrial Relations 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)

3) Defines "public work" to include, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by a public utility company pursuant to order of the Public Utilities Commission or other public authority. (Labor Code §1720(a))

4) Defines "paid for in whole or in part out of public funds" to include, among others:

    a. The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.
    b. The transfer by the state or political subdivision of an asset of value for less than fair market price.
    c. Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.
    d. Money loaned by the state or political subdivision that is to be repaid on a contingent basis. (Labor Code §1720(b))

5) Exempts from public works law private residential projects built on private property unless the projects are built pursuant to an agreement with a state agency, a redevelopment agency, a successor agency to a redevelopment agency when acting in that capacity, or a local public housing authority. (Labor Code §1720(c)(1))

6) Exempts, unless required by a public funding program, the construction or rehabilitation of privately owned residential projects from public works law if the public participation in the project that would otherwise meet the criteria of "paid for in whole or in part out of public funds" is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, as specified, to individuals or families earning no more than 80 percent of the area median income. (Labor Code §1720(c)(5)(E))

7) Allows a state low-income housing tax credit (LIHTC) for costs related to construction, rehabilitation, or acquisition of low-income housing. This credit, which mirrors the federal LIHTC, may be used by taxpayers to offset tax under the Personal Income Tax, the Corporation Tax, and the Insurance Tax laws. (Revenue and Taxation Code §§12206, 17058, 23620.5)

8) Allocates $70 million on an ongoing basis to the California Tax Credit Allocation Committee (TCAC) for the purposes of administering the LIHTC and adjusts this amount for inflation. (Revenue and Taxation Code §§12206, 17058, 23620.5)

This bill:

1) Expands the definition of "paid for in whole or in part out of public funds" for purposes of defining what constitutes a public works project to include certain low-income housing tax credits, as specified.

2) Requires private residential projects built on private property to abide by public works law if they receive specified low-income housing tax credits pursuant to 1), above, or a below-market interest rate loan with a state agency, a redevelopment agency, a successor agency to a redevelopment agency, when acting in that capacity, or a local public housing authority.

3) Provides that 2), above, does not apply if the public funds are less than three million dollars for a project that is the acquisition or rehabilitation of a residential project of 50 units or less.

4) Provides that projects subject to 2), above, do not qualify for an existing exemption from public works law for the construction or rehabilitation of privately owned residential projects that are funded in the form of a below-market interest rate loan for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, as specified, to individuals or families earning no more than 80 percent of the area median income.

5) Specifies that the provisions to designate additional categories of work as public works shall not be construed to implicate requirements of other laws applicable to construction contracts awarded by public entities, including requirements within the Public Contracts Code, as specified.

6) Becomes operative on or before January 1, 2025, and only if AB 3160 of the 2023-24 Regular Session is enacted.

7) Repeals the bill's provisions on January 1, 2032.

COMMENTS

1. Background:

Prevailing Wages
All 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 requirements, this means paying a prevailing wage. 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 of the Department of Industrial Relations 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 and the rates that may have been predetermined for federal public works. Prevailing wage laws ensure that contractors are not awarded public works contracts by paying low wages and undercutting competitors. In this way, these laws create a level playing field on publicly-subsidized projects.

In California and across the nation, construction is a bifurcated industry, separated into a high wage, often unionized nonresidential construction sector and a low-wage, often exploitative residential construction sector. A 2021 report by the UC Berkeley Labor Center found that almost half of families of construction workers in California are enrolled in a safety net program, at an annual cost of over $3 billion[1]. The hardship created by low wages and misclassification extends beyond workers and their families. When employers underpay and misclassify their workers they also defund government programs like workers' compensation, Social Security, and Medicare[2].

State Low-Income Housing Tax Credit (LIHTC) and Below Market-Rate Loans (BMR Loans)
In 1986, the federal government established the LIHTC to incentivize the private development of affordable rental housing for low-income households. The program enables low-income housing sponsors and developers to raise project equity through the allocation of tax benefits to investors. In 1987, California authorized a state LIHTC to augment the federal one. Recipients must receive the federal LIHTC to be eligible for the state one. The annual amount of money allocated for the state LIHTC is limited to $70 million, adjusted for inflation. In 2020, the total credit amount available for allocation was about $100 million plus any unused or returned credit allocations from previous years. Affordable housing projects typically have several funding sources outside of the state LIHTC.

Beginning in 2020, California began providing an additional $500 million in "enhanced" state LIHTCs. The $500 million is subject to appropriation, but has been authorized in the budget each year since. The credits are "enhanced" because they have a higher credit rate, providing more assistance to each development than the original state ones. Over their first

[1] Ken Jacobs and Kuochih Huang, "The Public Cost of Low-Wage Jobs in California's Construction Industry," UC Berkeley Labor Center, June 8, 2021, The Public Cost of Low-Wage Jobs in California's Construction Industry - UC Berkeley Labor Center
[2] Ibid.

four years, the enhanced state housing credits have made possible an additional 25,000 homes affordable to low-, very low-, and extremely low-income households. Since their inception, demand for the enhanced state credits has been oversubscribed.

In addition to using state LIHTCs, affordable housing developers also make use of BMR loans. Both state LIHTCs and BMR loans are excluded from prevailing wage requirements. A 2020 report conducted by the Terner Center for Housing Innovation at UC Berkeley found that although the LIHTC program does not trigger prevailing wage requirements, LIHTC projects often layer other forms of public funding that do require either federal or state prevailing wage, or they may be subject to local project labor agreements for their construction contracting[3]. To that effect, the report found that approximately 60 percent of LIHTC projects awarded funds between 2008 and 2019 were subject to either prevailing wage or local project labor agreements, or both.

The Terner Center report identified hard construction costs, specifically the costs of material and labor, as the primary driver of rising development costs[4]. This increase in costs has real consequences. For example, the report found the same amount of public subsidy is needed to build two units at 1,000 square feet as was needed for three units just 10 years ago. In California, the mismatch between the number of permitted units and the growth in the construction sector is significant. The author of this measure points out that 100,000 more residential construction workers are need to meet affordable housing production goals.

Home values and rents in California are among the most expensive in the nation. A 2023 statewide survey by PPIC found that about half of Californians report that the cost of housing is a financial strain for them and their families[5]. Furthermore, majorities of Californians across partisan and demographic groups and regions say the state needs more policies geared towards making both home buying and rental housing more accessible[6]. Recruiting and training construction workers is a pivotal component of ramping up affordable housing. As California adopts policies meant to incentivize housing development, the state must balance this with its commitment to create high-road jobs that don't force workers to rely on safety net programs. Certainly, this is no easy task.

Package Deal: AB 3160 (Gabriel, 2024)
The provisions of this bill are contingent upon AB 3160 and shall become operative only if both become law. AB 3160 would provide that an additional allocation of $500 million to the state LIHTC is not subject to an appropriation in the annual Budget Act for calendar years 2025 through 2030. Securing this enhanced credit provides developers the certainty they need to pursue affordable housing projects without worrying that funding will disappear.

2. Need for this bill?

According to the author:

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[3] Carolina Reid, "The Costs of Affordable Housing Production: Insights from California's 9% Low-Income Housing Tax Credit Program," Terner Center for Housing Innovation UC Berkeley, March 2020, LIHTC_Construction_Costs_March_2020.pdf (berkeley.edu)
[4] Ibid.
[5] Mark Baldassare, et al., "PPIC Statewide Survey: Californians and Their Government," PPIC, December 2023, https://www.ppic.org/publication/ppic-statewide-survey-californians-and-their-government-december-2023/
[6] Ibid.

"There are three types of public funds that have been historically used by affordable housing developers that makes them exempt from paying their workers a prevailing wage [State LIHTCs, state and local below market-rate loans, and redevelopment agencies' low and moderate-income housing funds]. If a project receives funding through any of these funds, they are not required to pay the industry standard prevailing wage…

From 2021 to 2023, $1 billion worth of affordable housing projects (nearly 16,500 units) were funded through one of the exemptions and the workers on these projects were not paid a prevailing wage. Additionally, the State LIHTC program has grown to provide hundreds of millions of dollars per year to affordable housing projects. State and local BMR loans contribute an additional hundreds of millions per year in funding for affordable housing. The increase in the use of both of these funds – and their exemption from public works law – means that many affordable housing projects in our State do not have to pay the workers on these jobs a prevailing wage.

Unfortunately, the prevailing wage exemptions – as well as lack of benefits and wage theft – prevent the State from recruiting construction workers to work on housing projects. California needs 100,000 more residential construction workers to meet the State's affordable housing production goals. It also needs an additional 200,000 construction workers to meet the State's overall housing goals. The U.S. Bureau of Labor Statistics has even concluded that many construction workers prefer to work on non-housing commercial projects because of the higher wages and better benefits."

Under this bill, "Construction trades workers who build publicly subsidized affordable housing construction projects will be paid prevailing wages the same as workers who build publicly subsidized, nonresidential projects, including those that receive tax credits under President Joe Biden's Inflation Reduction Act and the CHIPS and Science Act. The effect of this bill also will be to promote the recruitment, training and retention of apprentices registered in state-approved programs."

3. Proponent Arguments:

The sponsors of the measure, the California Conference of Carpenters, argue"

"For over 90 years, California's Prevailing Wage Laws have required contractors on publicly funded projects to pay construction workers occupation- and geographic area-specific prevailing wages. AB 3190 will close loopholes in the Prevailing Wage Laws that have allowed affordable housing developers to receive state and local public subsidies without paying prevailing wages. AB 3190 is a logical next step to recently enacted housing legislation such as AB 2011 (Wicks, 2022), SB 423 (Wiener, 2023), and SB 4 (Wiener, 2023) that condition state intervention in favor of housing production on prevailing wage standards.

In recent years, hundreds of millions of dollars in State Low Income Housing Tax Credits (LIHTCs) and below-market-rate interest state and local government loans have been awarded annually to private affordable housing developers in California without a requirement that contractors on these projects pay prevailing wages.

The affordable housing prevailing wage loopholes have perpetuated poverty- and near-poverty-levels of compensation for thousands of California residential construction workers

building publicly financed projects without the benefit of prevailing wage standards.2 Exploitative pay rates in the residential construction trades often are aggravated by contractor wage theft and tax fraud. Researchers estimate that 'low road' construction contractor employment practices have a public cost that tallies in the billions of dollars annually in safety net program expenditures and foregone tax revenues.

The 37,000 members of the Nor Cal Carpenters Union have a deep vested interest in housing. Our union organizes and bargains for construction workers who build affordable housing, and our members and their families desperately need a more abundant supply of affordable housing. State and local government-subsidized affordable housing should be built by workers who do not add to mile-long waiting lists of Californians seeking spots in affordable housing developments. For these reasons, the NCCU urges members of the Senate Labor Committee to support AB 3190."

4. Opponent Arguments:

The California Housing Consortium and Housing California are opposed to the bill, stating:

"Our organizations represent development, non-profit, financial, and public sectors united in the goal of increasing the supply of safe, stable, and affordable housing options for the people of California. Given our collective mission, we are concerned that the costs [of] AB 3190 will significantly reduce the number of affordable units that can be produced.

Our organizations have been partners with labor, in fact, together we successfully passed AB 2011 (Wicks, Statues 2022, Chapter 647), which created a ministerial, streamlined approval process for 100% affordable housing projects in commercial zones and for mixed-income housing projects along commercial corridors, under certain circumstances. The legislation, which is optional for developers, also imposes specified labor standards on those projects, including requirements that contractors pay prevailing wages, participate in apprenticeship programs, and make specified healthcare expenditures.

The research shows that hard construction costs—specifically the costs of material and labor— are the primary driver of rising development costs. Adding more cost when existing resources are so scarce, when the Governor is proposing to cut $1.2 billion in General Fund investment plus reducing by $500 million critical tax credits will undermines all the progress made. Affordable housing financing is already an overly complex system, this bill adds an outsize amount of cost for the benefit it delivers.

As written this is an anti-affordable housing bill. To apply prevailing wages on tax credits and existing loans simply means reducing the number of new affordable units that can be produced."

5. Prior Legislation:

AB 3160 (Gabriel, 2024) would provide that an additional allocation of $500 million to the Low Income Housing Tax Credit is not subject to an appropriation in the annual Budget Act for calendar years 2025 through 2030. AB 3160 would only become operative if AB 3190 (Haney, 2024) is enacted and becomes effective on or before January 1, 2025. *This bill is pending in the Senate Revenue and Taxation Committee.*

AB 2231 (Kalra, Chapter 346, Statutes of 2020) defined a public subsidy as de minimis for the purpose of paying the prevailing wage in private projects if it is both less than $600,000 and less than 2 percent of the total project cost for bids advertised or contracts awarded after July 1, 2021. If the subsidy is for a residential project consisting entirely of single-family dwellings, the subsidy is de minimis so long as it is less than 2 percent of the total project cost.

AB 101 (Committee on Budget and Fiscal Review, Chapter 159, Statues of 2019) among other things, allocated $500 million for LIHTC in 2020, and up to $500 million, upon appropriation, in 2021 and beyond.

SB 972 (Costa, Chapter 1048, Statutes of 2002) provided exemptions from prevailing wage requirements for the construction or rehabilitation of privately-owned residential projects, as specified.

SB 975 (Alcaron, Chapter 938, Statutes of 2001) provided that certain private residential housing projects and development projects built on private property are not subject to the prevailing wage, hour, and discrimination laws that govern employment on public works projects.

SUPPORT

California Conference of Carpenters (Sponsors)
Bluegreen Alliance
California State Association of Electrical Workers
California State Council of Laborers
California State Council of Service Employees International Union
California State Pipe Trades Council
Construction Employers' Association
Fresno Building Healthy Communities
Nor Cal Carpenters Union
Wall and Ceiling Alliance
Western States Council Sheet Metal, Air, Rail and Transportation
Western States Regional Council of Carpenters
Western Wall and Ceiling Contractors Association (WWCCA)

OPPOSITION

Associated General Contractors of California
Associated General Contractors-San Diego Chapter
California Coalition for Rural Housing
California Council for Affordable Housing
California Housing Consortium
California Housing Partnership
Housing California
San Diego Housing Federation
Southern California Association of Non-profit Housing (SCANPH)

-- END --

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

Bill No:	AB 2421	**Hearing Date:**	June 26, 2024
Author:	Low		
Version:	February 13, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Employer-employee relations: confidential communications

KEY ISSUE

This bill prohibits a public employer from questioning an employee regarding communications made in confidence between the employee and an employee representative in connection with representation.

ANALYSIS

Existing law:

1) Provides that no person has a privilege to refuse to be a witness; to refuse to disclose any matter or to refuse to produce any writing, object, or other thing, or prevent another person from the same, unless otherwise provided by statute. (Evidence (Evid.) Code § 911.)

2) Governs the admissibility of evidence in court proceedings and generally provides a privilege to refuse to testify or otherwise disclose confidential communications made in the course of certain relationships. (Evid. Code §§ 954, 966, 980, 994, 1014, 1033, 1034, 1035.8, 1037.5, 1038.)

3) Provides that the right of a person to claim specified privileges is waived with respect to a protected communication if the holder of the privilege has disclosed a significant part of that communication or consented to disclosure, without coercion. Existing law provides that a disclosure does not constitute a waiver where it was reasonably necessary to accomplish the purposes for which the lawyer, lawyer referral service, physician, psychotherapist, sexual assault counselor, domestic violence counselor, or human trafficking caseworker was consulted. (Evid. Code § 912(a), (d).)

4) Provides that if two or more persons are joint holders of a privilege, a waiver of a right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. In the case of the spousal privilege, the right of one spouse to claim the privilege does not affect the right of the other spouse to claim the privilege. (Evid. Code § 912 (b).)

5) Provides that if a privilege is claimed on the ground that the matter sought to be disclosed is a communication made in confidence in the course of a recognized privileged relation, the communication is presumed to have been made in confidence, and the opponent of the claim of privilege has the burden of proof to establish that the communication was not confidential. A communication does not lose its privileged character for the sole reason that it was communicated by electronic means or because persons involved in the delivery, facilitation,

or storage of electronic communication may have access to the content of the communication. (Evid. Code § 917.)

6) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. (29 United State Code § 151 et seq.)

   While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights.

7) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include, among others, the Meyers-Milias-Brown Act (MMBA), which governs labor relations between local public agencies and their employees; the Education Employer-Employee Relations Act (EERA), which governs labor relations between school employers and their employees; and the Ralph C. Dills Act (Dills Act) which governs labor relations between the State and its employees. (Government Code (GC) § 3500 et seq.)

8) Does not cover California's public transit districts by a common collective bargaining statute. Instead, while some transit agencies are subject to the MMBA, other transit agencies are subject to labor relations provisions that are found in each district's specific Public Utilities Code (PUC) enabling statute, in joint powers agreements, or in articles of incorporation and bylaws (for example, see PUC §40000 et seq.).

9) Establishes the Public Employment Relations Board (PERB), a quasi-judicial administrative agency charged with resolving disputes and enforcing the statutory duties and rights of public agency employers and employee organizations, but provides the City, and the County, of Los Angeles a local alternative to PERB oversight through the city's Employee Relations Board (ERB) and the county's Employee Relations Commission (ERCOM). (GC § 3541)

This bill:

1) This bill makes it unlawful under the state's public sector collective bargaining statutes to question any employee or employee representative regarding communications made in confidence between an employee and an employee representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation. Communications between an employee and their employee representative shall not be confidential if, at any time, the representative was a witness or party to any of the events forming the basis of a potential administrative disciplinary or criminal investigation.

2) The bill's prohibition does not supersede existing employee protections, as specified, under the Public Safety Officers Procedural Bill of Rights Act.

3) This bill makes the following legislative findings:

   a. It is the Legislature's intent to prohibit public employers from questioning any employee or employee representative regarding communications made in confidence between an employee and an employee representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation.
   b. There is a strong interest in encouraging union members to communicate fully and frankly with their union representative, in order to receive accurate information and advice. The expectation of confidentiality is critical to employee-union representation. Without confidentiality, union members would be hesitant to be fully forthcoming with their representatives, detrimentally impacting a union representative's ability to advise and represent union members with questions or problems within the scope of representation.
   c. This confidentiality does not extend to criminal investigations.
   d. This act does not create an evidentiary privilege. However, confidentiality protections prohibit public employers, their agents, and those acting on their behalf from compelling the disclosure of confidential communications, including to third parties.

COMMENTS

1. Background.

In *American Airlines, Inc. v. Superior Court*, 114 Cal. App. 4th 881 (2003), a union representative asserted privilege against disclosure of certain information a represented employee shared in confidence. The court ultimately determined no such privilege existed. Since then, union representatives have periodically sponsored a number of bills seeking to establish a privilege for communications between an employee and a union representative.

This bill, along the same efforts, but not specifically establishing an evidentiary privilege, prohibits a public employer from questioning an employee regarding communications made in confidence, as specified.

2. Need for this bill?

According to the author:

"While employees commonly believe that discussions with their union representative regarding workplace matters, such as discipline or grievances, are confidential, current state law does not explicitly prohibit employers from compelling employees or their representatives to disclose such communications. AB 2421 prohibits a local public agency employer, a state employer, a public school employer, a higher education employer, or the district from questioning any employee or employee representative regarding communications made in confidence between an employee and an employee representative in connection with representation relating to any matter within the scope of the recognized employee organization's representation. Maintaining confidentiality in such communications is essential to fostering trust and ensuring effective representation."

3. Proponent Arguments

According to the sponsor:

"This bill amends the MMBA and similar state collective bargaining statutes to make clear that public employers and those acting on their behalf commit an unfair labor practice by questioning union members or their labor representatives about communications between represented employees and their union representatives about matters within the scope of union representation. In short, this bill would recognize the confidentiality of those communications and preclude public employers from interfering with union representation, which benefits every public sector union and public employee in California."

According to a coalition of several police officers association, including the Riverside Sheriffs' Association:

"Current law prohibits public employers from taking certain actions relating to employee organization, including imposing or threatening to impose reprisals on employees, discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of their exercise of their guaranteed rights. AB 2421 will extend existing protections for confidential communications between a union member and their representative."

4. Opponent Arguments:

A coalition of employer associations and representatives including the California Chamber of Commerce express two principal concerns. First, the bill still functions, in practice, as an evidentiary privilege in civil litigation despite the provision stating that Legislature does not intend for the bill to establish an evidentiary privilege. Second, the bill creates too narrow an exception for when it grants the confidential privilege to communication between an employee and employee representative. The coalition argues, "Communications would only be deemed not confidential if there was an investigation related to potential administrative discipline or a criminal investigation. This seems to leave a loophole for scenarios where a formal investigation has not been triggered or where the employee or representative wants to voluntarily share information with the employer if there is a concern about safety or other problematic conduct."

According to a coalition of public employer associations, including the California State Association of Counties:

"AB 2421 would interfere with the public employer's responsibility to provide a safe workplace, free from unlawful discrimination, harassment, or retaliation, by impeding a public employer's ability to communicate with employees to learn about, investigate and respond to such concerns. AB 2421 could also decrease workplace safety if public employers are limited in their ability to investigate threats of violence within the workforce. Employers are legally required to promptly investigate complaints of unlawful discrimination, harassment, retaliation, and other types of unlawful workplace conduct. If the employer is limited in its communications with employees, it will make it much more difficult to comply with these legal obligations, which were imposed by the legislature to create safer workplaces, free from unlawful discrimination and harassment."

5. Dual Referral:

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

6. Prior Legislation:

AB 418 (Kalra, 2019) would have established an evidentiary privilege from disclosure for communications between an employee representative and a represented employee or represented former employee. *The bill died on the Senate inactive file.*

AB 3121 (Kalra, 2018) was substantively identical to AB 418. *It also died on the Senate inactive file.*

AB 729 (Hernández, 2013), would have established an employee representative and a represented employee or represented former employee a privilege of refusing to disclose confidential communication between the employee or former employee and the employee representative. *The Governor vetoed the bill.* According to his veto message:

> "This bill would establish an evidentiary privilege to prohibit the disclosure of confidential communications between represented employees and their union agents."
>
> "I don't believe it is appropriate to put communications with a union agent on equal footing with communications with one's spouse, priest, physician or attorney. Moreover, this bill could compromise the ability of employers to conduct investigations into workplace safety, harassment and other allegations."

SUPPORT

California Association of Highway Patrolmen (Co-sponsor)
Peace Officers Research Association of California (Co-sponsor)
Arcadia Police Officers' Association
Burbank Police Officers' Association
California Association of Professional Scientists
California Association of Psychiatric Technicians
California Coalition of School Safety Professionals
California School Employees Association
California State Council of Service Employees International Union
California Teachers Association
Claremont Police Officers Association
Corona Police Officers Association
Culver City Police Officers' Association
Deputy Sheriffs' Association of Monterey County
Fullerton Police Officers' Association
Los Angeles School Police Management Association
Los Angeles School Police Officers Association
Murrieta Police Officers' Association
Newport Beach Police Association
Novato Police Officers Association
Orange County Employees Association
Palos Verdes Police Officers Association
Placer County Deputy Sheriffs' Association

Pomona Police Officers' Association
Professional Engineers in California Government
Riverside Police Officers Association
Riverside Sheriffs' Association
Santa Ana Police Officers Association
Upland Police Officers Association

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
Association of California School Administrators
Association of California Healthcare Districts
Association of California School Administrators
CalChamber
California Association of Health Facilities
California Association of Joint Powers Authorities
California Association of Recreation & Park Districts
California Association of Winegrape Growers
California Chamber of Commerce
California Farm Bureau
California School Boards Association
California Special Districts Association
California State Association of Counties
Civil Justice Association of California
Coalition of Small and Disabled Veteran Businesses
Community College League of California
Flasher Barricade Association
League of California Cities
National Federation of Independent Business
Public Risk Innovation, Solutions, and Management
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 2754	**Hearing Date:**	June 26, 2024
Author:	Rendon		
Version:	May 20, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Employment contracts and agreements: sufficient funds: liability

KEY ISSUE

This bill addresses the issue of worker misclassification in the port drayage industry by 1) prohibiting port drayage motor carriers from entering into contracts for services if they know or should have known that the contract was insufficient to comply with labor laws, as specified; and 2) requiring on or after January 1, 2025, a customer that uses a port drayage motor carrier to share all civil legal responsibility and civil liability, as specified, regardless of whether or not the port drayage motor carrier is on the Division of Labor Standards Enforcement's (DLSE) list of carriers that have engaged in illegal conduct.

ANALYSIS

Existing law:

1) Prohibits a person or entity from entering into a contract or agreement for labor or services with specified types of contractors, including garment, janitorial, and warehouse contractors, if the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with applicable local, state, and federal laws or regulations governing the labor or services to be provided. (Labor Code §2810(a))

2) Creates a rebuttable presumption affecting the burden of proof that there has been no violation of the prohibition in 1), above, if the contract meets specified conditions. (Labor Code §2810(b))

3) Provides that to qualify for the rebuttable presumption, a contract or agreement must be in writing, in a single document, and contain specified provisions, including, but not limited to:

    a. The name, address, and telephone number of the person or entity and the construction, farm labor, garment, janitorial, security guard, or warehouse contractor through whom the labor or services are to be provided.
    b. A description of the labor or services to be provided and a statement of when those services are to be commenced and completed.
    c. The workers' compensation insurance policy number and the name, address, and telephone number of the insurance carrier, as specified.
    d. The total number of persons who will be utilized under the contract or agreement as independent contractors, along with a list of the current local, state, and federal contractor license identification numbers that the independent contractors are required to have under local, state, or federal laws or regulations.

4) Excludes from 1), above, a person or entity who executes a collective bargaining agreement covering the workers employed under the contract or agreement, or a person who enters into a contract or agreement for labor or services to be performed on that person's home residences, as specified. (Labor Code §2810(c))

5) An employee aggrieved by a violation of 1), above, may file an action for damages to recover the greater of all of the employee's actual damages or $250 per employee per violation for an initial violation and $1000 per employee for each subsequent violation, as specified. The employee may also bring an action for injunctive relief. (Labor Code §2810(g))

6) Defines, for purposes of Labor Code §2810.4, "port drayage motor carrier" as an individual or entity that hires or engages commercial drivers in the port drayage industry. It also means a registered owner, lessee, licensee, or bailee of a commercial motor vehicle, as specified, that operates or directs the operation of a commercial motor vehicle by a commercial driver on a for-hire or not-for-hire basis to perform port drayage services in the port drayage industry. It also means an entity or individual who succeeds in the interest and operation of a predecessor port drayage motor carrier, as specified. (Labor Code §2810.4(a)(5))

7) Defines, for purposes of Labor Code §2810.4, "customer" as a business entity, regardless of its form, that engages or uses a port drayage motor carrier to perform port drayage services on the customer's behalf, whether the customer directly engages or uses a port drayage motor carrier or indirectly engages or uses a port drayage motor carrier through the use of an agent, including, but not limited to, a freight forwarder, motor transportation broker, ocean carrier, or other motor carrier. Excludes a business entity with a workforce of fewer than 25 workers, as specified. (Labor Code §2810.4(a)(2))

8) Directs the DLSE to post on its internet webpage the names, addresses, and essential information for a port drayage motor carrier with an unsatisfied final court judgment, tax assessment, or tax lien that may be released to the public under federal and state disclosure laws, including any order, decision, or award obtained by a public or private person or entity finding that a port drayage motor carrier has engaged in illegal conduct, as specified. (Labor Code §2810.4(b))

9) Directs DLSE to post on its internet webpage a list consisting of the names, addresses, and essential information for a prior offender with a subsequent judgment, ruling, citation, order, decision, or award finding that the port drayage motor carrier has violated a labor or employment law or regulation, even if all periods for appeals have not expired. (Labor Code §2810.4(b))

10) Subjects a customer that engages or uses a port drayage motor carrier that is on the DLSE list to joint and several liability with the motor carrier or the motor carrier's successor for all civil legal responsibility and civil liability owed to a port drayage driver for services obtained after the date the motor carrier appeared on the list, as specified. This includes sharing with the motor carrier the full amount of unpaid wages, unreimbursed expenses, damages and penalties, including applicable interest, which are found due for all of the following:

    a. Minimum, regular, or premium wages that are unpaid by the motor carrier
    b. Unlawful deductions from wages
    c. Out-of-pocket expenses incurred by the commercial driver

d. Civil penalties for failure to secure workers' compensation coverage (Labor Code §2810.4(b)(3))

11) Provides that a customer's joint and several liability is to be determined by either of the following:

a. By the Labor Commissioner in an administrative proceeding or pursuant to their citation authority.
b. By a court in a civil action brought by the Labor Commissioner, a commercial driver, or their representative after providing the customer with at least 30 business days notice prior to filing the action, as provided. (Lab Code §2810.4(c).)

12) Provides a series of exemptions for customers from the joint and several liability, including where the carrier's employees are covered by a collective bargaining agreement, as specified. (Labor Code §2810.4(d))

13) Requires a port drayage motor carrier that provides port drayage services to a customer to furnish written notice to the customer of any unsatisfied final judgments against the motor carrier, as specified, and the text of this section. (Labor Code §2810.4(e), (f))

14) Prohibits adverse action against a commercial driver for providing notification of violations or filing a claim or civil action pertaining to unpaid wages, unreimbursed expenses, or the recovery of damages and penalties. (Labor Code §2810.4(h))

This bill:

1) Adds port drayage motor carrier to the list of services where a person or entity is prohibited from entering into a contract or agreement for labor or services if the person or entity knows or should know that the contract or agreement does not include funds sufficient to allow the contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided.

2) Excludes from 1) above a contract with a port drayage motor carrier involving 30 days or fewer of cumulative labor or services within a one-year period.

3) Adds port drayage motor carrier to the list services for which there is a rebuttable presumption affecting the burden of proof that there has been no violation of 1), above, if the contract or agreement meets specified requirements.

4) Adds to the requirements for the rebuttable presumption described in 3), above, that the contract include, the total number of persons who will be utilized under the contract or agreement as independent contractors, along with both of the following:

a. A list of the current local, state, and federal contractor license identification numbers or motor carrier authority or registration that the independent contractors are required to have under local, state, or federal laws or regulations.
b. A copy of any agreement executed by an independent contractor identified pursuant to these provisions.

5) For purposes of these provisions, defines "port drayage motor carrier" as an individual or entity that hires or engages commercial drivers in the port drayage industry. It also means a registered owner, lessee, licensee, or bailee of a commercial motor vehicle, as specified, that operates or directs the operation of a commercial motor vehicle by a commercial driver on a for-hire or not-for-hire basis to perform port drayage services in the port drayage industry. It also means an entity or individual who succeeds in the interest and operation of a predecessor port drayage motor carrier, as specified.

6) Requires on and after January 1, 2025, a customer that, as part of its business, engages or uses a port drayage motor carrier to share with the motor carrier or the motor carrier's successor all civil legal responsibility and civil liability owed to a port drayage driver or the state arising out of the motor carrier's misclassification of the driver as an independent contractor, regardless of whether or not the port drayage motor carrier is on the DLSE maintained list of port drayage motor carriers that have engaged in illegal conduct, as specified.

7) Provides that the customer shall have no liability pursuant to 6), above, under either of the following circumstances:

   a. The motor carrier utilizes its own employee drivers to perform services for the customer.
   b. The motor carrier utilizes bona fide independent contractors to perform services for the customer where each independent contractor possesses their own operating authority and has a business relationship with the motor carrier that meets the California legal standard for being determined an independent contractor.

COMMENTS

1. Background:

Port Drayage

Port drayage services describe the hauling of standardized metal shipping containers between ports and warehouses for conveyance onto ships, trucks, or retail cars. Simply put, drayage is an essential logistical function that ensures freight moves from its origin point to its destination. California has 12 ports, through which large volumes of goods are both imported and exported internationally. These ports vary in size, operations, and finances, but combined, they process about 40 percent of all containerized imports and 30 percent of all exports in the United States[1]. The two largest ports in the nation, the Port of Los Angeles and the Port of Long Beach, are also located within the state[2]. Port truckers make this movement of goods possible, with approximately 33,500 drayage trucks servicing California's seaports and railyards annually[3]. The port trucking industry is worth upwards of $12 billion per year.[4]

Worker Misclassification

Although California's port truckers are an integral part of the nation's supply chains, many of them are victims of exploitative labor practices and misclassification. Decades-long efforts to undercut port trucker wages, rights, and livelihoods have had serious consequences.

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[1] Eunice Roh, "Overview of California Ports," LAO, August 23, 2022, https://lao.ca.gov/Publications/Report/4618
[2] Ibid.
[3] Ibid.
[4] Erica Phillips, *Port-Trucking Firms Run Into Labor Dispute* (May 11, 2016) Wall Street Journal, https://www.wsj.com/articles/port-trucking-firms-run-into-labor-dispute-1462959003.

Misclassification is particularly harmful because independent contractors do not enjoy the same protections employees do. For example, employees must be paid at least the minimum wage, are due overtime, generally cannot be forced to pay for equipment needed to do the job, must be covered by workers' compensation, and are entitled to state unemployment and disability insurance. A 2014 National Employment Law Project (NELP) report found that approximately 49,000 of the 75,000 port truck drivers in the US are misclassified as independent contractors[5]. In driver surveys, independent contractors reported an average net income 18 percent lower than that of employee drivers. Independent contractors were also two-and-a-half times less likely than employee drivers to have health insurance and almost three times less likely to have retirement benefits[6]. A 2017 investigative report by USA Today found that port trucking companies in Southern California spent decades forcing drivers to finance their own trucks by taking on debt they could not afford. Companies then used that debt to extract forced labor, even taking steps to physically bar workers from leaving[7]. Port congestion during the Covid-19 pandemic only worsened the conditions described above.

In recent years, the Labor Commissioner's Office has awarded more than $50 million to some 500 truckers who claimed they were deprived of wages through misclassification[8]. One of the world's largest trucking companies, XPO Logistics agreed to pay $30 million in 2021 to settle class-action lawsuits filed by drivers who said they earned less than the minimum wage delivering goods for major retailers from the ports of Los Angeles and Long Beach.

The impact of misclassification has ramifications outside of the workers and their families. When employers misclassify employees, they deprive the state of revenue all while expanding participation in public safety net programs. Additionally, it makes it difficult for the state to meet its green economy goals and to cut down on air pollution related to port activities. Lastly, misclassification hurts law-abiding employers who have to compete with bad actors that avoid obligations to contribute to California safety net programs and comply with labor law.

SB 1402 (Lara, 2018) and SB 338 (Gonzalez, 2021)
In response to well-documented labor abuses in the port drayage industry, SB 1402 established a new enforcement mechanism. It required DLSE to list the names and other information of port drayage motor carriers with unsatisfied judgements, assessments, or other awards against it based on illegal conduct, including failure to pay wages and misclassification of employees, as specified. Customers working with such carriers that are placed on the list are subject to joint and several liability with the carrier for relevant liabilities, including unpaid wages and assessed penalties. SB 1402 put financial pressure on trucking companies to pay outstanding wage claims quickly.

SB 338 strengthened the protections enacted under SB 1402 by among other things, designating Cal/OSHA violations as triggers that put trucking companies on the DLSE list,

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[5] Smith, Rebecca, Paul Marvy, and Jon Zerolnick. "The Big Rig Overhaul: Restoring Middle-Class Jobs at America's Ports Through Labor Law Enforcement." National Employment Law Project, Change to Win, Los Angeles Alliance for a New Economy, February 2014. https://www.nelp.org/wp-content/uploads/2015/03/Big-Rig-Overhaul-Misclassification-Port-Truck-Drivers-Labor-Law-Enforcement.pdf;
[6] Ibid.
[7] Brett Murphy, "Rigged: Forced Into Debt. Worked Past Exhaustion. Left With Nothing.," USA Today, June 16, 2017, https://www.usatoday.com/pages/interactives/news/rigged-forced-into-debt-worked-past-exhaustion-left-with-nothing/
[8] Margot Roosevelt, "Port Truckers Win $30 Million in Wage Theft Settlement," Los Angeles Times, October 13, 2021, Port truckers win $30 million in wage theft settlements - Los Angeles Times (latimes.com)

including "prior offenders" on the list, and requiring companies to show they have remedied violations to be removed from the list. Unlike first time offenders, prior offenders can be added to the DLSE list before all periods for appeals expire.

Under both of these measures, customers that use a port drayage motor carrier that is on the DLSE list share with the motor carrier all civil legal responsibility and civil liability owed to a port drayage driver or to the state for port drayage services obtained after the date the motor carrier appeared on the list. This means joint and several liability with the motor carrier for the full amount of unpaid wages, unreimbursed expenses, damages, and penalties, including applicable interest.

AB 2754 would require on or after January 1, 2025 a customer that uses a port drayage motor carrier to share all civil legal responsibility and civil liability regardless of whether or not the port drayage motor carrier is on the DLSE list.

2. Need for this bill?

According to the author:

"Endemic misclassification in trucking hurts workers by depriving them of wages and other protections while making them bear the costs and responsibility of truck purchase, maintenance, and upkeep…

Considering the problems that currently exist in trucking, there is no reason why the Labor Code should not apply to port drayage motor carriers. AB 2754 would amend the Labor Code to make it applicable to port drayage motor carriers and to the cargo owners that utilize their services. This means that cargo owners will be liable for labor code violations committed by their trucking contractors. These cargo owners will be held responsible if a port drayage motor carrier or their successor misclassify drivers as independent contractors or if they knowingly enter into unsustainable contracts that would require the contractor to violate the law or to lose money on the contract. Making cargo owners accountable in this way will incentivize them only to contract with companies that follow the law and properly classify their employees. These changes will ultimately put pressure on the port drayage trucking industry as a whole to stop misclassifying employees."

3. Proponent Arguments:

The sponsors of the measure, the California Teamsters Public Affairs Council, state:

"AB 2754 would address the ongoing employee misclassification problem in trucking by proposing a series of changes to California's sufficient contracts and joint liability laws to clarify their application to port trucking companies and the entities that engage them.

The California legislature has continually recognized that workers' misclassification as independent contractors is one of the most serious challenges facing the state today. Misclassified employees are deprived of all state employment protections that the legislature has developed over decades, and employers who employ misclassified employees gain an unfair advantage over law-abiding companies (in part by avoiding their obligations to contribute as employers to California safety net systems, such as workers' compensation insurance and unemployment insurance). One industry where this problem has become

endemic is commercial trucking and freight across the state. At ports nationwide, for example, studies estimate that approximately 82% of all drivers are labeled 'independent contractors' but over 80% are actually misclassified employees.

This endemic misclassification in trucking hurts workers by depriving them of wages and other protections while making them bear the costs and responsibility of truck purchase, maintenance, and upkeep of their trucks. It hurts the state by depriving it of much needed revenue while putting it on the hook when these misclassified drivers must avail themselves of California's safety net, which is fairly often considering that truck driving is one of the most dangerous professions in the country."

4. Opponent Arguments:

A coalition of opponents, including the CalChamber and the Western States Trucking Association, state:

"AB 2754 would unwind previously agreed-to amendments in AB 1897 (Hernandez – 2014) to exempt motor carriers from provisions of the bill targeting 'contingent' or 'permatemp' work.

As drafted, AB 2754 instead implicates nearly every customer and transportation service provider in the supply chain as jointly liable for payment of wages, worker's compensation and reimbursement of business expenses where a worker receives, picks up, or delivers containerized freight at the shipper or consignee's premises, facility or worksite. Additionally, the legislation uses an impossibly broad definition of motor carrier, defining it to be any entity that utilizes commercial drivers to move containerized freight. Taken as a whole, the legislation seeks to place joint and several liability on any entity that pays for the movement of or accepts freight and does not attempt to acknowledge that most of the implicated entities will have no visibility into the arrangement of that transportation or the cost of the same.

The transportation of containerized freight simply does not equate to the use of contingent and permatemp staff in other industries identified by the legislation."

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:

SB 338 (Gonzalez, Chapter 333, Statutes of 2021) expanded the set of violations that can cause port drayage contractors to be placed on a Division of Labor Standards Enforcement list that extends joint liability for future violations to customers of that contractor.

SB 1402 (Lara, Chapter 702, Statutes of 2018) required the DLSE to list the names and other information of port drayage motor carriers with unsatisfied judgments, assessments, or other awards against it based on illegal conduct, including failure to pay wages and misclassification of employees, as specified. Required joint and several liability for

customers who contract with port drayage services who have unpaid wage, tax and workers' compensation liability.

AB 1897 (Roger Hernández, Ch. 728, Stats. 2014) required a client employer, as defined, to share with a labor contractor, as defined, all civil legal responsibility and civil liability for: (1) payment of wages to workers provided by a labor contractor; (2) failure to report and pay all required employer contributions, worker contributions, and personal income tax withholdings as required by the Unemployment Insurance Code; and (3) failure to secure valid workers' compensation coverage.

SB 459 (Corbett, Chapter 706, Statutes of 2011) prohibited any person or employer from engaging in willful misclassification of an employee as an independent contractor and provided for civil penalties.

SUPPORT

California Teamsters Public Affairs Council (Sponsors)
California Labor Federation
City of Los Angeles

OPPOSITION

Agricultural Council of California
Agriculture Transportation Coalition
Associated California Loggers
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Cotton Ginners & Growers Association
California Forestry Association
California Fresh Fruit Association
California League of Food Producers
California Moving and Storage Association
California Tomato Growers Association
Carmax
Civil Justice Association of California
Gemini Shippers Association
Harbor Trucking Association
Industry Business Council
Los Angeles Customs Brokers and Freight Forwarders Association
NAIOP California
San Gabriel Valley Economic Partnership
Southern California Leadership Council
Truck Renting and Leasing Association
U.S. Forage Export Council
Western Agricultural Processors Association
Western States Trucking Association

-- END -

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

Bill No:	AB 2889	**Hearing Date:**	June 26, 2024
Author:	Zbur		
Version:	March 18, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Local public employee relations: the City of Los Angeles Employee Relations Board and the Los Angeles County Employee Relations Commission

KEY ISSUE

This bill prohibits the Los Angeles City Employee Relations Board (ERB) and the Los Angeles County Employee Relations Commission (ERCOM)) from awarding strike-preparation expenses as damages or awarding damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

The bill also grants the state Public Employees Relations Board (PERB) exclusive initial jurisdiction over a request for injunctive relief to enjoin a union or union activity that is arguably protected or prohibited, as specified, including, but not limited to, a strike.

ANALYSIS

Existing law:

1) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves to the states the regulation of collective bargaining in their respective public sectors. (29 United State Code § 151 et seq.)

   While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees generally have no collective bargaining rights absent specific statutory authority establishing those rights.

2) Provides several statutory frameworks under California law to provide public employees collective bargaining rights, govern public employer-employee relations, and limit labor strife and economic disruption in the public sector through a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and recognized public employee organizations or their exclusive representatives. These include the *Meyers-Milias-Brown Act* (MMBA) which governs the employer-employee relationship between local public agencies and their employees. (Government Code (GC) § 3500 et seq.)

3) Establishes the Public Employment Relations Board (PERB), a quasi-judicial administrative agency charged with resolving disputes and enforcing the statutory duties and rights of public agency employers and employee organizations, but provides the City, and the County, of Los Angeles a local alternative to PERB oversight through the city's Employee Relations Board (ERB) and the county's Employee Relations Commission (ERCOM). (GC § 3541)

4) Specifies that PERB has no authority to award strike-preparation expenses as damages, and no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike. (GC § 3509 (b))

5) Grants ERB and ERCOM the power and responsibility to take actions on recognition, unit determinations, elections, and all unfair practices, and to issue determinations and orders as the employee relations commissions deem necessary. (GC § 3509 (d))

This bill:

1) Prohibits ERB and ERCOM, in an action to recover damages due to an unlawful strike, to award strike-preparation expenses as damages or to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.

2) Grants PERB, in an action involving the City of Los Angeles or the County of Los Angeles, exclusive initial jurisdiction over a request for injunctive relief that seeks to enjoin organization by employees or employee activity that is arguably protected or prohibited by the Meyers-Milias-Brown Act, including, but not limited to, a strike.

3) Makes findings and declarations that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique authority or insistence of authority by ERB and ERCOM, as specified.

COMMENTS

1. Background

This bill arises from an ongoing labor dispute between the Union of American Physicians and Dentists (UAPD) members and Los Angeles County whose last agreement expired two years ago and who have been no doubt frustrated in their bargaining negotiations.[1] UAPD sought to improve the benefits of their members, medical professionals who work in the county's health service. The union cites the disparate benefits between county health professionals and health professionals employed by competing medical employers as a reason for the county health service's recruitment and retention issues. The county has rejected UAPD's attempts, citing that UAPD members receive the same benefits the county provides to all other county employees and the need to dedicate limited resources to targeted incentives that address the most critical recruitment and retention issues facing the health service.

Believing that the county had engaged in bad-faith bargaining over the last years, UAPD prepared in December 2023 to engage in a limited strike. The county apparently countered by filing an unfair labor practice charge with ERCOM, seeking damages for harm because it needed to hire replacement staff to ensure that it could maintain critical services during any strike. It also sought an injunction against UAPD for the strike, which it described as unlawful. Neither of these two actions would be possible for most public employers where

[1] "Doctors at L.A. County-run facilities postpone strike planned for next week", Los Angeles Times, Dec. 22, 2023. https://www.latimes.com/california/story/2023-12-22/uapd-postponed-strike

PERB reviews and adjudicates their labor disputes. However, current law does not specifically include ERCOM and ERB in the prohibition from awarding strike damages that applies to PERB. Current law also does not explicitly address whether ERCOM or ERB have initial jurisdiction to determine a petition for an injunction against a union for a strike. Whereas such a petition would go to PERB for employers within PERB's jurisdiction, LA County (and LA City) can presumably file directly with Los Angeles Superior Court for an injunction. This bill would ensure that PERB, not the Court, ERB, nor ERCOM, has jurisdiction over such petitions.

2. Need for this bill?

According to the author:

"The California Court of Appeal has held that a law that expressly identifies PERB, while not identifying ERB or ERCOM, does not necessarily apply to ERB or ERCOM. In *City of Los Angeles v. City of Los Angeles Employee Relations Board* (2016) 7 Cal.App.5th 150, the Court of Appeal concluded that Government Code Section 3509.5, a law that allows final decisions of PERB to be reviewable by a writ petition filed directly in the Court of Appeal, did not apply to ERCOM because Section 3509.5 only identifies 'the board' – i.e., PERB – and not ERB or ERCOM and the Legislative history of Section 3509.5 is silent on whether it is intended to apply to ERB or ERCOM. Similarly, when SB-857 amended the law, the amended language of Government Code § 3509, subdivision (b), only identifies 'the board' and not ERB or ERCOM; moreover, the Legislative history of SB-857 is likewise silent on whether it is intended to apply to ERB or ERCOM. Accordingly, the legislature must clarify that the same protections afforded to all unions under PERB's jurisdiction apply to those unions under ERB or ERCOM's jurisdiction."

3. Proponent Arguments:

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

"Under existing law, ERB and ERCOM replace the functions that PERB serves. Neither ERB nor ERCOM has a process for a party to ask the board to seek injunctive relief, nor do they have access to the same enforcement resources as PERB. Unlike PERB, neither ERB nor ERCOM are budgeted for, nor maintain an office of the General Counsel like PERB, nor do they have full-time attorneys assigned to them."

According to the Union of American Physicians and Dentists:

"Assembly Bill 2889 will make sure that when public sector unions in Los Angeles County have a labor dispute with the County, PERB will rightly have jurisdiction over injunctions filed by management. It also clarifies that unions under the jurisdiction of ERB and ERCOM have the same protection from union-busting tactics that all other unions under PERB's jurisdiction have enjoyed for over a decade. Specifically, this bill clarifies that, like PERB, neither ERB nor ERCOM has authority to award damages resulting from an unlawful strike."

According to the Service Employees International Union – California:

"Currently, neither ERB nor ERCOM has a process for a party to ask the board to seek injunctive relief, nor do they have access to the same enforcement resources as PERB. Unlike

PERB, neither ERB nor ERCOM are budgeted for nor maintain an office of the General Counsel like PERB, nor do they have full-time attorneys assigned to them. PERB is also committed to informally resolving disputes, the fastest form of dispute resolution."

4. Opponent Arguments:

None received.

5. Dual Referral:

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

6. Prior Legislation:

AB 1881 (Jones-Sawyer, 2012) required that appointments to ERB and ERCOM be made from respective lists of nominees jointly submitted by the applicable public employer and a committee of the exclusive representatives of the employer's respective employees, within 30 days of submission of the list. *The Governor vetoed the bill, citing the following in his veto message:*

"This bill sets standards in state law for appointing members to the Los Angeles City Employee Relations Board and the Los Angeles County Employment Relations Commission."

"Signing this bill would be a significant override of local decision making authority and a departure from my belief in subsidiarity. These issues should be resolved at the local level."

SB 857 (Lieu, Chapter 539, Statutes of 2011) specified that PERB has no authority to award damages for strike-preparation expenses or for costs, expenses, or revenue losses incurred during an unlawful strike, and that this prohibition is declaratory of existing law.

AB 2908 (Goldberg, Chapter 1137, Statutes of 2002) made clarifying changes to the MMBA, including providing for the Court of Appeals to have jurisdiction to review PERB's decisions or orders.

SB 739 (Solis, Chapter 901, Statutes 2000) transferred jurisdiction for resolving unfair labor practice charges and representation disputes under the MMBA to PERB.

SUPPORT

American Federation of State, County and Municipal Employees (Co-sponsor)
Service Employees International Union - California (Co-sponsor)
Union of American Physicians and Dentists (Co-sponsor)
California Labor Federation

OPPOSITION

None received.

-- END --

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

Bill No:	AB 2975	**Hearing Date:**	June 19, 2024
Author:	Gipson		
Version:	April 2, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Occupational safety and health standards: workplace violence prevention plan

KEY ISSUE

This bill requires the Occupational Safety and Health Standards Board, by March 1, 2025, to amend the existing workplace violence prevention in health care standards to require certain licensed hospitals to maintain metal detectors at specified entrances, adopt related policies, staffing and signage, as specified.

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.
    d. Authorizes to be levied against employers that violate these requirements, as specified. (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 employers to establish, implement and maintain an effective Injury and Illness Prevention Program (IIPP) that must include, among other things, a system for identifying and evaluating workplace hazards, including a workplace violence prevention plan (WVPP). (Labor Code §6401.7)

5) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee which results in lost time beyond the date of

the injury or illness, or which requires medical treatment beyond first aid. A report must be filed within five days after the employer obtains knowledge of the injury or illness. In addition to this report, in every case involving a serious injury or illness, or death, the employer is required to make an immediate report to Cal/OSHA by telephone or email. Failure to file this report as required deems an employer guilty of a misdemeanor punishable by up to six months in a county jail and/or a $5,000 fine. (Labor Code §6409.1)

6) Establishes the Workplace Violence Prevention in Health Care standard, as part of its injury and illness prevention plan, requiring specified health care employers to maintain an effective workplace violence prevention plan, maintain a violent incident log, and provide effective training to employees to protect health care workers and other facility personnel from aggressive and violent behavior. (Labor Code §6401.8)

7) Defines "workplace violence" to include, but is not limited to, both of the following:

   a. The use of physical force against a hospital employee by a patient or a person accompanying a patient that results in, or has a high likelihood of resulting in, injury, psychological trauma, or stress, regardless of whether the employee sustains an injury.
   b. An incident involving the use of a firearm or other dangerous weapon, regardless of whether the employee sustains an injury.
   (Labor Code §6401.8)

8) Requires Cal/OSHA to post to its website a report containing information regarding violent incidents at hospitals, that includes, but is not limited to, the total number of reports, and which specific hospitals filed reports, pursuant to (6) above, the outcome of any related inspection or investigation, the citations levied against a hospital based on a violent incident, and recommendations of the division on the prevention of violent incidents at hospitals. (Labor Code § 6401.8(c))

9) Requires hospitals to conduct a security and safety assessment (annually reviewed and updated) and, using the assessment, develop a security plan with measures to protect personnel, patients, and visitors from aggressive or violent behavior. The plan must include specified security considerations. The plan may include security considerations relating to efforts to cooperate with local law enforcement regarding violent acts in the facility and requires the hospital to consult with affected employees, including the recognized collective bargaining agent or agents, if any, and members of the medical staff. (Health and Safety Code §1257.7)

This bill:

1) Requires the Occupational Safety and Health Standards Board (Standards Board), by March 1, 2025, to amend the workplace violence prevention in health care standards to require hospitals to do all of the following:

   a. Maintain metal detectors at the hospital's main public entrance, at the entrance to the hospital's emergency department, and at the hospital's labor and delivery entrance if separately accessible to the public.
      i) Specifies that this requirement does not apply to ambulance entrances.

b. Assign appropriate security personnel who meet training standards to be developed by the department to monitor metal detectors at each public entrance at all times the entrance is open to the public.
   i) Specifies that no one other than a security officer who meets the training requirements developed shall search personal belongings at any hospital entrance or confiscate weapons.

c. Adopt reasonable protocols for storage of any patient, family, or visitor property that might be used as a weapon and reasonable protocols for alternative search and screening for patients, family, or visitors who refuse to undergo metal detector screening.

d. Post, within reasonable proximity of any metal detectors maintained at public entrances, a notice adopted by the Standards Board advising the public that the hospital conducts screenings for weapons upon entry but that no person shall be refused medical care for failure to undergo screening by a metal detector, and that the hospital has protocols in place for dealing with weapons when found during screening.

COMMENTS

1. Background: Workplace Violence Prevention in Health Care Standard

As a result of SB 1299 (Padilla, Chapter 842, Statutes of 2014) the Division of Occupational Safety and Health (Cal/OSHA) proposed and the Standards Board adopted a health-care industry specific workplace violence prevention standard. Employers covered by this standard must establish, implement, and maintain an effective workplace violence prevention plan, maintain a violent incident log, and provide effective training to employees. Certain employers must also report violent incidents to Cal/OSHA. The standard additionally requires annual reviews of the plan. Regarding protections against firearms or other such weapons, the standards includes the following, among other items, under the required identification of corrective measures the employer must address:

> (E) Creating a security plan to prevent the transport of unauthorized firearms and other weapons into the facility in areas where visitors or arriving patients are reasonably anticipated to possess firearms or other weapons that could be used to commit Type 1 or Type 2 violence. This shall include monitoring and controlling designated public entrances *by use of safeguards* ***such*** *as weapon detection devices*, remote surveillance, alarm systems, or a registration process conducted by personnel who are in an appropriately protected work station.

The current standard provides guidance to hospitals on the types of measures that can be taken to address the unauthorized transport of firearms or other weapons into a facility including the possible use of weapon detection devices. This bill would *mandate* the use of metal detectors at specified hospital entrances.

2. Workplace Violence-Related Injuries:

As noted by the Assembly Labor Committee analysis of this bill:

"Several studies and reports over the years have shown the risk of workplace violence to hospital workers is higher than in other industries. In 2018, the US Bureau of Labor Statistics

(BLS) found that 73 percent of all nonfatal workplace violence-related injuries involved healthcare workers.[1] In the report, BLS also found that, in 2018, nonfatal assaults were made on hospital workers in this country a rate of 10.4 assaults per 10,000 workers. This rate is much higher as compared to all industry, where BLS found a rate of 2.1 nonfatal assaults per 10,000 workers.[2]

In more recent years, particularly during the COVID-19 pandemic, workplace violence in healthcare settings has become an even more visible problem, presenting unique challenges for both patients and providers. A 2023 study by Patient Safety Network found that healthcare workers are five times more likely to sustain a workplace violence injury than in other professions.[3]

This problem is echoed around the world, with the World Health Organization finding that healthcare workers worldwide are at risk of workplace violence, with up to 38 percent of workers experiencing physical violence at some point in their careers. Most violence is committed by patients and visitors.[4] This is even more concerning given that the healthcare industry is already experiencing high staff burnout and a critical shortage of workers.

The effectiveness of metal detectors as long as they have appropriate staffing is well documented. One study found that hospitals with metal detectors were five times more likely to confiscate weapons than facilities that don't use metal detectors.[5] This has been found to be effective in both hospitals with psychiatric units[6] and in emergency departments.[7]"

3. Need for this bill?

According to the author:

"Healthcare workers face a disproportionately high rate of workplace violence compared to other industries. One study suggests healthcare workers are five times more likely to sustain a workplace violence injury than other professions. In 2018, 73% of all nonfatal workplace violence-related injuries involved healthcare workers. There is growing attention on workplace violence in healthcare settings as it exacerbates the stress and burnout of frontline staff and contributes to our healthcare workforce shortage. This study looked at the rate of reported incidents before the pandemic and during the first years of the pandemic. The study found no significant drop in the number of incidents despite an overall decline in the patient volume in hospitals. The bill would improve hospital safety by requiring metal detectors and appropriate staffing at public entrances to hospitals."

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[1] U.S. Bureau of Labor Statistics, 2020, Workplace Violence in Healthcare, 2018, https://www.bls.gov/iif/factsheets/workplace-violence-healthcare-2018.htm
[2] Ibid.
[3] Cheryl B. Jones, PhD, RN, FAAN; Zoe Sousane, BS; Sarah E. Mossburg, RN, PhD, Patient Safety Network, 2023, Addressing Workplace Violence and Creating a Safer Workplace, https://psnet.ahrq.gov/perspective/addressing-workplace-violence-and-creating-safer-workplace
[4] World Health Organization, 2022, Preventing Violence Against Health Workers, https://www.who.int/activities/preventing-violence-against-health-workers
[5] Blando JD, Paul C, Szklo-Coxe M. Risk factors for workplace encounters with weapons by hospital employees. Public Health Pract (Oxf). 2021, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9461573/
[6] Ibid.
[7] Malka ST, Chisholm R, Doehring M, Chisholm C. Weapons Retrieved After the Implementation of Emergency Department Metal Detection. J Emerg Med. 2015, https://pubmed.ncbi.nlm.nih.gov/26153030/

4. Proponent Arguments:

According to the sponsors of the measure, SEIU California:

"Healthcare workers are five times more likely to face violence in the workplace than any other profession. Unfortunately, they are often required to search and seize weapons from visitors and patients. One such Incident occurred at Encino Hospital. A patient came in with a knife and became enraged about the wait times. The patient stabbed one nurse and two workers responding to the Incident. The Emergency Department was shut down, which delayed access to care for everyone in that community, including the three healthcare workers who had to be driven to a different hospital for care.

AB 2975, improves safety in hospitals by including a requirement to have metal detectors at public entrances to hospitals, including the emergency room and maternity wards, if separate from the main hospital and have appropriate security staffing. Metal detectors are a proven tool to protect public places from the worst consequences of workplace violence."

They conclude by stating that, "Californians expect hospitals to be safe and available when they need to access care. This measure builds on existing measures to ensure hospitals are safe, including requiring hospitals to have workplace safety plans and prohibitions on individuals carrying guns in hospitals."

5. Opponent Arguments:

The California Hospital Association is opposed to the measure and argues:

"Existing law already contemplates the use of metal detection devices when the presence of weapons is reasonably anticipated. … To that end, many hospitals throughout the state have implemented metal detection screening protocols at locations and corresponding entrances where the individual facility has determined the need for such heightened security measures warrants the screening.

However, AB 2975 would remove hospital discretion and instead direct the Cal/OSHA Standards Board to require metal detection devices at the public entrances of all California hospitals, regardless of whether the risk of harm warrants the security measure. Such a universal requirement could have a detrimental impact on patient care and worker safety. Patients may be deterred from entering a hospital out of fear of, or opposition to, metal detection screening and opt out of care. Similarly, patients and visitors may display violent behavior due to a generalized frustration with the screening process, or an unwillingness to consent to screening and/or confiscation of a personal item. These unintended consequences are more likely to be avoided if factors are in place that determine first, if metal detection screening is needed, and second, at what entrance.

Additionally, AB 2975 places the responsibility on the hospital, not law enforcement or trained security personnel, to develop a contraband policy that includes storing confiscated items that could be used as a weapon. Hospitals are trained to save lives, not confiscate, and store objects that may be used as weapons. Placing the onus on hospital personnel to store confiscated personal items places hospital workers in the most vulnerable position – namely between the person and their weapon. Hospitals should have the discretion to determine how

they want to handle the confiscation of weapons – whether that be through local law enforcement or for visitors denying entrance."

Additional opposition from the Association of California Healthcare Districts notes:

"Installing metal detectors in facilities that do not already have them will add significant additional costs for public facilities that are already struggling. However, the most significant concern for public district hospitals is the increased liability created by mandating metal detectors in their facilities. Hospitals are federally required to provide access to care for all patients seeking hospital and emergency care. There are currently no federal or state statutes allowing hospitals to reject individuals seeking care because they have an item that constitutes a weapon. Further, hospitals are not and should not be storage facilities for personal property, especially weapons."

6. Double Referral:

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

7. Amendments in Next Committee:

This bill requires hospitals to implement a new policy on weapons detection, specifically the use of metal detector devices, at specified entrances to a hospital. Although some hospitals may have such policies in place and use metal detector devices currently, the bill would mandate such use by all covered hospitals. This policy change would direct a shift in practice on what the public expects when going to a hospital.

In 1986, Congress enacted the Emergency Medical Treatment & Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. EMTALA requires hospitals with emergency departments to provide a medical screening examination to any individual who comes to the emergency department and requests such an examination, and prohibits hospitals from refusing to examine or treat individuals with an emergency medical condition.

Given EMTALA and the public expectation of care when going to a hospital, any new policy implementing procedures for weapons detection needs to be carefully crafted to ensure compliance with federal law and educate the public on the shift in practice. To this end, the author may wish to amend the measure in order to:

- Require the hospitals to implement a weapons detection screening policy that includes the use of weapons screening devices, not limited to the use of metal detectors, as defined by the Standards Board.
- Ensure only properly trained personnel implement the weapons detection-screening policy, monitor, and operate any weapons screening devices.
- Ensure the training includes training on proper operation of such devices and includes training on incident de-escalation and implicit bias.
- Ensure that healthcare providers are not required to monitor or operate any weapons detection devices and continue to perform the healthcare duties for which they are licensed and trained.

- Ensure that the public posting requirement is clear that the hospital conducts screenings for weapons upon entry but that no person shall be refused medical care.

The author may also wish to consider the need for a public education campaign informing patients and visitors that hospitals will now be monitored for weapons upon entry.

Additionally, this bill would raise new questions regarding the responsibilities of the hospital and its staff if a weapon is confiscated. What happens to a weapon once it is confiscated? What protocols should be in place if someone resists confiscation? How would this policy's implementation differ between patients and visitors who are not seeking care, and thus aren't protected under EMTALA?

Due to the double referral of this bill to Senate Health Committee after our hearing and the approaching policy deadline to hear bills, Committee recommends the author amend the bill in the next Committee to address the above-described concerns.

8. Prior/Related Legislation:

SB 2 (Portantino, Chapter 249, Statutes of 2023) provided that a person granted a license to carry a pistol, revolver, or other firearm capable of being concealed upon the person shall not carry a firearm on or into any of several specified "sensitive places," including certain types of healthcare facilities.

SB 553 (Cortese, Chapter 289, Statutes of 2023) requires employers to establish, implement and maintain an effective workplace violence prevention plan (WVPP) that includes, among other elements, requirements to maintain incident logs, provide specified trainings, and conduct periodic reviews of the plan. This bill also authorizes a collective bargaining representative of an employee who has suffered unlawful violence from any individual, to seek a temporary restraining order (TRO) and an order after hearing on behalf of the employee(s) at the workplace.

SB 1299 (Padilla, Chapter 842, Statutes of 2014) required the Occupational Safety and Health Standards Board, no later than July 1, 2016, to adopt standards that require specified hospitals to adopt a workplace violence prevention plan as part of their injury and illness prevention plan to protect health care workers and other facility personnel from aggressive and violent behavior.

AB 1083 (Perez, Chapter 506, Statutes of 2009) required hospital security and safety assessments to be conducted not less than annually, and required hospital security plans to be updated annually. AB 1083 also required hospitals to consult with affected employees and members of the medical staff in developing their security plans, and for their plans to include efforts to cooperate with local law enforcement regarding violent acts at the facility.

AB 508 (Speier, Chapter 936, Statutes of 1993) required hospitals to conduct security assessments, develop security plans, and have sufficient personnel to provide security. AB 508 also required hospitals to report any act of assault against on-duty personnel to a local law enforcement agency within a specified time frame.

SUPPORT

SEIU California (Sponsor)
California Labor Federation

OPPOSITION

Association of California Healthcare Districts
California Hospital Association

-- END --