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

Bill No: AB 310 **Hearing Date:** July 3, 2024
Author: Arambula
Version: June 17, 2024
Urgency: No **Fiscal:** Yes
Consultant: Glenn Miles

SUBJECT: State Department of State Hospitals: civil service psychiatrists

KEY ISSUE

This bill would require the State Department of State Hospitals to report to legislative budget committees how much it expends for additional psychiatrist caseload needs, as specified.

ANALYSIS

Existing law:

- 1) Establishes the State Department of State Hospitals (DSH) and grants jurisdiction to DSH over the following facilities:
 - a. Atascadero State Hospital.
 - b. Coalinga State Hospital.
 - c. Metropolitan State Hospital.
 - d. Napa State Hospital.
 - e. Patton State Hospital.
 - f. The Admission, Evaluation, and Stabilization (AES) Center in the County of Kern, and other AES Centers as defined by regulation.
 - g. A county jail treatment facility under contract with the State Department of State Hospitals to provide competency restoration services.
 - h. A facility under contract with the State Department of State Hospitals pursuant to Section 4361.6, excluding community-based restoration of competency services that are operated by the county.
 - i. Any other State Department of State Hospitals facility subject to available funding by the Legislature. (Welfare and Institutions Code (WIC) § 4100)
- 2) Requires DSH to provide legislative fiscal committees a fiscal estimate package for the current year and budget year for the state hospitals by January 10 and at the time of the Governor's May Revision that addresses patient caseload by commitment category, non-level-of-care and level-of-care staffing requirements, and operating expenses and equipment. (WIC § 4100.2 (a) - (b))
- 3) Requires the DSH fiscal estimate package to include the following:
 - a. A statement articulating the assumptions and methodologies used for calculating the patient caseload factors, all staffing costs, and operating expenses and equipment.
 - b. Where applicable, a narrative and basis for its proposed and estimated costs for individual policy.

- c. Fiscal bridge charts shall be included to provide the basis for the year-to-year changes.
 - d. Any additional information as deemed appropriate to provide a comprehensive fiscal perspective to the Legislature for analysis and deliberations for purposes of appropriation. (WIC § 4100.2 (c))
- 4) Establishes the State Civil Service Act to provide a comprehensive personnel system for the state in which appointments are based upon merit and fitness ascertained through practical and competitive examination (Government Code § 18500).
 - 5) Requires that all persons who provide services to the state under conditions that the State Personnel Board (SPB) determines constitute an employment relationship shall hold a civil service appointment unless otherwise exempt by the constitution (GC § 19130).
 - 6) Creates the California Department of Human Resources (CalHR) with powers, duties, and authorities necessary to operate the state civil system pursuant to Article VII of the California Constitution, the California Government Code, the merit principle, and applicable rules duly adopted by SPB (GC § 18502).
 - 7) Creates, under the Dills Act, a system of collective bargaining between the state and its employees' exclusive representatives to negotiate for terms and conditions of employment (GC § 3512 et seq.).
 - 8) Establishes standards for the state's use of personal service contracts to achieve savings if the contract meets certain conditions, including that the contract does not displace civil service employees. Also, the contracted services must not be available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system (GC § 19130).

This bill:

- 1) Requires DSH to submit a report to the Senate and Assembly Budget Committees on or before January 31, 2026, providing amounts expended during the 2024–25 fiscal year for additional Bargaining Unit 16 psychiatrist caseload needs.
- 2) Requires the report to provide the following:
 - a. The amount budgeted for civil service psychiatrists.
 - b. The amount expended for civil service psychiatrists.
 - c. The amount expended on civil service psychiatrists working additional caseload.
 - d. The number of civil service psychiatrists who participated in working additional caseload.
 - e. The amount expended on contract psychiatrists.
- 3) Makes the bill's provisions inoperative on June 30, 2026, and, repeals the provisions as of January 1, 2027.

COMMENTS

1. Need for this bill?

According to the author:

“This bill seeks to address the impact of using contract psychiatrists in lieu of civil service psychiatrists in the Department of State Hospitals. To do this, AB 310 requires the Department of State Hospitals, by January 31, 2026, to submit a report to the Senate and Assembly Budget Committee on the amount budgeted and spent for civil service psychiatrists. The data capture until 2030 will be used to determine the cost-saving efficacy of utilizing civil service psychiatrist versus contracted psychiatrists.”

2. Proponent Arguments:

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

“AB 310 provides valuable information to the legislature on the rise in long-term vacancies within state hospitals and prisons, particularly among positions relating to professionally licensed care. A vacancy report as of January of 2023 revealed vacancy rates of State Psychologists up to 22% at Patton State Hospital and 15.2% of State Physicians and Surgeons at Coalinga State Hospital. To fill these gaps temporarily, California annually expends about \$100 million on contract physicians who work temporarily treating patients in state facilities. These temporary private physicians are paid two to three times the salary of state employees in the same position. In addition to increased costs to taxpayers, these private contracting positions have less accountability and fewer employee protections, and the unstable workforce decreases continuity of healthcare for the facility populations.”

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 775 (Arambula, 2023) would amend existing law authorizing state agencies to use personal services contracts under specified circumstances to require the Department of State Hospitals (DSH) to establish a physician registry for Patton State Hospital under a three-year pilot program. *The Senate Appropriations Committee is currently holding this bill in committee on its suspense file.*

SB 422 (Pan, 2022) would have required DSH to establish, by January 1, 2024, a physician registry as a three-year pilot program for the Patton State Hospital to be maintained by DSH and composed of members of State Bargaining Unit 16 (BU 16), who may elect to join the registry. *The Governor vetoed the bill.*

SUPPORT

American Federation of State, County and Municipal Employees (Co-sponsor)
Union of American Physicians and Dentists (Co-sponsor)
California Association of Psychiatric Technicians

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 1137	Hearing Date:	July 3, 2024
Author:	Jones-Sawyer		
Version:	June 11, 2024		
Urgency:	No	Fiscal:	Yes
Consultant:	Glenn Miles		

SUBJECT: Excluded employees

KEY ISSUE

This bill would require a state agency to notify an excluded employee, in writing, of a denial of a merit salary adjustment 10 working days before the proposed effective date of the adjustment. The bill would also require the state to pay an excluded employee, mandated to work on specified holidays, overtime pay and holiday credit, as specified.

ANALYSIS

Existing law:

- 1) For purposes of state personnel administration, defines “employee” or “state employee,” except where otherwise indicated, to mean employees subject to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1), supervisory employees as defined in subdivision (g) of Section 3513, managerial employees as defined in subdivision (e) of Section 3513, confidential employees as defined in subdivision (f) of Section 3513, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the Public Employment Relations Board, conciliators employed by the California State Mediation and Conciliation Service, employees of the Department of Human Resources, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than audit staff, intermittent athletic inspectors who are employees of the State Athletic Commission, professional employees in the Personnel/Payroll Services Division of the Controller’s office, and all employees of the executive branch of government who are not elected to office. (Government Code (GC) § 19815 (d))
- 2) Provides that after completion of the first year in a position, each employee shall receive a merit salary adjustment equivalent to one of the intermediate steps during each year upon meeting the standards of efficiency as prescribed by the California Department of Human Resources (CalHR). However, if this provision is in conflict with a memorandum of understanding (MOU), the MOU shall control. (GC § 19832)
- 3) Establishes the Ralph C. Dills Act (Dills Act) which sets forth a framework that governs labor relations between the State of California and state employees, except for specified managerial, confidential and supervisory employees. (GC § 3512-3524)
- 4) Defines “state employee” under the Dills Act to mean any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction but excludes managerial employees, confidential

employees, supervisory employees, employees of the Department of Human Resources, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the board, conciliators employed by the California State Mediation and Conciliation Service, employees of the Office of the State Chief Information Officer except as otherwise provided in Section 11546.5, and intermittent athletic inspectors who are employees of the State Athletic Commission. (GC § 3513 (c))

- 5) Establishes the Bill of Rights for State Excluded Employees to inform state supervisory, managerial, confidential, and employees otherwise excepted from coverage under the Dills Act, of their rights and terms and conditions of employment, as specified, and serves to promote harmonious personnel relations among those representing state management in the conduct of state affairs. (GC § 3526)
- 6) Provides the following definitions for purposes of the Bill of Rights for State Excluded Employees:
 - a. Defines "employee" as a civil service employee of the State of California, including state agencies, boards, and commissions designated by law to employ civil service employees, except the University of California, Hastings College of the Law, and the California State University.
 - b. Excepts from the definition of "state employee," managerial employees, confidential employees, supervisory employees, and other employees, as defined.
 - c. Defines "excluded employee organization" as one that includes excluded employees of the state and that has as one of its primary purposes representing its members in employer-employee relations, including supervisory employee organizations.
 - d. Defines "state employer" or "employer," for purposes of meeting and conferring on matters relating to supervisory employer-employee relations, as the Governor or his or her designated representatives. (GC § 3527)
- 7) Authorizes supervisory employees to form, join, and participate in the activities of supervisory employee organizations of their own choosing for purposes of representation on all matters of supervisory employer-employee relations, as specified, or to refrain from so doing. They also have the right to represent themselves individually in their employment relations with the public employer. (GC § 3531)
- 8) Provides excluded employee organizations with the right to represent their excluded members in their employment relations, including grievances, with the State of California. (GC § 3530)
- 9) Specifies that the scope of representation for supervisory employees includes all matters relating to employment conditions and supervisory employer-employee relations including wages, hours, and other terms and conditions of employment. (GC § 3532)
- 10) Authorizes CalHR to adopt reasonable rules and regulations for the administration of employer-employee relations, including excluded employer-employee relations. (GC § 3535)

- 11) Prohibits, as specified, an employer from employing an employee for a workweek longer than forty hours unless such employee receives compensation at a rate not less than one and one-half times the employee's regular rate. (Fair Labor Standards Act (FLSA), 29 USC 207 (a))
- 12) Exempts from FLSA's maximum hour (i.e., overtime) requirements any employee employed in a bona fide executive, administrative, or professional capacity, as specified. (29 USC 213 (a)(1))
- 13) Authorizes covered employees of a public agency, i.e., State, political subdivision of a State, or an interstate governmental agency, to receive in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour, as specified. (FLSA, 29 USC 203 (o))
- 14) Provides that all state employees shall be entitled to the following holidays: January 1, the third Monday in January, the third Monday in February, March 31, the last Monday in May, July 4, the first Monday in September, November 11, Thanksgiving Day, the day after Thanksgiving, December 25, the day chosen by an employee pursuant to Section 19854, and every day appointed by the Governor of this state for a public fast, thanksgiving, or holiday. (GC § 19853 (a))
- 15) Provides that any state employee (but not excluded employees) mandated to work on any of the specified holidays, and who does work on any of these holidays, shall be entitled to receive straight-time pay and eight hours of holiday credit. (GC § 19853 (c))

This bill:

1. Requires a state agency employer to notify an excluded employee in writing of a merit salary adjustment denial 10 working days before the proposed effective date of the adjustment.
2. Provides that an excluded employee required to work on January 1, the last Monday in May, July 4, the first Monday in September, Thanksgiving Day, or December 25 shall receive the following:
 - a. If the employee is eligible for overtime payments under FLSA, one-half times their salary rate for all hours worked on the holiday and up to eight hours of holiday credit. This pay shall count toward any premium overtime compensation earned during the same workweek. Part-time employees shall receive prorated amounts subject to department rules.
 - b. If the employee is ineligible for overtime payments under FLSA, up to eight hours of holiday credit and four hours of informal time off. Part-time employees shall receive prorated amounts of holiday credit and informal time off, subject to department rules.

COMMENTS**1. Background:**

The state's employee labor relations statute, the Dills Act, does not cover excluded employees (managers, supervisors, confidential, etc.) and thus, bargaining agreements with represented employees do not cover excluded employees. Instead, CalHR determines,

pursuant to its statutory authority, the pay and benefits provided to excluded employees. This bill would ensure that excluded employees get appropriate notice of merit pay denials and appropriate holiday credit when mandated to work specified holidays.

2. Committee Amendments:

This bill inadvertently amends existing law for *represented* state employees that potentially reduces a benefit current statute already requires. Current law provides represented employees straight-time pay and eight hours (not *up to* eight) hours of holiday credit when mandated to work specified holidays. The committee recommends the following amendments to return the provision to current law:

Government Code § 19853...

(c) (1) Any state employee who may be required to work on any of the holidays included in this section, and who does work on any of these holidays, shall be entitled to receive straight-time pay and ~~*up to*~~ eight hours of holiday credit.

3. Need for this bill?

According to the author:

“While rank-and-file employees receive notification that they were denied a Merit Salary Adjustment (MSA) 10 working days prior to the effective date of the MSA, there is no statutory or regulatory timeline for an excluded employee to be notified that they were denied an MSA. This has led to uncertainty for excluded employees and their departments resulting in time-consuming disputes and grievances.”

“When rank-and-file employees work on premium holidays they receive one and a half times pay, but when excluded employees work on premium holidays they receive the same pay as usual. This is unfair and inequitable.”

4. Proponent Arguments:

According to the Association of California State Supervisors (ACSS):

“AB 1137 will ensure fairness and equity in state employment by providing state supervisors and managers with two important employment benefits that are currently provided to rank and file employees through the collective bargaining process.”

“Specifically, AB 1137 would provide state supervisors and managers (also known as excluded employees) with: (1) official notification of the denial of a Merit Salary Adjustment (MSA) and (2) additional compensation for working on premium holidays. These benefits are currently provided to rank and file state employees as a result of collective bargaining – but not to state supervisors and managers. Providing these same benefits to supervisors and managers will ensure that there are incentives in place for individuals to promote and hire into the job classifications who take on the responsibility and challenges of managing and directing state programs.”

5. Opponent Arguments:

None received.

6. Prior Legislation:

SB 716 (Alvarado-Gil, 2023) would have given state excluded employees, such as managers and supervisors, the option of requesting binding arbitration as a method for resolving disputes with their state employers after first exhausting the current grievance resolution procedures. *The Governor vetoed the bill.*

AB 1714 (Cooper, 2022) was substantially identical to SB 716 (Alvarado-Gil, 2023). *The Governor vetoed the bill.*

SB 1406 (Durazo, 2022) was virtually identical to SB 716 (Alvarado-Gil, 2023) and AB 1714 (Cooper, 2022), except that SB 1406 did not have a sunset date in its provisions. *The Governor vetoed SB 1406.*

SUPPORT

Association of California State Supervisors (Sponsor)
California Association of Professional Scientists
California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment
Professional Engineers in California Government

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 2134 **Hearing Date:** July 3, 2024
Author: Muratsuchi
Version: May 16, 2024
Urgency: No **Fiscal:** Yes
Consultant: Glenn Miles

SUBJECT: School employees: transfer of leave of absence for illness or injury

KEY ISSUE

This bill makes changes to existing law relating to the transfer of accumulated leave of absence for illness or injury (“sick leave”) by certificated and classified employees between their local public education employers.

ANALYSIS

Existing law:

- 1) Requires that all California State Teachers’ Retirement System (CalSTRS) members be granted service credit for each day of unused sick leave to which the member was entitled on the member’s final day of employment. This section also requires employers to certify the amount of unused sick leave with CalSTRS and requires CalSTRS to utilize specific factors to convert unused sick leave to service credit. (Education Code (ED) § 22717)
- 2) Requires that California Public Employees’ Retirement System (CalPERS) school members, school safety members, and local members employed by a contracting agency that is a school district, county office of education, or community college district, be granted sick leave credit, as specified, each unused day of sick leave certified to the board by the employer. (Government Code (GC) § 20963.5)
- 3) Entitles every certificated employee employed five days a week by a school district being to at least 10 days leave of absence for illness or injury (“sick leave”) with full pay for a school year of service. (ED § 44978)
- 4) Requires that where a certificated school employee transfers from one school employer to another school or community college employer or to a professional education position in the California Department of Education (CDE), the first employer shall transfer and the second employer shall accept the employee’s accumulated unused sick leave provided the following conditions are met:
 - a. The employee worked at least one year at the first school employer.
 - b. The employee accepted a position requiring certification qualifications at the second school employer or a professional education position at CDE any time after the beginning of the employee’s second year at the first employer or within the school year following the employee’s termination at the first employer.
 - c. The employee informed the employers of the employee’s acceptance of the position at the second employer.

- d. For transfers to CDE, the amount transferred shall not exceed the amount of accumulated sick leave that the person would have earned as an employee in the system to which the employee is transferring (Education Code (ED) §§ 44979, 44980, and 44982)
- 5) Requires the State Board of Education to adopt rules and regulations prescribing the manner in which the first employer shall certify to the second employer the total amount of sick leave to be transferred. (ED § 44979)
- 6) Prohibits a school employer governing board from adopting any policy or rule, written or unwritten, which requires any certificated employee transferring to its district to waive any part or all of the leave of absence which he or she may be entitled to have transferred in accordance with this section. (ED § 44979)
- 7) Requires that where a classified employee, as specified, whose employment is terminated other than for cause and who subsequently transfers to another school district or county superintendent of schools within one year of the termination, the first employer shall transfer and the second employer shall accept the employee's total amount of earned sick leave in the same manner as provided for certificated employees. (ED § 45202)
- 8) Permits the transfer of sick leave in any case where a classified employee was terminated for cause, if agreed to by the governing board of the school district or the county superintendent of schools newly employing the employee. (ED § 45202)
- 9) Permits all or any part of the classified employee's previous service not separated by a break in service greater than one year as of the last day of paid service, to be construed to have been served in the school district or county superintendent of schools of employment for seniority purposes, if agreed to by the employing entity, except when the board orders a position or personnel reduction. (ED § 45202)
- 10) Prohibits any governing board of a school district from adopting any policy or rule, written or unwritten, which requires all classified employees, or any individual classification, or group of classifications of employees transferring to its district to waive any part or all benefits which they may be entitled, as specified. (ED § 45202)

This bill:

- 1) Clarifies that a certificated employee transferring from a *county office of education, or state special school* is also entitled to sick leave transfers from their previous employer to their subsequent employer, as specified.
- 2) Clarifies that sick leave transfers also apply for certificated employees transferring to a *county office of education or state special school*.
- 3) Requires school employers, as specified, to make sick leave transfers in an amount based on total number of days (i.e., not as total hours).
- 4) Requires subsequent employer entities, as specified, to honor a transfer request *made at any time during the certificated employee's employment* with that subsequent employer entity.

- 5) Requires the former employing entity to provide all of the following information in responding to a request for the transfer of accumulated leave of absence for illness or injury from the subsequent employing entity:
 - a. The name and identification number for the employee requesting the transfer.
 - b. The contact information for that former employing entity.
 - c. The time period of the service, including start date and end date, for the employee requesting the transfer.
 - d. The number of days of leave of absence, including any fraction thereof, for illness or injury to be transferred based on the former employing entity's workday.
 - e. The contact information for the subsequent employing entity.
 - f. The signature of the person completing and verifying the accuracy of the information provided pursuant to this subdivision, including that person's name, title, and contact information.

- 6) Provides that if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

COMMENTS

1. Need for this bill?

According to the author, this bill will strengthen existing statute to protect earned sick leave after a job change within the education system by explicitly stating that there is no time frame during which unused sick leave must be transferred between employers, requiring unused sick leave to be transferred between employers in days and not hours, and requiring county offices of education and state special schools to accept transfers of unused sick leave from prior employers.

2. Proponent Arguments:

According to the California School Employees Association:

“The current system for transferring earned sick leave between school districts is inconsistent. Existing law permits such transfers, but unclear timeframes and a lack of standardization create hurdles for school staff. AB 2134 would simplify the transfer process by removing any ambiguity regarding timeframes and would standardize measurement by mandating sick leave transfers to be calculated in days, not hours. This bill would create a more efficient and equitable system that fosters stability and incentivizes staff to continue their careers within the school system.”

According to the California Teachers Association:

“In the public education sector unused sick time is rolled over year-to-year and may be converted to service credit for an educator's pension upon retirement. Allowing this conversion has a number of policy benefits, and provides an incentive for workers to maintain good attendance and avoid taking unnecessary sick leave; this policy encourages employees to prioritize their health and well-being while minimizing absenteeism.

Converting unused sick leave into retirement credit can provide workers with additional financial security during retirement, and the accumulated leave can supplement retirement savings and provide a cushion for unexpected expenses or healthcare costs in retirement. Allowing workers to convert unused sick leave into retirement credit can be a win-win situation for both employees and employers, promoting health and attendance while also enhancing retirement savings and employee satisfaction.

If a school employee changes jobs to a different education employer within the state, the Education Code currently allows them to transfer their accrued sick time to their new job. CTA believes that whenever an employee is required to serve on a school day, there should be no loss of sick leave, salary, or benefits.”

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 706 (Low, Chapter 100, Statutes of 2019) removed circumstances for which an academic employee of a community college district of at least one school year is entitled to transfer accrued leave of absence for illness or injury to another district.

AB 2295 (Ridley-Thomas, Chapter 814, Statutes of 2014) extended the length of time, from one year to three years, for which CCC faculty are entitled to transfer a leave of absence for illness or injury upon their acceptance of election of employment to another school district or CCC district.

SUPPORT

American Federation of State, County and Municipal Employees
California Federation of Teachers
California Labor Federation
California Retired Teachers Association
California School Employees Association
California Teachers Association
Delta Kappa Gamma International - Chi State
Perk Advocacy

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 2494 **Hearing Date:** July 3, 2024
Author: Calderon
Version: May 20, 2024
Urgency: No **Fiscal:** Yes
Consultant: Emma Bruce

SUBJECT: Employer notification: continuation coverage

KEY ISSUE

This bill requires all employers to provide employees, upon termination or upon reduction in hours, as specified, a notice via hard copy or email stating that the employee may be eligible for coverage under the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and that the employee will receive an election notice from the plan administrator or group health plan.

ANALYSIS

Existing federal law:

- 1) Under COBRA, requires the plan sponsor, as specified, of each group health plan to provide that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event, is entitled, under the plan, to elect, within the election period, continuation coverage under the plan. (29 U.S. §1161(a))
- 2) Provides that the requirement in 1), above, does not apply to any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding year. (29 U.S. §1161(b))
- 3) Provides that the term “qualifying event” means any of the following events which, but for the continuation of coverage required above, would result in the loss of coverage of a qualified beneficiary:
 - a. The death of the covered employee.
 - b. The termination or reduction of hours of the covered employee’s employment, as specified.
 - c. The divorce or legal separation of the covered employee from the employee’s spouse.
 - d. The covered employee becoming entitled to benefits under XVIII of the Social Security Act.
 - e. A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan. (29 U.S. §1163)
- 4) Requires the group health plan to provide, at the time of commencement of coverage under the plan, written notice to each covered employee of the rights provided under COBRA. (29 U.S. §1166(a)(1))

- 5) Requires employers to notify the administrator of a plan of a qualifying event, as specified, within 30 days of the event. (29 U.S. §1166(b))
- 6) Requires the administrator to notify a qualified beneficiary within 14 days of the date on which the administrator is notified of the qualifying event, as specified. (29 U.S. §1166(c))
- 7) Provides that the election period:
 - a. Begins not later than the date on which coverage terminates under the plan by reason of a qualifying event;
 - b. Is of at least 60 days' duration; and
 - c. Ends not earlier than 60 days after the later of either the date described in (a.), or the date a qualified beneficiary receives notice by the administrator. (29 U.S. §1165(a))

Existing state law:

- 1) Requires all employers to provide to employees, upon termination, notification of all continuation, disability extension, and conversion coverage options under any employer-sponsored coverage for which the employee may remain eligible after employment with that employer terminates. (Labor Code § 2808(b))
- 2) Requires an employee who is discharged to be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code §201)

This bill:

- 1) Requires all employers, whether public or private, to provide to employees, upon termination or upon a reduction in hours, as specified, a notice stating that the employee may be eligible for coverage under COBRA and that the employee will receive an election notice from the plan administrator or group health plan.
- 2) Requires the notification in 1), above, to be provided to an employee no later than the date on which the employee's wages are due and payable.
- 3) Requires that, if the notification is required because of a reduction in hours, the notification in 1), above, must be provided within one business day of the employee receiving notice that their hours are being reduced.
- 4) Provides that an employer may provide the notification required by 1), above, via hard copy or email to an account of the employee's choosing, as specified, if an employee affirmatively, and in writing or by electronic acknowledgment, elects to receive electronic statements or materials.
- 5) Requires, in the case of electronic acknowledgement, that the acknowledgement form do all of the following:
 - a. Provide an explanation that the employee is agreeing to electronic delivery of the notification required by this section.
 - b. Provide information to the employee about how the employee may revoke consent to electronic receipt.

- c. Create a record of the employee's agreement to electronic delivery of the notification required by this section.
- 6) Provides that an employee may revoke the agreement at any time in writing, by email, or by any other form of electronic acknowledgment.
- 7) Prohibits an employer from discharging an employee or in any manner discriminating, retaliating, or taking any adverse action against an employee who does not affirmatively, in writing or by electronic acknowledgment, elect to receive electronic statements or materials.

COMMENTS

1. Background:

According to the Bureau of Labor Statistics, more than half of American get their health plan coverage through their employers. This presents a significant problem when people separate from their jobs, voluntarily or involuntarily, and lose coverage. Before the Affordable Care Act, the only option available to maintain coverage was COBRA.

The Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances. However, qualified individuals may be required to pay the entire premium for coverage up to 102 percent of the cost to the plan¹. COBRA sets rules for how and when plan sponsors must offer and provide continuation coverage, how employees and their families may elect continuation coverage, and what circumstances justify terminating continuation coverage.

COBRA generally applies to all private sector group health plans maintained by employers that had at least 20 employees on more than 50 percent of its typical business days in the previous calendar year.

Three notices are required under COBRA:

- 1) **Initial General COBRA Notice** - Group health plans must give each employee and spouse a general notice describing COBRA rights within the first 90 days of coverage.
- 2) **COBRA Qualifying Event Notice** - Informs the qualified beneficiaries of their loss of group coverage and their right to enroll in continuation coverage using the attached COBRA election form.
- 3) **Unavailability of Coverage Notice** - Informs the covered individual(s) of their ineligibility to enroll in continuation coverage due to failure of the employee to inform their HR office of a COBRA qualifying event in a timely manner.

Timeline

Employers are required to notify the administrator of a group health plan within 30 days after a qualifying event occurs. After receiving a notice of a qualifying event, the plan must

¹ "Continuation of Health Coverage," U.S. Department of Labor, [Continuation of Health Coverage \(COBRA\) | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/eis/whd/COBRA/)

provide the qualified beneficiaries with an election notice within 14 days. Employers that are also plan administrators have 44 days to provide the notice to the qualified beneficiaries. The election notice describes their rights to continuation coverage and how to make an election. The federal Department of Labor and CalHR have sample notices available for use.

Plans must give qualified beneficiaries at least 60 days to choose whether to elect COBRA coverage, beginning from the date the election notice is provided, or the date the qualified beneficiary would otherwise lose coverage under the group health plan due to the qualifying event, whichever is later.

Comments

This bill would require employers to provide a notice of coverage under COBRA to an employee no later than the date on which the employee's wages are due and payable, or if the notice is for a reduction in hours, within one business day of an employee receiving notice of the reduction. This notice would simply state that the employee may be eligible under COBRA and that they will receive a qualifying event notice from the group health plan's administrator.

The author states the following:

“During the time between the qualifying event occurring and the notice from the plan arriving, the covered employee is without continued coverage. Should the employee not receive their notice in time to elect coverage, they may miss the deadline to opt-in for coverage. This is especially detrimental for individuals who may not be aware of coverage disruption, are already experiencing an employment termination or a reduction of hours, and need to access health care services.”

It is unclear what problem the author is trying to solve. No data has been provided to demonstrate the magnitude of the purported issue. Additionally, federal law and state policy already require employees to be provided with written notification of their COBRA rights within 90 days of their enrollment into benefit programs. Therefore, employees should be aware of their eligibility for COBRA well before termination or reduction in hours.

2. Amendments:

The author's office plans to amend the bill in committee to extend the notification timeline for employees that are eligible for COBRA due to a reduction in hours.

2808.05...

(a)(2) The notification required by paragraph (1) shall be provided to an employee no later than the date on which the employee's wages are due and payable pursuant to Sections 201 and 202. If notification is required because of a reduction in hours, the notification shall be provided ~~within one business day of the employee receiving notice that their hours are being reduced.~~ *to the employee within 72 hours or by the employee's next shift, whichever is sooner.*

3. Need for this bill?

According to the author:

“Current law requires most group health plans to offer continuation coverage to covered employees, former employees, spouses, former spouses, and dependent children when group health coverage would otherwise be lost due to certain qualifying events. Group health plans must provide covered employees and their families with certain notices explaining their COBRA rights.

An employer must notify the health plan if the qualifying event is the covered employee’s termination, reduction of employment hours, death, entitlement to Medicare, and/or employer bankruptcy. The employee must notify the plan if the qualifying event is divorce, legal separation, or a child’s loss of dependent status under the plan. The employer must notify the plan within 30 days of the event.

When the plan receives the notice of a qualifying event, it must give the beneficiaries an election notice, which describes their rights to continuation coverage and how to make an election. This notice must be provided within 14 days after the plan receives notice of the qualifying event.

During the time between the qualifying event occurring and the notice from the plan arriving, the covered employee is without continued coverage. Should the employee not receive their notice in time to elect coverage, they may miss the deadline to opt-in for coverage. This is especially detrimental for individuals who may not be aware of coverage disruption, are already experiencing an employment termination or a reduction of hours, and need to access health care services.

AB 2494 remedies this problem by requiring all employers to provide notices of COBRA eligibility to the affected employee following termination or the reduction of hours. This will ensure that covered employees are not left without health coverage when they need it.”

4. Proponent Arguments:

None received.

5. Opponent Arguments:

None received.

6. Prior Legislation:

AB 842 (Swanson, 2009) would have required the Labor and Workforce Development Agency to maintain a guide of benefits and services that may be available to employees who are the subject of a layoff, including unemployment assistance and COBRA information, and to transmit the guide to an employer who gives notice of an impending layoff, and to post the guide on the agency’s Internet Web site. *This bill died in Assembly Appropriations.*

SUPPORT

None received.

OPPOSITION

None received.

-- END --

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

Bill No:	AB 2872	Hearing Date:	July 3, 2024
Author:	Calderon		
Version:	April 10, 2024		
Urgency:	No	Fiscal:	Yes
Consultant:	Glenn Miles		

SUBJECT: Department of Insurance: sworn members: compensation.

KEY ISSUE

This bill requires the state to pay sworn members of the Department of Insurance (CDI) who are rank-and-file members of State Bargaining Unit (BU) 7 the same compensation paid to corresponding rank-and-file sworn peace officers of the Department of Justice (DOJ).

ANALYSIS

Existing law:

- 1) Requires the California Department of Human Resources (CalHR) to establish and adjust salary ranges for each class of position in the state civil service. (Government Code (GC) § 19826 (a))
- 2) Requires CalHR, at least six months before the end of the term of an existing memorandum of understanding (MOU) or immediately upon the reopening of negotiations under an existing MOU, to submit to the parties meeting and conferring, and to the Legislature, a report containing the CalHR's findings relating to the salaries of employees in comparable occupations in private industry and other governmental agencies. (GC § 19826 (c))
- 3) Requires the state, to recruit and retain the highest qualified employees in specified classifications, to consider the total estimated average compensation paid to employees in comparable occupations. (GC § 19826 (c))
- 4) Establishes the Dills Act, which provides collective bargaining rights to state employees and regulates labor relations between the state and its represented employees. (GC § 3512 et seq.)

This bill:

Requires the state to pay CDI sworn members who are rank-and-file members of State Bargaining Unit 7, the same compensation paid to the corresponding DOJ rank-and-file sworn peace officer employees in order to recruit and retain the highest qualified employees,

COMMENTS

1. Background

This bill seeks to overcome a systemic disparity in the compensation scales of CDI peace officer investigators and their special investigator colleagues at DOJ by linking the two

salary scales to provide pay parity for CDI Bargaining Unit (BU) 7 peace officers. For historical reasons, CalHR did not incorporate DOJ's special agent classification into a consolidation of investigator classifications that affected other state agencies, including CDI. This separate treatment allowed a compensation disparity to grow between the two departments. The disparity means that CDI has trouble retaining peace officers, who after receiving training and experience at CDI leave for better compensation at DOJ.

This seems, at first blush, an issue to take up in collective bargaining. The state has several instances where it must address pay inequities and readjust salary scales according to competing employers and does so through negotiations with its employees. The problem with this approach, the sponsor notes, is that even when CDI BU 7 employees obtain pay augmentations to narrow the gap between their positions and those of DOJ, DOJ quickly manages to obtain pay increases that once again grow the gap and result in further retention and recruitment problems at CDI. CDI argues that only by permanently linking the two to the same pay scales can they stabilize CDI's turnover rates.

CDI also notes that their agents are engaged in significant law enforcement actions that seek to protect the state's consumers from insurance fraud that include injured workers dissuaded from obtaining treatment, innocent victims of staged auto collisions, and patients victimized by medical providers conducting unnecessary medical procedures for profit, among other egregious examples. Without the proposed bill, CDI argues vacancy rates and retention issues will continue to hamper efforts to protect Californians.

2. Need for this bill?

According to the author:

“Insurance fraud not only endangers the safety of innocent victims, but also drives up the cost of insurance premiums, affecting consumers statewide. CDI receives over 18,000 suspected fraudulent claim referrals each year, representing suspected losses exceeding \$600 million. CDI is forced to close cases each year due solely to insufficient staffing. As of January 31, 2024, CDI has authority to fill 179 Investigator positions. Of these authorized positions, 57 are currently vacant, resulting in a vacancy rate of almost 32%. CDI receives over 18,000 suspected fraudulent claim referrals each year, but is forced to close cases each year due solely to insufficient staffing. CDI sworn officers work directly with local, regional, and federal law enforcement partners, as well as the insurance industry, from detection through prosecution.”

“The pay inequity between CDI Investigator and DOJ Special Agent positions has been identified as a major factor impacting retention of sworn officers at CDI. Subsequent to the 2023 Special Salary Adjustments (SSA), there is a nearly 21% differential in pay between the same classification at DOJ versus at CDI. Since the DOJ SSA in September 2021 and July 2023, 11 of the 15 (73.3%) Investigator transfers out of CDI have gone to DOJ Special Agent positions. We are aware of an additional nine (9) Investigators having recently interviewed and/or currently in the background investigation stage of the hiring process with DOJ or other law enforcement agencies.”

3. Proponent Arguments:

According to the California Insurance Commissioner:

“Due to the importance and complexity of insurance fraud cases, it is vital that we seek a comparable wage to support the staffing of these public safety positions with experienced Investigators.”

“By leveling the playing field, CDI will be better able to recruit and retain Fraud Investigators to protect the public and prevent economic loss. Insurance fraud not only endangers the safety of innocent victims, but also drives up the cost of insurance premiums, affecting consumers statewide. Through the detection, investigation, and prosecution of insurance fraud offenders, CDI Fraud Investigators protect the public and ensure that the California insurance market is a safe place to do business.”

According to a coalition of insurance company associations including the Nation Association of Mutual Insurance companies:

“The insurance market in California is one of the largest in the world, but it is plagued by rampant fraud, which takes a heavy toll on consumers and businesses alike. The CDI plays a pivotal role in combating insurance fraud, with its Fraud Division employing approximately 200 sworn officers who investigate and respond to fraudulent activities negatively impacting consumers statewide. However, despite their crucial role, CDI officers face significant challenges due to understaffing and a lack of competitive compensation.”

“The staffing shortage is thanks in part to the substantial pay gap between CDI investigators and their counterparts at DOJ. The disparity in pay has been a major factor contributing to the retention issues faced by CDI, with a significant number of investigators leaving for higher-paying positions at DOJ.”

4. Opponent Arguments:

The California Statewide Law Enforcement Association opposes the bill unless it is amended to eliminate the requirement of pay parity, provide a one-time “pay equivalence” for CDI sworn peace officers, and require the Berkeley Labor Center to perform and report on a compensation study of CDI’s BU & salary scales to identify potential solutions for improving CDI BU 7 employee compensation.

“While we certainly appreciate the author’s intent to increase pay for our investigators, we, unfortunately, must reject the premise that DOI Investigators pay should be tied to the DOJ Special Agent pay, on the principle that this conversation should be had solely at the collective bargaining table. To circumvent the collective bargaining process, or well-timed increases through the budget process while an MOU is in place, sets a dangerous precedent for all unions to be able to negotiate wage increases for its members.”

5. Prior Legislation:

AB 2335 (McKinnor, 2024) would require 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. *The bill is pending in the Senate Appropriations Committee.*

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.*

AB 1254 (Flora, 2023) would require the state use a formula that would pay CAL FIRE Bargaining Unit (BU) 8 members within 15 percent of the average of the salary for corresponding ranks in 20 specified local fire departments instead of determining state firefighters' pay through collective bargaining under the Dills Act as required by current law. *The Senate Appropriations Committee is currently holding this bill on its suspense file.*

SUPPORT

Insurance Commissioner Ricardo Lara / California Department of Insurance (Sponsor)
American Property Casualty Insurance Association
Independent Insurance Agents & Brokers of California, INC.
National Association of Mutual Insurance Companies
Pacific Association of Domestic Insurance Companies
Personal Insurance Federation of California
Western States Regional Council of Carpenters

OPPOSITION

California Statewide Law Enforcement Association (Oppose unless amended)

-- END --

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

Bill No: AB 2499 **Hearing Date:** July 3, 2024
Author: Schiavo
Version: June 6, 2024
Urgency: No **Fiscal:** Yes
Consultant: Alma Perez-Schwab

SUBJECT: Employment: unlawful discrimination and paid sick days: victims of violence

KEY ISSUES

This bill (1) moves provisions from the Labor Code, that allow employees to take time off of work for specified purposes when they are the victims of specified crimes, to the Fair Employment and Housing Act (FEHA); (2) expands the list of crimes for which employees are entitled to take time off; (3) allows employees to take time off to help family members, as defined, who are the victims of the specified crimes for specified purposes; (4) authorizes employers to limit the amount of time the employees can take off of work for the above purposes, as specified; and (5) authorizes employees to use their entitled paid sick leave for these purposes.

ANALYSIS

Existing law:

- 1) Establishes the Civil Rights Department (CRD) to, among other things, enforce California's Fair Employment and Housing Act (FEHA) and certain civil rights laws in order to protect Californians from discrimination in employment, housing, businesses, state-funded programs, and from bias-motivated violence, and from human trafficking. (Government Code §12900 *et seq.*)
- 2) Establishes the Division of Labor Standards Enforcement (DLSE), under the direction of the Labor Commissioner (LC), within the Department of Industrial Relations (DIR), to enforce, among other things, wage and hour laws, anti-retaliation provisions, and employer notice requirements. (Labor Code §79 *et seq.*)
- 3) Provides that an employer shall not discharge or in any manner discriminate against an employee for taking time off to:
 - a. Serve as required by law on an inquest jury or trial jury, if the employee, prior to taking the time off, gives reasonable notice to the employer of their requirement to serve.
 - b. Appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding or to obtain or attempt to obtain any relief if the employee is a victim of a crime. (Labor Code §230 (a)-(c))
- 4) Prohibits an employer from discharging or in any manner discriminating or retaliating against an employee because of the employee's status as a victim of crime or abuse, if the employee provides notice to the employer of the status or the employer has actual knowledge of the status. (Labor Code §230 (e))

- 5) Requires an employer to provide reasonable accommodations for a victim of domestic violence, sexual assault, or stalking, who requests an accommodation for the safety of the victim while at work. (Labor Code §230 (f)(1))
- 6) Provides that an employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by their employer because the employee has taken time off, as specified, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. (Labor Code §230 (g)(1))
- 7) Provides that an employee who is discharged, threatened with discharge, demoted or suspended, or in any other manner discriminated against, as specified, for exercising their rights pursuant to the above provisions may file a complaint with the LC. (Labor Code §230 (h)(1))
- 8) Prohibits an employer with 25 or more employees from discharging, discriminating or retaliating against an employee who is a victim of stalking, domestic violence, sexual assault, or of a crime that caused physical injury or that caused mental injury and a threat of physical injury, or whose immediate family member is deceased as the direct result of a crime, for taking time off from work for any of the following purposes:
 - a. To seek medical attention for injuries caused by crime or abuse.
 - b. To obtain services from a domestic violence shelter, program, rape crisis center, or victim services organization or agency as a result of the crime or abuse.
 - c. To obtain psychological counseling or mental health services related to an experience of crime or abuse.
 - d. To participate in safety planning and take other actions to increase safety from future crime or abuse, including temporary or permanent relocation. (Labor Code §230.1 (a))
- 9) Provides that an employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by their employer because the employee has taken time off for a purpose set forth in (8), above, is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer, as well as appropriate equitable relief. (Labor Code §230.1 (c))
- 10) States that an employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure or hearing authorized by law is guilty of a misdemeanor. (Labor Code §230.1 (c))
- 11) Provides that an employee who is discharged, threatened with discharge, demoted or suspended, or in any other manner discriminated against, as specified, for exercising their rights protected in 8), above, may file a complaint with the LC. (Labor Code §230.1 (d)(1))
- 12) Requires employers to inform each employee of their rights, as specified. Requires the information to be provided to new employees upon hire and to other employees upon request and requires the LC to develop a form that an employer may use to comply with the notice requirements. (Labor Code §230.1 (h)(1)-(2))

13) Defines: "child" as a biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a person to whom the employee stands in loco parentis; "domestic partner" as having the same meaning as defined in Family Code section 297; "grandchild" as a child of the employee's child; "grandparent" as a parent of the employee's parent; "parent" as a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child; "parent-in-law" as the parent of a spouse or domestic partner; "sibling" as a person related to another person by blood, adoption, or affinity through a common legal or biological parent. (Government Code §12945.2 (b))

This bill:

- 1) Moves existing provisions regarding protected time off for an employee to attend jury duty or attend to their needs as a victim of a crime from the Labor Code to the Government Code and places those provisions under the Fair Employment and Housing Act (FEHA).
- 2) Replaces references to an experience of "crime or abuse" with the term "qualifying act of violence."
- 3) Defines "qualifying act of violence" to mean any of the following, regardless of whether anyone is arrested for, prosecuted for, or convicted of committing any crime:
 - a. Domestic violence.
 - b. Sexual assault.
 - c. Stalking.
 - d. An act, conduct, or pattern of conduct that includes any of the following:
 - i) In which an individual causes bodily injury or death to another individual.
 - ii) In which an individual exhibits, draws, brandishes, or uses a firearm, or other dangerous weapon, with respect to another individual.
 - iii) In which an individual uses, or makes a reasonably perceived or actual threat to use, force against another individual to cause physical injury or death.
- 4) Entitles an employee working for an employer with 25 or more employees who has a family member, as defined, who is a victim of a qualifying act of violence to certain protections, including, among other things:
 - a. Taking time off from work without discrimination or retaliation to assist a family member to obtain or attempt to obtain relief. Relief includes, among other things, a temporary restraining order or other injunctive relief.
 - b. Taking time off from work without discrimination or retaliation to assist a family member to obtain victim services that include, among other things, obtaining medical attention to recover from injuries, seeking or obtaining services from a domestic violence shelter, obtaining psychological counseling, participating in safety planning, and providing care to a family member who is recovering from injuries caused by the qualifying act of violence.
- 5) Expands on existing anti-discrimination provisions to specify that an employee who is a victim or who has a family member who is a victim of a qualifying act of violence may take time off without discrimination or retaliation, for additional reasons, including:

- a. To relocate or engage in the process of securing a new residence due to the qualifying act of violence, including, but not limited to, securing temporary or permanent housing or enrolling children in a new school or childcare.
 - b. To seek, obtain, or assist a family member to seek or obtain civil or criminal legal services in relation to the qualifying act of violence.
 - c. To prepare for, participate in, or attend any civil, administrative, or criminal legal proceeding related to the qualifying act of violence.
 - d. To seek, obtain, or provide childcare or care to a care-dependent adult if the childcare or care is necessary to ensure the safety of the child or dependent adult as a result of the qualifying act of violence.
- 6) Updates the definition of “family member” to mean a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner as those terms are defined in Government code section 12945.2, or *designated person*.
- a. Defines “designated person” as any individual not related by blood whose association with the employee is the equivalent of a family relationship.
 - b. Provides that an employer may limit an employee to one designated person per 12-month period for leave pursuant to the bill.
- 7) Defines “employer” to mean any person who directly employs one or more persons to perform services for a wage or salary; and the state, and any political or civil subdivision of the state and cities.
- 8) Extends an employer's obligation to provide reasonable accommodations for an employee who is a victim to an employee whose family member is a victim of a qualifying act of violence who requests an accommodation for the safety of the employee while at work.
- 9) Clarifies that an employee who is a victim or whose family member is a victim may use paid sick leave for time off to attend to their needs or ensure their safety.
- 10) Authorizes an employee to use vacation, personal leave, paid sick leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken per the above.
- 11) Authorizes an employer to limit the total leave taken as follows:
- a. Limit leave taken to 12 weeks.
 - b. If an employee’s family member is a victim who is not deceased as a result of a crime, and the employee is not a victim, and the employee takes leave to relocate or engage in the process of securing a new residence due to the qualifying act of violence, including, but not limited to, securing temporary or permanent housing or enrolling children in a new school or childcare, then the employer may limit the total leave taken to 5 days.
 - c. If an employee’s family member is a victim who is not deceased as a result of crime, and the employee is not a victim, the employer may limit the total leave taken to 10 days.
- 12) Specifies that leave taken pursuant to this bill shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act of 1993 and the Moore-Brown-Roberti

Family Rights Act, commonly referred to as the California Family Rights Act, if the employee would have been eligible for that leave.

- 13) Makes it an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under these provisions.
- 14) Requires employers to inform each employee of their rights pursuant to these provisions in writing upon the employee's hire, on an annual basis, at any time upon request, and at any time an employee informs an employer that the employee or the employee's family member is a victim.
- 15) Requires the CRD to do the following:
 - a. Develop a form setting forth the rights and duties of employers and employees under these provisions for employer use to comply with the notice requirements;
 - b. Provide the notice in various languages, including any other language that is spoken by a substantial number of non-English-speaking people, as specified;
 - c. Ensure that the notice include information about other available leaves or wage replacement programs for which they may be eligible.
 - d. Create and post the form on its internet website on or before July 1, 2025.

COMMENTS

1. Background:

As noted by the Assembly Judiciary analysis of this bill:

“For nearly 25 years, California law has prohibited employers from taking adverse action against employees who are victims of crime and need to take time off from work because of it. SB 56 (Chap. 340, Stats. 1999) amended the Labor Code to allow victims of domestic violence to take unpaid leave from work, but only for the limited purposes of appearing in court to obtain or attempt to obtain relief for health, safety or welfare of the victim or the victim's child.

The following year AB 2357 (Chap. 487, Stats. 2000) enacted the Victims of Domestic Violence Employment Leave Act, which prohibited an employer with 25 or more employees from taking any adverse action against an employee who is a victim of domestic violence and who takes time off to seek medical attention, obtain services from a domestic violence program, or obtain psychological counseling. Subsequent legislation extended these protections to include victims of sexual assault and stalking, and SB 400 (Chap. 759, Stats. 2013) required an employer to provide “reasonable accommodations” for employees who were victims of domestic violence, sexual assault, or stalking, and needed certain accommodations to ensure their safety while at work.

Four years ago, AB 2992 (Chap. 224, Stats. 2020) expanded these provisions to prohibit an employer with 25 or more employees from taking action against an employee who is a victim of any violent crime (not just domestic violence, sexual assault, stalking). In addition, AB 2992 expanded then-existing law by prohibiting an employer from taking an adverse action against an employee who had a family member who was a victim of a homicide and needed to take time off.”

2. *DIR, CRD or EDD?*

Existing law establishes the Department of Industrial Relations (DIR) in the Labor and Workforce Development Agency (LWDA) and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. As noted under existing law above, Labor Code provisions entitle employees who are discriminated or retaliated against for exercising their rights as victims of specified crimes to file a complaint with the Division of Labor Standards Enforcement (within DIR) and seek relief.

Existing law also establishes the Civil Rights Department (CRD) to, among other things, enforce California's Fair Employment and Housing Act (FEHA) and certain civil rights laws in order to protect Californians from discrimination in employment, housing, businesses, state-funded programs, and from bias-motivated violence, and from human trafficking. Also housed within CRD are, among others, laws providing employees with job-protected access to leave under the California Family Rights Act (CFRA), Pregnancy Disability Leave (PDL), and protections under the Disabled Persons Act and the California Trafficking Victims Protection Act.

Existing law additionally establishes the Employment Development Department (EDD) to, among other duties, administer the Unemployment Insurance and State Disability Insurance programs, including, as part of the SDI, the Paid Family Leave (PFL) program. PFL entitles eligible employees up to eight weeks of wage replacement benefits within a 12-month period to workers who need to take time off work to care for specified family members, bond with a new child, or participate in a qualifying event due to military deployment.

This bill – CRD administration

According to the author and advocates, gaps in existing law place survivors of crime in the untenable position of having to choose between their safety and their jobs. This bill revises, recasts and expands on existing available employment protections for victims of specified crime, in addition to extending the use of these protections for employee's assisting specified family members and designated persons who are victims. By moving the existing and expanded provisions of these protections from the Labor Code to the Government Code under FEHA, this bill would ensure that similar leave provisions are administered by the same governmental entity under the CRD.

This bill – extension to family members and designated persons

As noted in existing law, the current job protection options available apply to employees who need to take time off from work because they are victim of the specified crimes, not to employees who may need to provide care or support for others in their family that may need help. This bill fills that gap by extending those protections as such. Additionally, by including the ability to take leave to assist a "designated person," this bill recognizes the chosen family.

According to an article by the Center for American Progress, "millions of people rely on chosen family—individuals who form close bonds akin to those traditionally thought to occur in relationships with blood or legal ties—for caregiving support. Chosen families are particularly meaningful for Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) individuals, many of whom have strained relationships with blood relatives or have close

partners to whom they are not legally married or in a registered domestic partnership.”¹ Additionally, according to a U.S. Census Bureau report, “multigenerational households may be more likely to reside in areas where new immigrants live with their relatives, and in areas where housing shortages or high costs force families to double up their living arrangements.

This extension of law for a designated person currently exists under other provisions of existing law. AB 1041 (Wicks, Chapter 748, Statutes of 2022) added a “designated person” to the list of individuals for whom an employee may take leave to care for under CFRA and the Healthy Workplaces, Healthy Families Act of 2014 (Paid Sick Days).

3. Need for this bill?

According to the author:

“Current law recognizes the state’s role in protecting the economic security of survivors who need to take unpaid time off for specific safety and recovery reasons, but its application is limited, can be confusing, and leaves out crucial family needs stemming from victimization. Some survivors of violence can take unpaid job-protected time off to access healthcare, victim services, or to engage in safety planning. Other common reasons survivors need to take leave due to victimization are not covered under existing law. Loved ones who are impacted by violence and need to take unpaid leave to support their family or themselves in seeking safety or healing are not protected under California law. No employee who is a victim or has a loved one who is a victim of violence should have to choose between safety and losing their job.

AB 2499 fills the gaps in the state’s current approach, strengthens these protections, and ensures victims of violence and their loved ones have access to job-protected unpaid time off that they need to meet critical recovery, safety, and legal needs after victimization. This approach also benefits employers because when employees have the time they need to ensure their and their families’ safety and recovery, they are more likely to return to work as productive members of the team.”

4. Proponent Arguments:

According to a coalition letter from proponents, including the sponsors of the measure:

“One in six victims of violent crime report losing their jobs or being demoted because they need to take time off following the victimization and in one study, over 90% of employed women experiencing domestic violence reported that they had resigned or been terminated within the previous two years as a result of their abuse. This is because, too often, survivors have to make a choice between staying employed or taking necessary steps to preserve their safety. This is critical, given that 7 in 10 victims describe feeling unsafe or scared following a traumatic event. While current law offers some protection to survivors who need to take time off for specific recovery and safety related reasons, its application is somewhat limited and leaves out certain crucial needs stemming from victimization. AB 2499 will address existing shortcomings by ensuring survivors and their loved ones the ability to take limited, necessary, capped, and unpaid time off for specific reasons related to safety and recovery.

¹ Mahowald, L. and Boesch, D. (2021, February). Making the Case for Chosen Family in Paid Family Medical Leave Policies. <https://www.americanprogress.org/article/making-case-chosen-family-paid-family-medical-leave-policies/>

This bill will permit reasonable safety-related accommodations for survivors of more forms of violence, recognize additional common reasons survivors need to take unpaid time off from work, allow family members of survivors to take necessary unpaid time off to support their loved ones in achieving safety and recovery, allow family members to use their pre-existing paid sick days for covered purposes, and streamline the process through which survivors can learn about and assert their rights.”

5. Opponent Arguments:

A coalition of employers, including the California Chamber of Commerce, is opposed to the measure arguing:

“We appreciate the amendments that have been taken on this bill and understand the importance of this issue. However, California’s businesses have been subject to nine new leaves in just the last four years. Some of those leaves address the same circumstances addressed in this bill. While one more leave in isolation may not seem burdensome, it is important to view this proposal as part of the broader set of mandates to which employers are subject, especially our smallest employers. We must continue to oppose the expansion of this 12-week leave.”

6. Double Referral:

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

7. Prior/Related Legislation:

AB 1041 (Wicks, Chapter 748, Statutes of 2022) added a “designated person” to the list of individuals for whom an employee may take leave under CFRA and the Healthy Workplaces, Healthy Families Act of 2014 (Paid Sick Days).

AB 1119 (Wicks, of 2021) would have expanded the list of protected characteristics under FEHA to include “family responsibilities,” defined to mean the obligations of an employee to provide direct and ongoing care for a minor child or a care recipient. *AB 1119 was held by the Assembly Appropriations Committee.*

AB 2366 (Rob Bonta, 2018) would have extended permitted time off protections to victims of sexual harassment and to the immediate family members providing support to victims of sexual harassment, domestic violence, sexual assault and stalking. *AB 2366 was held by the Assembly Appropriations Committee.*

SB 1383 (Jackson, Chapter 86, Statutes of 2020) expanded the CFRA to provide job-protected leave to additional employees (those working for employers with five or more employees instead of the previous 50 employee threshold) and expanded the list of family members for which an employee can take leave.

SUPPORT

Californians for Safety and Justice (Co-Sponsor)
Crime Survivors for Safety and Justice (Co-Sponsor)
Legal Aid at Work (Co-Sponsor)
AAUW California
American Federation of State, County and Municipal Employees
Asian Law Alliance
BreastfeedLA
Calegislation
California Breastfeeding Coalition
California Catholic Conference
California Child Care Resource and Referral Network
California Domestic Workers Coalition
California Employment Lawyers Association
California Immigrant Policy Center
California Labor Federation, AFL-CIO
California NOW
California Partnership to End Domestic Violence
California Rural Legal Assistance Foundation
California Teachers Association
California Women's Law Center
California Work & Family Coalition
Californians United for A Responsible Budget
Caring Across Generations
Center for Community Action and Environmental Justice
Center for Workers' Rights
Child Care Law Center
Citizens for Choice
Communities United for Restorative Youth Justice (CURYJ)
Community Legal Services in East Palo Alto
Courage California
Disability Rights California
Electric Universe
Ella Baker Center for Human Rights
Empowering Women Impacted by Incarceration
Equal Rights Advocates
Food Empowerment Project
Friends Committee on Legislation of California
Fund Her
GRACE/End Child Poverty in California
Human Impact Partners
Initiate Justice
Initiate Justice Action
Jewish Center for Justice
LA Alliance for A New Economy
LA Best Babies Network
National Council of Jewish Women CA
National Council of Jewish Women Los Angeles
National Partnership for Women & Families

Orange County Equality Coalition
Our Family Coalition
Parent Voices California
Poder Latinx
Prosecutors Alliance Action
Prosecutors Alliance of California
Public Counsel
SEIU California
Sister Warriors Freedom Coalition
Smart Justice California
TechEquity Action
UAW Region 6
UFCW - Western States Council
Western Center on Law & Poverty, INC.
W.O.M.A.N., Inc.
Working Partnerships USA
Worksafe
Young Women's Freedom Center

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
American Petroleum and Convenience Store Association
Anaheim Chamber of Commerce
Associated General Contractors
Associated General Contractors of San Diego
Brea Chamber of Commerce
California Association for Health Services At Home
California Association of Health Facilities
California Association of Joint Powers Authorities (CAJPA)
California Builders Alliance
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Farm Bureau
California Farm Labor Contractor Association
California Financial Services Association
California Fitness Alliance
California Landscape Contractor's Association
California League of Food Producers
California Lodging Industry Association
California Manufacturers and Technology Association
California Restaurant Association
California Retailers Association
California State Council of the Society for Human Resource Management (CalSHRM)
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Civil Justice Association of California
Coalition of Small and Disabled Veteran Businesses

Construction Employers' Association
Corona Chamber of Commerce
Cupertino Chamber of Commerce
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Fairfield-Suisun Chamber of Commerce
Family Business Association of California
Flasher Barricade Association
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Garden Grove Chamber of Commerce
Glendora Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Housing Contractors of California
Independent Lodging Industry Association.
La Cañada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lincoln Area Chamber of Commerce
Livermore Valley Chamber of Commerce
Long Beach Area Chamber of Commerce
Mammoth Lakes Chamber of Commerce
National Federation of Independent Business
Oceanside Chamber of Commerce
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Templeton Chamber of Commerce
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
Ridgecrest Chamber of Commerce
Rocklin Chamber of Commerce
Roseville Area Chamber of Commerce
Sacramento Metropolitan Chamber of Commerce
Sacramento Regional Builders Exchange
San Juan Capistrano Chamber of Commerce
San Marcos Chamber of Commerce
San Pedro Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Shingle Springs/Cameron Park Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Torrance Chamber of Commerce
West Ventura County Business Alliance
Western Electrical Contractors Association
Western Growers Association
Yuba-Sutter Chamber of Commerce

-- END --

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

Bill No: AB 2557 **Hearing Date:** July 3, 2024
Author: Ortega
Version: June 17, 2024
Urgency: No **Fiscal:** Yes
Consultant: Glenn Miles

SUBJECT: Local agencies: contracts for special services and temporary help: performance reports

KEY ISSUE

This bill places requirements on local governmental agencies related to contracting out services, as specified.

ANALYSIS

Existing law:

- 1) Authorizes a county board of supervisors (CBOS) to contract for special services on behalf of the following public entities: the county, any county officer or department, or any district or court in the county. Special services or special skills contracts shall be with persons specially trained, experienced, expert and competent to perform the special services. (Government Code (GC) § 31000)
- 2) Authorizes CBOS to contract with temporary help firms for temporary help to assist county agencies, departments, or offices during any peak load, temporary absence, or emergency other than a labor dispute, provided the board determines that it is in the economic interest of the county to provide such temporary help by contract, rather than employing persons for such purpose. Use of temporary help under this section shall be limited to a period of not to exceed 90 days for any single peak load, temporary absence, or emergency situation. (GC § 31000.4)
- 3) Authorizes a city's legislative body (COUNCIL) to contract with any specially trained and experienced person, firm, or corporation for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters. (GC § 37103)
- 4) Authorizes the legislative body of any public or municipal corporation or district (DISTRICT BOARDS) to contract with and employ any persons for special services and advice in financial, economic, accounting, engineering, legal, or administrative matters if such persons are specially trained, experienced, and competent to perform the special services required. (GC § 53060)

This bill:

- 1) Makes the following legislative findings and declarations:
 - a. Local governments are increasingly relying on private contractors to provide public services customarily performed by the civil service workforce.

- b. The delivery of quality public services and goods requires a capable and efficient workforce who receives fair compensation.
- c. Transparent contracting processes allow thorough public scrutiny to ensure that quality services and goods are delivered to California communities.
- d. There is a statewide interest in ensuring that public funds are used effectively and ethically and that the replacement of bargaining unit work with private contractors does not undermine public employee relations.

Special Services / Temporary Help Contracts

- 2) Beginning July 1, 2025, requires CBOS, COUNCILS, or DISTRICT BOARDS that solicit for and enter into a special services or temporary help contracts, as specified, for functions that are currently, or were in the prior five years, performed by unionized employees of the respective contractee, to post the contract and any related documents, including any required performance reports, that are subject to the California Public Records Act (CPRA) on its internet website.
- 3) Requires, beginning July 1, 2026, each contract, as specified, for functions that are currently, or were in the prior five years, performed by unionized employees of the respective contractee to include all of the following:
 - a. The objectives, deliverables, and goals of the contract.
 - b. A list of all financial expenditures associated with the delivery of contracted services, including, but not limited to, personnel costs, direct expenses, and indirect expenses, and their corresponding deliverables.
 - c. The number of each contractor's and subcontractor's employees associated with the delivery of the contracted services, organized by job category, and the number of each contractor's and subcontractor's independent contractors associated with delivery of the contracted services organized by job category.
 - d. The names of any subcontractors providing services under the contract; and the hourly rates, total compensation, and pay scales of employees and independent contractors providing services under the contract, organized by job classification.
- 4) Requires the CBOS, COUNCIL, or DISTRICT BOARD to give reasonable written notice, as specified, to the affected workforce's union, that explains the proposed contract, the justification for the contract, the expected length of the contract, and the effect on represented classifications. However, this provision shall not apply in the event of an emergency.
- 5) Requires the CBOS, COUNCILS, or DISTRICT BOARDS to notify the affected workforce's union, in writing, of its intent to modify or renew the contract at least 30 days before the contract's modification or renewal.
- 6) Requires the contract to provide that all records provided to CBOS, COUNCILS, or DISTRICT BOARDS, respectively, by the contractor shall be subject to the CPRA and requires contractors and any subcontractors to maintain records related to performance of the contract that ordinarily would be maintained by the contractee in performing the same functions.
- 7) Defines the following terms for purposes of this provision:

- a. “Deliverables” means the agreed upon services set forth in the contract, the expected rate of delivery, and the success of those services.
 - b. “Emergency” means a situation where immediate acquisition is necessary for the protection of the public health, welfare, or safety.
 - c. “Total compensation” means the complete payment provided to a contracted employee throughout the duration of the contract, including, but not limited to, applicable hourly pay, overtime pay, benefits, and retirement.
- 8) Declares the severability of the respective provision and provides that if any provision of or its application is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
 - 9) Makes legislative findings and declarations that ensuring that the replacement of bargaining unit work with contracted employees does not undermine public employee relations is a matter of statewide concern for purposes of Section 4 of Article XI of the California Constitution, and therefore, applies the provision to all counties, including charter counties.
 - 10) Applies the respective provision to CBOS, COUNCILS, or DISTRICT BOARDS, respectively on and after January 1, 2025, and declares that these amendments shall apply prospectively only and shall not be construed, applied, or otherwise interpreted to have any effect on or application to any contract entered into before January 1, 2025.
 - 11) Declares that if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

COMMENTS

1. Need for this bill?

According to the author:

“Civil servants (i.e., public sector workers) are rightly subject to a litany of transparency laws that include open meeting requirements and the California Public Records Act; however, existing law does not require the same transparency measures for contracted workers of local governments. This frequently leads contracted work to result in reduced service quality and opens the door for opportunities for private firms and organizations to misuse of taxpayer resources. [...]”

“With limited oversight, this practice has disproportionate implications on vulnerable communities who rely on local governments for critical services, including foster care, homeless programs, and public safety.”

2. Proponent Arguments

According to SEIU California:

“Current law allows local governments to contract with private firms and employers to provide services that could be provided by direct employees. Contractors may offer short-term savings by hiring less qualified staff, paying lower wages, and lowering standards for

working conditions. However, research on the privatization of public services over the past few decades found little to no cost savings and poorer outcomes for the public. [...]"

"The practice of contracting out also reduces the number of union jobs that are available to the surrounding community. Government anti-discrimination policies enacted in the 1960s and 1970s diversified public sector workplaces, and women and people of color enjoy higher employment rates in the public sector. The unionization rate of the public sector is five times higher than the private sector, leading to better wages, working conditions, benefits, and retirement security. For example, in Los Angeles County, Black workers in the public sector earn 46% more on average than those in the private sector. Black public sector workers are also overwhelmingly more likely to own their homes and have health insurance than Black private sector workers."

According to the California Labor Federation:

"Public sector jobs were once considered the backbone of the middle class, but decades of low funding and government austerity measures have led to the decline of the stable union jobs that once sustained communities. In efforts to cut costs, governments contract out public work to the lowest bidder and an array of unaccountable service providers. Public services, including substance abuse treatment, foster youth care, and health services, are increasingly contracted out to private entities that do not have to meet the same workforce and performance standards that public agencies do."

"The widespread practice of contracting out public services has led to the elimination of middle-class career opportunities for residents, especially for women and BIPOC individuals. This has an impact on entire communities as lower quality private contractor jobs replace good union public sector ones. For example, a recent report found that in Los Angeles County, Black workers in the public sector earn 46% more on average than Black workers in the private sector. Black public sector workers are overwhelmingly more likely to own their homes and have health insurance compared to Black private sector workers."

3. Opponent Arguments:

According to a coalition including the California State Association of Counties and the California Chamber of Commerce:

"California's more than 4,800 local agencies depend on partnerships with trusted local businesses and community partners to deliver core services, especially to our most vulnerable populations. Services such as emergency response, mental health care, homeless services, forest management, foster care, animal services, 9-1-1 dispatching and much more are often provided through these partnerships. Local service providers possess unique capabilities to reach and build trust with individuals that government entities are not able to reach as effectively."

"Local service providers and community-based organizations often deliver services more efficiently and cost-effectively than government agencies can alone. Limiting these partnerships will result in increased costs, service reductions, and the potential elimination of essential programs, leaving those who rely on these services without support."

According to a coalition of approximately 170 nonprofit organizations, including the United Way:

“Nonprofits have historically filled service gaps because we are uniquely qualified to meet specific community needs. We are troubled by any characterization that such partnership negatively impacts service provision and do not think that reflects reality. What’s more, there are major shortages in various professions that are making it very hard for employers of all types to hire qualified people needed to provide critical services.”

“AB 2557 has the potential to dramatically impede nonprofits' ability to pursue or renew partnered efforts and to reduce the flow of public dollars to already under-resourced communities.”

4. Committee Concerns and Recommended Amendments:

The committee recognizes the proponents’ legitimate efforts in trying to ensure that public work be performed by appropriately compensated, skilled and trained public employees. The committee also acknowledges the proponents’ important insistence that the disclosure of public contracts and evaluation of contractors’ performance are necessary guardrails to protect against the waste and abuse of public dollars. Nevertheless, the committee has concerns regarding this bill’s scope and potential to impede otherwise effective methods local governments use to provide services, particularly to hard-to-reach or historically discriminated communities. Therefore, the committee recommends the following amendments to exclude from the bill’s provisions: contracts that are: 1) for amounts under \$100,000; and 2) for services not usually performed by a public employee, as defined:

Amend Government Code §§ 31000.01, 310004.5, 37103.1, 53060.1, respectively with the following language:

(f) This section shall not apply to any contracts that meet both of the following criteria:

(1) A contract for an amount less than \$100,000.

(2) A contract to provide services for work not usually performed by public employees.

(g)...(4) “Work not usually performed by public employees” means a function or activity for which the employer has not had a classification within the last 5 years prior to the initiation of the contract whose duties include the function or activity.

5. Double Referral:

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

6. Prior Legislation:

AB 2561 (McKinnor, 2024) would require each local public agency that has bargaining unit vacancy rates for more than 180 days to: 1) promptly meet and confer within 21 days at the recognized union's request, about substantive strategies to fill vacancies; and 2) hold a public hearing within 90 days, as specified. The bill also entitles the union to make a presentation at the hearing and limits the request to meet and confer on this matter to once per calendar year per bargaining unit. *This bill is currently in the Senate Labor, Public Employment and Retirement Committee.*

AB 2489 (Ward, 2024) would require a local government that wants to contract for special services or temporary help already performed by union employees to notify, in writing, the exclusive representative of the workforce, at least 10 months before beginning a procurement process to contract for special services that are currently, or were in the previous 10 years, performed by employees of the county, any county officer or department, or any district court in the county represented by an employee organization, of its determination to begin that process. *The Assembly Appropriations Committee is currently holding the bill on suspense.*

AB 1250 (Jones-Sawyer, 2017) would prohibit a county from contracting for personal services currently or customarily performed by that county's employees unless it makes specified findings. *The Senate Rules Committee held this bill in committee.*

SUPPORT

American Federation of State, County and Municipal Employees (Co-sponsor)
California Labor Federation (Co-sponsor)
Service Employees International Union, California (Co-sponsor)
California Professional Firefighters
California School Employees Association
California Teachers Association
Coalition of California Welfare Rights Organizations
County Employees Management Association
Los Angeles County Probation Officers Union
Orange County Employees Association
Smart - Transportation Division

OPPOSITION

60 Accelerator Education Partners
5 Stones Open Door
805 Undocufund
A Greater Hope
A.I. Clinton Charitable and Operating Foundations
Abrazar, INC.
Active Cultures
Alano Club of Redding INC.
Aldea, INC.
Alliance for Community Empowerment
Alliance for Young Women and Girls
Alpha Academy Youth Training Facility
American Council of Engineering Companies of California
American Institute of Architects California

American Medical Response
American Public Works Association Region VIII
American Society of Civil Engineers, Region 9
American Staffing Association
Anderson Valley Winegrowers Association
Aresis Ensemble (City Garage)
Arts for LA
Asociacion De Emprendedor@s
Association of California Community and Energy Services
Association of California Healthcare Districts
Association of California School Administrators
Association of California Water Agencies
Association of Community Human Service Agencies
Bay Area Bioscience Education Community
Birthmom Buddies
Board of Supervisors County of Madera
Boys & Girls Club of Laguna Beach - Also Serving Saddleback Valley
Boys & Girls Club of The Foothills
Bread & Roses Presents
Building a Generation
Butte Environmental Council
Cal Poly Humboldt Centerarts
California & Nevada Civil Engineers and Land Surveyors Association, INC.
California Alliance of Child and Family Services
California Animal Welfare Association
California Asian Pacific Chamber of Commerce
California Association for Local Economic Development
California Association of Alcohol and Drug Program Executives, INC.
California Association of County Veteran Services Officers
California Association of Joint Powers Authorities
California Association of Nonprofits
California Association of Public Hospitals and Health Systems
California Association of Recreation and Park Districts
California Association of Sanitation Agencies
California Building Officials
California Chamber of Commerce
California Coalition for Adequate School Housing
California Coalition for Rural Housing
California Contract Cities Association
California Council of Community Behavioral Health Agencies
California County Superintendents
California Disability Services Association
California Family Life Center
California Family Resource Association
California Fire Chief's Association
California Geotechnical Engineers Association
California Geothermal Heat Pump Coalition
California Municipal Utilities Association
California Parks and Recreation Society
California Releaf

California School Boards Association
California Special Districts Association
California State Association of Counties
California State Park Rangers Association
California State Sheriffs' Association
Calle 24 Latino Cultural District
Calnonprofits
Carlsbad Chamber of Commerce
Carpinteria Children's Project
Center for Family Strengthening
Center for Human Services
Center for Nonprofit Leadership of The Sierra
Center for Nonprofit Management
Central California Family Crisis Center, INC.
Ceres Community Project
Child Abuse Prevention Center
Child Action, INC.
Chino Hills; City of
Chino Valley Chamber of Commerce
Chrysalis
Citizens Review Panel-critical Incidents
City of Bakersfield
City of Bellflower
City of Carlsbad
City of Colton
City of Corona
City of Cypress
City of Elk Grove
City of Fairfield
City of Foster City
City of Grass Valley
City of Kerman, CA
City of Lakewood CA
City of Lomita
City of Los Alamitos
City of Merced
City of Norwalk
City of Pico Rivera
City of Redlands
City of Rolling Hills Estates
City of San Jose
City of Santa Fe Springs
City of St. Helena
City of Thousand Oaks
City of Whittier
Coalition of Adequate School Housing
Coastal Nonprofit Consulting
Cocokids
Colin Bailey Legal and Consulting Services
Collective Resilience

Community Build, INC.
Community Education Partnerships
Community Partners
Community Resource Project, INC.
Community Solutions
Compassion Institute
Conflict Resolution Center of Santa Cruz County
Contra Costa Chorale
Contra Costa County
Corona Chamber of Commerce
Corporation for Supportive Housing
County Behavioral Health Directors Association of California
County Health Executives Association of California
County of Alpine
County of Butte
County of Fresno
County of Humboldt
County of Inyo
County of Kern
County of Kings
County of Los Angeles
County of Merced
County of Monterey
County of Placer
County of Riverside
County of San Joaquin
County of Santa Clara
County of Sierra
County of Stanislaus
County Recorders Association of California
County Welfare Directors Association of California
Creative Alternatives
Crenshaw Health Partners
Cressgemconsultllc
Crittenton Services for Youth and Families
Cultiva LA Salud
Cupertino Chamber of Commerce
Danville Area Chamber of Commerce
Didi Hirsch Mental Health Services
Dorothy Glaspie Foundation INC
Downey; City of
Duc Learning Center
East Bay Sanctuary Covenant
Eastern Municipal Water District
ERISAT-ERITREAN Satellite Television
Esquires Music Foundation
Exclusively First Responders
Exposure Skate
Fairfield; City of
Families in Transition of Santa Cruz County, INC.

Family Bridges, INC
Feed My Flock INC.
Fierce Advocates
First Place for Youth
Five Keys
Fontana Chamber of Commerce
Food Exploration and Discovery
Food for People
Foster City Village, INC.
Fostering Dreams Project
Free the Need
Freedom Through Education
Fresh Lifelines for Youth (FLY)
Fresno County Board of Supervisors
Fullerton; City of
Galt Teen Center
Garden Grove Chamber of Commerce
Gold Country Bats
Greater High Desert Chamber of Commerce
Greater Irvine Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Green 4 Kids
Groundwork San Diego Chollas Creek
Helpline Youth Counseling, INC.
Hijas Del Campo
Hillsides
Hmi
Housing California
Human Services Alliance of Contra Costa
Humanistic Alternative to Addiction Research and Treatment, INC.
Independent Transportation Network Monterey County
Ink People Center for Arts and Culture
Inland Empire Community Collaborative
Interim, INC.
Iron Sharpens Iron Nonprofit Organization
Ives Torres Foundation
Josephine S. Gumbiner Foundation
Kalaya's Destiny
Kamali'i Foster Family Agency, INC.
Kern Bridges Youth Homes
Kidstream Children's Museum
Koreatown Youth + Community Center
LA Cañada Flintridge Chamber of Commerce and Community Association
Laguna Food Pantry
Laguna Hills Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Lakewood; City of
Las Virgenes-malibu Council of Governments
League of California Cities

Lets Stand Together
Lions Club of Benicia
Loch Lomond Glen Foundation
Los Angeles Area Chamber of Commerce
Low Income Investment Fund
Making Hope Happen Foundation
Manos Que Sobreviven
Maternal and Child Health Access
Meals on Wheels California
Mend-Meet Each Need With Dignity
Mesa Water District
Michelle's Place Cancer Resource Center
Mirror to Imagine Women Achieve
Mosquito and Vector Control Association of California
Mountain Homeless Coalition
Move Santa Barbara County
Napa Chamber of Commerce
National Action Network - Sacramento Chapter
National Alliance on Mental Illness
National Alliance to End Homelessness
National Society of Professional Engineers – California
NCRT, INC.
New Perspectives Center for Counseling
Nonprofit Kinect
Northern Santa Barbara County United Way
Oceanside Chamber of Commerce
Office of Samoan Affairs
Open Heart Kitchen
Orange County Business Council
Orange; City of
Oxnard Performing Arts Center Corporation (OPACC)
P2P Community Development Center
Pajaro Valley Prevention and Student Assistance, INC.
Palos Verdes Peninsula Chamber of Commerce
Partnership for OVC-Ethiopia
Pasadena Meals on Wheels, INC
Path
Pence Gallery
Peninsula Family Service
Peninsula Youth Theatre
Placentia; City of
Pleasantview Industries, INC.
Preetirang Sanctuary
Project Return Peer Support Network
Prunedale Senior Center INC.
Public Counsel
Public Risk Innovation, Solutions, and Management (PRISM)
Raices Y Carino
Rebuilding Together Peninsula
Redondo Beach Chamber of Commerce

Richmond Community Foundation
Richmond Museum Association
Richmond Museum of History and Culture
Ridgecrest Chamber of Commerce
Rising Communities
Rose Bowl Aquatics Center
Rural County Representatives of California
Sacra/profana
Sacramento Area Creeks Council
Sacramento Ballet
Sacramento; County of
San Bernardino County
San Bernardino; County of
San Diego Humane Society
San Francisco Study Center
San Joaquin County Board of Supervisors
San Marcos Chamber of Commerce
San Pedro Meals on Wheels
Santa Barbara Community Housing Corporation
Santa Barbara County Immigrant Legal Defense Center
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santa Ynez Valley Historical Museum
Save Elephant Hill
Sdv&cc
Seneca Family of Agencies
Seniors Council of Santa Cruz & San Benito Counties
Shasta Cascade Health Centers
Shasta; County of
Side by Side
Sierra - Sacramento Valley EMS Agency
Sierra County Department of Public Works and Transportation
Siskiyou Domestic Violence & Crisis Center
Social Science Services, Inc., Dba Cedar House Life Change Center
South Bay Association of Chambers of Commerce
South San Joaquin Irrigation District
Southern California Contractors Association
Southside Unlimited
Spectrum Community Services, INC.
Sst Nonprofit Services
Stanford Sierra Youth and Families
Stockton East Water District
Stories From the Frontline
Students for Eco-education and Ag
Studio 395 Foundation
Tahoe Water for Fire Suppression Partnership
Tent City Barbers
Testimonial Community Love Center
The 418 Project
The Adam Leventhal Memorial School & Museum

The Alpine Mountaineer
The Can Man
The Child Abuse Prevention Center
The Diversity Center of Santa Cruz County
The Gold Miners Girl
The Mom & Dad Project
The Nonprofit Partnership
The Plus Me Project
The Source Lgbt+ Center
The Village Family Services
Town of Hillsborough
Transitions-mental Health Association (TMHA)
Transportation California
Tri County Chamber Alliance
Truckee; Town of
Turning Point Community Programs
Tustin Area Woman's Club
Ultimate Restoration Unlimited, Uru INC.
United Way of California
Urban Counties of California
Urban Social Services and Advocacy
Valley Fund Corporation
Valley Industry and Commerce Association
Valley Teen Ranch
Victims Empowerment Support Team
Village Community Resource Center
Visalia; City of
Volunteer Center of Santa Cruz County
Watershed Research & Training Center
Waymakers
West Ventura County Business Alliance

-- END --

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

Bill No: AB 2561 **Hearing Date:** July 3, 2024
Author: McKinnor
Version: June 27, 2024
Urgency: No **Fiscal:** Yes
Consultant: Alma Perez-Schwab

SUBJECT: Local public employees: vacant positions

KEY ISSUE

This bill requires each public agency with high vacancy rates to (1) meet and confer with the representative of the recognized employee organization, as specified, about substantive strategies to fill vacancies and (2) hold a public hearing about vacancy rates and obstacles to hiring as well as their strategies to fill vacancies, as specified.

ANALYSIS

Existing federal law:

- 1) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA) but leaves it to the states to regulate collective bargaining in their respective public sectors. (United States Code Title 29 §151 *et seq.*)

Existing state law:

- 2) Provides several statutory frameworks under California law to provide public employees collective bargaining rights and govern public employer-employee relations. Under the Meyers-Milias-Brown Act (MMBA), existing law promotes full communication between local government public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. (Government Code §3500 *et seq.*)
- 3) Prohibits a public agency from engaging, among others, in any of the following:
 - a. Imposing or threatening to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by the MMBA.
 - b. Refusing or failing to meet and negotiate in good faith with a recognized employee organization.
 - c. Dominating or interfering with the formation or administration of any employee organization, contributing financial or other support to any employee organization, or in any way encouraging employees to join any organization in preference to another.
 - d. Refusing to participate in good faith in an applicable impasse procedure. (Government Code §3506.5)

- 4) Establishes the Public Employment Relations Board (PERB), a quasi-judicial administrative agency charged with administering various statutory frameworks governing employer-employee relations, resolving disputes, and enforcing the statutory duties and rights of public agency employers, employee organizations, and employees, but provides the City, and County, of Los Angeles a local alternative to PERB oversight. (Government Code §3541 *et seq.* and 3509)

This bill:

- 1) Finds and declares that:
 - a. Job vacancies in local government are a widespread and significant problem for the public sector affecting occupations across wage levels and educational requirements.
 - b. High job vacancies impact public service delivery and the workers who are forced to handle heavier workloads, with understaffing leading to burnout and increased turnover that further exacerbate staffing challenges.
 - c. There is a statewide interest in ensuring that public agency operations are appropriately staffed and that high vacancy rates do not undermine public employee labor relations.
- 2) Requires each public agency with high vacancy rates for more than 180 days to, at the request of the recognized employee organization, as defined, do both of the following:
 - a. Promptly meet and confer with the representative of the recognized employee organization within 21 days about substantive strategies to fill vacancies.
 - i. Limits such requests to only once per calendar year for each bargaining unit.
 - b. Hold a public hearing within 90 days about high vacancy rates, any obstacles in the hiring process, and the public agency's strategies to fill vacancies, as prescribed.
- 3) Specifies the following possible strategies to fill vacancies:
 - a. Developing trainings, mentorship programs, or apprenticeships to increase the pool of qualified applicants for vacant positions.
 - b. Identifying any necessary changes to policies, procedures, and recruitment activities that lead to obstacles in the process.
 - c. Identifying current permanent and temporary employees who could transition into a role in a bargaining unit and establish a training program to facilitate this practice.
 - d. Identifying opportunities to improve compensation, working conditions, and terms of employment.
 - e. Partnering with unions, community organizations, training and placement programs, and stakeholders to reduce barriers and improve access for applicants.
- 4) Entitles the employee organization to make a presentation at the hearing held by the public agency to the public.
- 5) Specifies that the meet and confer obligation imposed by these provisions are in addition to the existing meet and confer responsibilities of existing law under the MMBA.
- 6) Provides that these provisions do not prevent the governing board from holding additional public hearings about vacancy rates.

- 7) Makes these provisions severable and specifies that if any provision or its application is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
- 8) Finds and declares that these provisions further the purposes of which relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies and, as such, it is in the public interest to ensure that information concerning public agency employment is available to the public.

COMMENTS

1. Background: Vacancy Rates in Public Employment

Vacancies within state and local government is a problem currently plaguing the state and one whose impact is felt by all Californians. This Committee held a joint hearing on June 20, 2024 with the Joint Legislative Audit Committee and the Assembly Labor and Employment Committee to review a recent California State Auditor report, titled *The California Labor Commissioner's Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers (Report 2023-104)*. One of the key findings of the report highlighted through the hearing was the impact of high vacancy rates at the various units of the Labor Commissioners Office. The report noted that, "As of June 2023, the majority of the LCO's Wage Claim Adjudication Unit's (Adjudication Unit) 17 field offices had staff vacancy rates equal to or greater than 10 percent, and 13 field offices had a vacancy rate of 30 percent or more."¹ This problem has led to a backlog of 47,000 claims of wage theft still pending and a process of resolving those that takes over 854 days, more than six times longer than the law allows (the statutorily required timeline for resolution is 135 days).

This problem is affecting local governments as well, as noted by the Assembly Public Employment and Retirement Committee analysis of this bill:

"The committee is reminded of its informational hearing on May 10, 2023, titled "*Strengthening California through the Public Sector and Its Workforce*," which focused on various subjects, including contracting out of public employee work. During that hearing, the committee heard from a number of panelists, including experts from the University of California at Berkeley Labor Center, where data was provided and substantial concerns were expressed by other panelists about the ongoing and increasing reliance by public employers, including the state – as an employer, on a contingent, part-time, temporary, contracted out, or retired annuitant workforce to fill public sector vacancies, or to perform the duties of willing and capable existing and prospective public employees. These concerns also detailed how public employers are increasingly relying on these forms of employment and in a manner that has deleterious effects on wage growth, employee morale, employer-employee relations, and the need to ensure operational consistency and quality in the provision of services to the public that could be performed by permanent employees.

¹ CA State Auditor, *The California Labor Commissioner, Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers*, May 29, 2024. Report Number 2023-104. <https://www.auditor.ca.gov/reports/the-california-labor-commissioners-office/>

Following the committee's hearing last year, on April 17, 2024, the committee held another information relating to that subject titled: "Public Service Delivery and Workforce Wellbeing – Addressing the Vacancy Crisis in Local Government," where civil service vacancies, impacts of vacancies on the civil service workforce and services, and collaborative solutions to address civil service vacancies, were discussed. This bill represents one of the proposed solutions."

2. Need for this bill?

According to the author:

"AB 2561 addresses the pressing issue of high vacancy rates in local public agencies, particularly within bargaining unit positions. The bill is necessary to ensure that essential public services are adequately staffed and that employees' rights and interests are safeguarded. ... In essence, AB 2561 seeks to enhance transparency, ensure effective staffing, and foster positive labor relations within local public agencies, thereby addressing a critical need for comprehensive workforce management."

3. Proponent Arguments:

According to AFSCME, one of the sponsors of the measure:

"California's local governments are facing a vacancy crisis impacting these workers, the services they provide, and the economy, with a recent study from the UC Berkeley Labor Center finding that vacancy rates are as high as 30% in several counties. Due to high vacancies, many public sector workers face increased workloads and mandatory overtime, leading to burnout and high turnover. These conditions exacerbate the vacancy crisis and impact the quality of public service delivery for communities in need. Further, the problem compounds due to understaffing-related stress and the disruption of workers' personal lives by pushing more public service workers into the private sector as they seek other jobs with more predictable hours, manageable workloads, and competitive pay. This staffing crisis is not caused by a shortage of willing and able workers, our members believe that it is driven by a combination of factors, including unsustainable working conditions and compensation rates.

As the workers who remain in the public sector are dealing with these challenges, this crisis directly impacts critical services that local agencies provide to our communities, such as health care, public safety, and waste handling services, among others. These agencies are consistently unable to meet the needs of the public—such as nurses' inability to provide emergency health care to patients in need, 911 operators' inability to promptly answer calls, or sanitation workers' inability to handle illegal dumping in communities; services that are essential for communities to function."

They further argue that "AB 2561 requires local public agencies that have departmental vacancy rates exceeding 15 percent for more than 180 days to meet and confer with the recognized employee organization(s) to develop strategies to fill vacancies, as well as hold a public hearing on the issue. These requirements will only apply at the request of the employee organization(s) if departments face high vacancies rates for prolonged periods (e.g., more than 6 months). The public hearing will provide an opportunity for the public to be informed about the root drivers of the high vacancy rates and for the governing board to

proactively provide updates on their efforts to address the issue. AB 2561 will also provide an opportunity for the recognized employee organization(s) to participate in the development of solutions to fill vacancies, including the public hearing. This collaborative approach will ensure that the needs and concerns of employees are considered, which will ultimately benefit the employees, the agency, and public, collectively.

To address the vacancy crisis, protect civil service jobs, and ensure that communities receive crucial services, there must be accountable measures in place that give workers and public agency leaders an opportunity to transparently identify the challenges and barriers in retention and recruitment, and collaboratively develop strategies to fill vacant positions, all of which would be required under AB 2561.”

4. Opponent Arguments:

A coalition of opposition from local public employers, including the California State Association of Counties and League of California Cities, writes:

“Sizable vacancy rates exist in the public sector – for the state and for local employers. While the bill notably omits the state, the vacancy rate for the State of California has consistently been above 10 percent statewide for at least the past 20 years. As of February 2024, the vacancy rate for state jobs in California is about 20 percent.

For counties, the issue of vacancies is particularly acute with the highest rates typically in behavioral health, the sheriff’s department, probation departments, human resources departments, and social services. ... Local governments have been implementing innovative ways to try to boost recruitment and incentivize retention (e.g., sign-on bonuses, housing stipends, etc.).

In spite of these efforts, vacancies persist; driven by several distinct circumstances. The public sector workforce has changed. In a post-COVID era, there is a much higher demand for remote work, which is not a benefit that can be offered within public agencies across all departments or for all roles. Furthermore, newer entrants to the workforce have changed priorities when it comes to the benefits and conditions of their work. Public employees were on the front lines of the COVID response. While the state passed legislation and the Governor signed executive orders and set policy during those challenging months, public agency employees were the vessel of service delivery and the implementer of those policies. This work was arduous, nearly endless and seemingly thankless. In conjunction with delivering on the policies and priorities set by the state during the pandemic, counties specifically, have been burdened with several simultaneous overhauls of county service delivery, as mandated by the state. There is no doubt a correlation between the county programs dealing with the largest realignments of service delivery and structural overhaul as mandated in State law and those departments with the highest vacancy rates. Employees have experienced burn-out, harassment from the public, and a seemingly endless series of demands to transform systems of care or service delivery while simultaneously providing consistent and effective services, without adequate state support to meet state law. Obviously, it is difficult to retain staff in those conditions.”

They conclude by stating that, “Local bargaining units have the ability to address workforce concerns or develop hiring/retention strategies/incentives at the bargaining table within

agreements and compensation studies. We welcome partnering on workforce strategies and believe there is a more productive and economical pathway than AB 2561.”

5. Author Amendment:

Recent amendments as of June 27, 2024 substantially changed the provisions and direction of the measure. Prior versions would have required local public agencies to meet and confer with the recognized employee organization representative to produce, publish, and implement a plan to fill all vacant positions within a specified timeframe. These requirements would have been triggered when the vacancy rates exceeded 10 percent for more than 90 days within the past 180 days. Due to a drafting error in the recent amendments, the bill in print does not currently include a definition of “high vacancy rates” that would trigger the requirements of the bill now.

The author would like to amend the bill in Committee to include the following definition:

(f) For purposes of this section, “high vacancy rates” means that, at the time of the request by the employee organization pursuant to this section, 15 percent or more of the budgeted permanent full-time equivalent positions for classifications in the department have been unfilled for 180 days or more.

6. Prior/Related Legislation:

AB 2557 (Ortega, 2024) proposes to make changes to existing law relating to contracts by local governments for certain services by requiring such contracts to include specific standards and requirements, among other provisions. *AB 2557 is pending before this Committee.*

AB 2489 (Ward, 2024) proposes to make changes to existing law relating to contracts by local governments (i.e., counties, cities, local public agencies, and municipal corporations) for certain services by requiring such contracts to include specific standards and requirements, among other provisions. *AB 2489 is currently being held on suspense in the Assembly Appropriations Committee.*

AB 1250 (Jones-Sawyer, 2017) proposed to establish specific standards for the use of personal service contracts by counties and cities, among other provisions. *AB 1250 was held by the Senate Committee on Rules.*

SUPPORT

American Federation of State, County and Municipal Employees, AFL-CIO (Co-sponsor)
 California Labor Federation, AFL-CIO (Co-sponsor)
 California State Council of Service Employees International Union (SEIU CA) (Co-sponsor)
 California Association of Psychiatric Technicians
 California Professional Firefighters
 California School Employees Association
 Coalition of California Welfare Rights Organizations
 Orange County Employees Association
 Peace Officers Research Association of California (PORAC)
 Smart - Transportation Division

OPPOSITION

Alameda County Board of Supervisors
Alpine County, CA
Association of California Healthcare Districts (ACHD)
California Air Pollution Control Officers Association
California Association of County Treasurers and Tax Collectors
California Association of Public Hospitals & Health Systems
California Association of Recreation & Park Districts
California Municipal Utilities Association
California Special Districts Association
California State Association of Counties
California State Sheriffs' Association
California Transit Association
California Welfare Directors Association
Chief Probation Officers of California
City of Bakersfield
City of Carlsbad
City of Chino Hills
City of Corona
City of La Verne
City of Norwalk
City of Oceanside
City of Rancho Cucamonga
City of San Marcos
City of Sunnyvale
Contra Costa County
County Behavioral Health Directors Association of California
County Health Executives Association of California
County of Butte
County of Colusa
County of Del Norte
County of Fresno
County of Humboldt
County of Kern
County of Lassen
County of Merced
County of Sacramento
County of San Bernardino
County of San Luis Obispo
County of Shasta
County of Solano
County Welfare Directors Association of California
Eastern Municipal Water District
El Dorado Irrigation District
Fresno County Board of Supervisors
Kings County Administration
League of California Cities
Marin County Council of Mayors & Council Members

Mesa Water District

Public Risk Innovation, Solutions, and Management (PRISM)

Rural County Representatives of California

South Coast Air Quality Management District

Town of Truckee

Tuolumne County Board of Supervisors

Urban Counties of California

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

Bill No: AB 2573 **Hearing Date:** July 3, 2024
Author: Mike Fong
Version: June 20, 2024
Urgency: No **Fiscal:** No
Consultant: Emma Bruce

SUBJECT: Policy fellows: status of services: associations

KEY ISSUE

This bill clarifies that the services of a policy fellow provided by an association are not compensation, a reward, or gift, nor an interest, business, transaction, professional activity, or obligation that is in substantial conflict with the proper discharge of the duties of a Member of the Legislature, state elective, appointive officer, judge, or justice, as specified.

ANALYSIS

Existing law:

- 1) Establishes a code of ethics for members of the Legislature, state elective or appointive officers, or judges which prohibits them while serving as such, from having any interest, financial or otherwise, direct or indirect, or engaging in any business or transaction or professional activity, or incurring any obligation of any nature, that is in substantial conflict with the proper discharge of their duties in the public interest and of their responsibilities as prescribed in the laws of this state.

The code also prohibits them from receiving or agreeing to receive, directly or indirectly, any compensation, reward, or gift from any source except the State of California for any service, advice, assistance or other matter related to the legislative process, except fees for speeches or published works on legislative subjects and except, in connection therewith, reimbursement of expenses for actual expenditures for travel and reasonable subsistence for which payment or reimbursement is not made by the State of California. (Government Code (GC) §8920)

- 2) Prohibits an elected state officer, elected officer of a local government agency, or other specified individual from accepting gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250) and defines “ gift” to mean any payment, except as specified, that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. (GC §89503 and §82028)
- 3) Recognizes, among other related legislative findings and declarations, that the California Council on Science and Technology (CCST) was formed as a 501(c)(3) corporation to provide expert, unbiased advice to various agencies of state government in connection with science and technology policy issues, and in 2009 began placing Ph.D.-level, or equivalent, scientists, engineers, and other experts in legislative offices for the purpose of providing

Members, committees, and legislative staff with unbiased advice in connection with science and technology-related legislation. (GC §8924.5)

- 4) Provides that the services of a CCST Fellow are not compensation, a reward, or a gift to a member of the Legislature for which the receipt thereof constitutes a prohibited act pursuant to the legislative code of ethics. (GC §8920)
- 5) Provides that the services of a CCST Fellow are not compensation, a reward, or a gift to a state elective, appointive officer, judge, or justice for which the receipt thereof constitutes a prohibited act. (GC §8920)

This bill:

- 1) Defines “association” for purposes of these provisions as any of the following organizations that are exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code:
 - a. The Asian Pacific Islander Capitol Association.
 - b. The California Legislative Black Staff Association.
 - c. The Capitol LGBTQ Association.
 - d. The California Latino Capitol Association Foundation.
- 2) Provides that the services of a policy fellow provided by an association are not compensation, a reward, or gift, nor an interest, business, transaction, professional activity, or obligation that is in substantial conflict with the proper discharge of the duties of a Member of the Legislature, state elective, appointive officer, judge, or justice, as specified.
- 3) Provides that a policy fellow provided by an association is not an employee of either house of the Legislature for purposes of these provisions.
- 4) Provides that the state civil service does not include a policy fellow provided by an association.
- 5) States that these provisions do not constitute a change in, but are declaratory of, existing law.

COMMENTS**1. Need for this bill?**

According to the author:

“There are several legislative staff associations that provide staff support, networking opportunities, community engagement, and professional development and engagement through workshops, events and fellowship programs. They include APICA, the California Legislative Black Staff Association, the Capitol LGBTQ Association, and the California Latino Capitol Association Foundation (CLCAF). They are non-partisan, non-profit organizations with membership from the capital community.

Currently, APICA and the CLCAF sponsor Fellowship Programs. The APICA brings approximately 6-10 college students/recent graduates to Sacramento and provides a two-month internship during the summer to learn about the State Legislature. CLCAF’s

internship is open to anyone over 21 years of age for a 10 week internship, also during the summer...

AB 2573 provides that the services of fellows hosted by the legislative staff associations are not compensation, a reward, a gift, and interest, a business, a transaction, a professional activity, or an obligation. The bill also specifies that a fellow is not an employee of the Legislature or included in the state service, similar to the provisions that apply to a CA Science and Technology Policy Fellow Provided by CCST.”

2. Proponent Arguments:

The University of California is in support of the measure, stating:

“Staff associations provide an invaluable service to the State Capitol community by building a pipeline of diverse professionals working in the legislative field. As a part of this service, some of the associations provide paid fellowships in legislative offices.

Public service is a part of the University’s mission, and its core values include collaboration, excellence, equity and inclusion, and public impact. For over 20 years, UC has operated its Sacramento Center, which provides expertise and research on public policy matters, as well as public-service opportunities for our students in the Capitol community.

The University is proud to have had several of its current students and alumni participate in these state association fellowships, including individuals who work in the Legislature and in non-profit advocacy. UC is committed to supporting all efforts that help our students successfully obtain employment in the Capitol community and fully engage in learning and participating in the legislative process. Many of our students who are selected to participate in these staff association fellowships ultimately become leaders in public service entities and carry forward the University’s core values in regard to our public service mission. For these reasons, the University is in support of AB 2573.”

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 698 (Wilk, Chapter 112, Statutes of 2023) clarified that the services provided by a California Science and Technology Policy Fellow are not compensation or a gift to an executive branch state officer otherwise prohibited by state ethics law.

AB 573 (Portantino, Chapter 117, Statutes of 2009) clarified that the services of a California Science and Technology Policy Fellow provided by the California Council on Science and Technology and authorized by the Senate Rules Committee, the Assembly Rules Committee, or the Joint Rules Committee are not compensation, a reward, or a gift to a Member of the Legislature.

Assembly Concurrent Resolution 162 (Farr, Chapter 148, Statutes of 1988) requested the creation of the CCST.

SUPPORT

University of California

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 3043 **Hearing Date:** July 3, 2024
Author: Luz Rivas
Version: May 20, 2024
Urgency: No **Fiscal:** Yes
Consultant: Emma Bruce

SUBJECT: Occupational safety: fabrication activities

KEY ISSUE

This bill addresses worker safety in the stone fabrication industry by, among other things, 1) prohibiting the use of “dry methods” in fabrication; 2) establishing training, certification, and licensing requirements; 3) prohibiting suppliers from providing slabs to unlicensed people and entities; and 4) creating an online database to track violations of health and safety orders and licensing requirements.

ANALYSIS

Existing law:

- 1) Under the California Occupational Safety and Health Act, assures safe and healthful working conditions for all California workers by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health. (Labor Code §6300)
- 2) Establishes the Labor Workforce and Development Agency (LWDA) under the supervision of an executive officer known as the Secretary and tasks the LWDA with, among other things, enforcing California labor laws to protect workers and create an even playing field for employers. (Government Code §15550 et seq.)
- 3) Establishes the Department of Industrial Relations (DIR) within the LWDA and vests it with various powers and duties to foster, promote, and develop the welfare of the wage earners of California, to improve their working conditions, and to advance their opportunities for profitable employment. (Labor Code §50.5)
- 4) Establishes within DIR the Division of Labor Standards Enforcement (DLSE) under the direction of the LC, and empowers the LC to ensure a just day’s pay in every work place and to promote justice through robust enforcement of labor laws. (Labor Code §79-107)
- 5) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within DIR to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)
- 6) Establishes the Occupational Safety and Health Standards Board (Board), within DIR, to promote, adopt, and maintain reasonable and enforceable standards that will ensure a safe and healthful workplace for workers. (Labor Code §140-147.6)

- 7) 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. (Labor Code §6409.1)
- 8) Prohibits a person from discharging or in any manner discriminating against any employee because the employee, among other things, reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records, or exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), as specified. (Labor Code §6310)
- 9) Prohibits an employee from being laid off or discharged for refusing to perform work in violation of prescribed safety standards, where the violation would create a real and apparent hazard to the employee or his or her fellow employees. Any employee who is laid off or discharged in violation of this right shall have a right of action for lost wages for the time the employee is without work as a result of the layoff or discharge. (Labor Code §6311)

State Regulations

- 10) Establishes standards for exposure to respirable crystalline silica in the construction industry including, but not limited to, setting a permissible exposure limit and action level, and requiring respiratory protection, (California Code of Regulations (CCR), Title 8, §1532.3)
- 11) Requires, under the Emergency Temporary Standard on Respirable Crystalline Silica, covered employers to develop, among other things, exposure controls, a written exposure control plan, employee communication and training, respirator protection, and employee exposure monitoring to protect employees from respirable crystalline silica. (CCR, Title 8, §5204)

This bill:

- 1) Makes various findings and declarations regarding silicosis and its associated health impacts.

Definitions

- 2) Defines, for purposes of these provisions, “department” as the Department of Industrial Relations (DIR) and provides that “Director” is the Director of DIR.
- 3) Defines “dry methods” as the undertaking of fabrication activities without the use of effective wet methods that effectively suppress dust.
- 4) Defines “effective wet methods” as the suppressing of dust by one of the identified methods below, which ensure that water covers the entire surface of the work object where a tool, equipment, or machine contacts the work object:

- a. Applying a constant, continuous, and appropriate volume of running water directly onto the surface of the work object. When water flow is integrated with a tool, machine, or equipment, water flow rates shall equal or exceed manufacturer recommendations and specifications to ensure effective dust suppression.
 - b. Submersing the work object under water.
 - c. Water jet cutting or use of high-pressure water to cut material.
- 5) Defines “fabrication activities” as machining, crushing, cutting, drilling, abrading, abrasive blasting, grinding, chiseling, carving, gouging, polishing, buffing, fracturing, intentional breaking, or intentional chipping of slab products. Excludes onsite construction work covered by Section 1532.3 of Title 8 of the California Code of Regulations.
 - 6) Defines “fabrication shop” as a location where fabrication activities are undertaken on slab products. Excludes facilities where slab products are manufactured, including, but not limited to, quarries, concrete manufacturing facilities, or tile manufacturing facilities.
 - 7) Defines “license” as a slab product fabrication activity license to engage in fabrication activities issued by DIR pursuant to these provisions.
 - 8) Defines “respirable crystalline silica” as quartz, cristobalite, or tridymite contained in airborne particles that are determined to be respirable by a sampling device designed to meet the characteristics for respirable-particle-size-selective samplers specified in the Air Quality – Particle Size Fraction Definitions for Health-Related Sampling in Report 7708 completed by the International Organization for Standardization in 1995.
 - 9) Defines “slab product” as a thick, flat piece of a solid stone substance, including artificial, engineered, or natural stone that is used for countertop installation or customization.

Slab Fabrication Activity Account

- 10) Establishes the Slab Fabrication Activity Account (Account) in the Occupational Safety and Health Fund in the State Treasury.
- 11) Requires all fees, penalties, or other moneys collected by DIR to be deposited in the Account and specifies moneys in the account may be expended by DIR, upon appropriation of the Legislature, to administer these provisions.

Fabrication Activities

- 12) Prohibits any person or entity engaged in fabrication activities or fabrication shops from using dry methods in any fabrication activities and instead requires the use of effective wet methods.
- 13) Provides that a violation of 12), above, is grounds for an immediate order prohibiting continued fabrication activities by the Director and may be grounds for additional fines and penalties, as determined by the Director. These violations may be reported to the Division of Labor Standards Enforcement (DLSE).
- 14) Provides that notwithstanding any provisions of this bill to the contrary, a violation of 12), above, is not a crime.

Training and Certification

- 15) Requires DIR on or before July 1, 2025, to consult with representatives of approved apprenticeship programs to adopt a training curriculum regarding the safe performance of fabrication activities.
- 16) Requires the training curriculum to both cover applicable safety and health standards and include classroom instruction and supervised hands-on activities.
- 17) Authorizes an approved apprenticeship program to provide the training curriculum and requires DIR to approve alternative providers if approved apprenticeship programs do not offer programs sufficient to meet the needs of the industry.
- 18) Prohibits an owner or operator of a slab product fabrication shop beginning on July 1, 2026 from permitting any individual to perform fabrication activities or employing an individual to perform work on the shop floor where fabrication activities are conducted, unless the individual has been certified pursuant to the training curriculum described in 16), above.
- 19) Requires the owner or operator of a slab product fabrication shop to be responsible for paying for the costs of the training curriculum of its employees.
- 20) Requires DIR to certify an individual who has completed the approved training curriculum immediately upon completion.
- 21) Provides that above training provisions do not apply to an individual who is enrolled in, or who has graduated from, an apprenticeship program that covers fabrication activities and is approved by the Division of Apprenticeship Standards.

Initial Licensing and Renewal Requirements

- 22) Requires DIR on or before January 1, 2026, to develop an application and licensing process for a slab product fabrication activity license to authorize fabrication shops to engage in fabrication activities. Provides that each license granted by DIR is valid for a three-year period.
- 23) Authorizes a fabrication shop to engage in fabrication activities during the pendency of the application development and licensing process. Revokes this authorization on January 1, 2026.
- 24) Requires DIR on January 1, 2026, to accept applications for and grant licenses to fabrication shops that demonstrate satisfaction of all of the following workplace safety conditions and precautions:
 - a. Evidence of a legally obtained and valid business license and applicable state contractor's license.
 - b. Evidence of satisfactory workers' compensation insurance coverage.
 - c. Demonstration of compliance with any occupational safety and health standards and orders that are promulgated by the Occupational Safety and Health Standards Board (Board).

- d. Implementation of an air quality monitoring program consistent with any occupational safety and health standards and orders that are promulgated by the Board and documentation of verification of implementation by a third party that is normally engaged in those kinds of verifications.
 - e. Documentation of completion by all employees of a technical training program focused on the prevention of workplace respirable crystalline silica exposure, including the use of protective equipment and control measures that is approved by the department.
- 25) Requires DIR, or a third party certified by DIR, to inspect a fabrication shop before the issuance of the license to verify that the equipment and procedures of the fabrication shop are in compliance with any occupational safety and health standards and orders that are promulgated by the Board.
- 26) Requires an applicant for a license to submit to DIR an initial license application, including a \$450 application fee and an initial license fee of \$200, which will be deposited in the Account.
- 27) Requires DIR to accept a renewal application for and grant a license renewal to a licensee who demonstrates continued compliance with specified workplace safety conditions and precautions, including presenting documentation that all individuals performing fabrication activities have been certified or are exempt from certification.
- 28) Authorizes DIR to suspend or revoke a license issued if the licensee has engaged in gross negligence, gross incompetence, or willful or repeated disregard of an occupational safety and health standard or order. Prohibits a person or entity from engaging in fabrication activities without a license. These violations may be reported to DLSE.

Suppliers

- 29) Prohibits a person on and after January 1, 2026, from supplying a slab product directly to a person or entity engaged in fabrication activities if the person or entity engaged in fabrication activities does not have a valid license.
- 30) Requires a person that supplies slab products to a person or entity engaged in fabrication activities to verify that the person or entity has a valid license before providing the slab product; and requires the supplier to rely on a written certification issued under penalty of perjury from the person that the person will not directly engage in fabrication activities with the product without a license and that, if the person resells the product, the person will resell to a person or entity with a license.
- 31) Requires a person that seeks services that require fabrication activities and enters into a contract with a person or entity to undertake fabrication activities to verify that the person or entity has a valid license before engaging with and providing slab products to that person or entity.
- 32) Provides that a violation of supplier provisions, above, may be grounds for penalties as determined by the Director. Notwithstanding any provision to the contrary, a violation of these provisions is not a crime.

Public Database

- 33) Requires the Director on January 1, 2026, to maintain a publicly accessible database on the DIR's website that includes all of the following:
- a. Information on any active orders issued by the department in the prior 12 months prohibiting an activity at a fabrication shop pursuant to this chapter.
 - b. Information on fabrication shops in the state licensed pursuant to this chapter and on any enforcement actions pending at those licensed fabrication shops.
 - c. An online tool to report suspected or alleged violations of this chapter.

Reports to the Legislature

- 34) Requires DIR on or before July 1, 2025, to submit a report to the Legislature in consultation with the Labor and Workforce Development Agency (LWDA), the Division of Occupational Safety and Health (Cal/OSHA), and the State Department of Public Health (CDPH) that includes, among other things, the following:
- a. The number of violations issued for failure to comply with any temporary or future standards relating to respirable crystalline silica adopted by Cal/OSHA, and the geographic areas in the state with the highest numbers of those violations.
 - b. Updates on steps taken by DIR or Cal/OSHA to increase the ratio of industrial hygienists to workers exposed to respirable crystalline silica
- 35) Requires DIR on or before January 1, 2027, and on or before January 1, 2029, to submit a report to the Legislature in consultation with LWDA, Cal/OSHA, and CDPH that includes, among other things, the following:
- a. The number of licenses, violations for failure to comply with licensure requirements, and license suspensions or revocations issued by the department pursuant to this chapter, and the geographic areas with the highest numbers of those penalties.
 - b. The number of notices issued to fabrication shops found to be in noncompliance with DIR regulations relating to respirable crystalline silica.
 - c. The overall enhancement to workers protections with the license program, including any successes or gaps.
- 36) Requires DIR and Cal/OSHA to use the findings of the above reports to prioritize enforcement of the requirements of this chapter in geographic areas with the highest numbers of violations or other penalties issued by the department relating to respirable crystalline silica, including, but not limited to, the San Fernando Valley.

- 37) Repeals this section for these reporting requirements on January 1, 2031.

COMMENTS

1. Background:

Artificial Stone and Silicosis

Silica is a common mineral found in soil, sand, granite, and most other types of rock. In its crystalline form, the mineral is hazardous and creates a respirable dust that is easy to inhale¹. Artificial stone, used for countertops, contains more than 93 percent crystalline silica, in combination with adhesives and pigments². When artificial stone is cut or manipulated, respirable crystalline silica (RCS) releases into the air. Prolonged exposure to RCS produces an aggressive form of silicosis, a progressive, disabling, and often fatal lung disease. RCS particles travel deep into the lungs where they cause inflammation and eventually scarring. This scarring in turn makes breathing difficult. Ultimately, silicosis is incurable and typically leads to an early death.

Although silicosis is centuries old, the disease is just now surging across the United States and in California. Approximately 2.3 million workers in the U.S. are exposed to RCS in the workplace each year³. In California, the number of reported silicosis cases began increasing in 2019, with the Department of Health and the Occupational Health Branch describing the rise as an epidemic. DIR estimates that stone fabrication shops employ around 4,040 workers in the state. Based on a silicosis prevalence rate of 12 percent to 21 percent and a fatality rate of 19 percent, Cal/OSHA estimates that between 500 and 850 cases of silicosis will occur among these workers, and between 90 to 160 will likely die⁴. Prior to the adoption of an emergency temporary standard by the Board, discussed below, an existing standard did regulate occupational exposure to RCS. However, when Cal/OSHA examined the slab fabrication industry in 2019 and 2020, it found that 72 percent of shops were in violation of silica regulations⁵.

The troubling rise in silicosis cases can be traced to the increasing popularity of artificial stone countertops. Artificial stone has dominated the market in the last 10 to 15 years primarily because of its affordability, low maintenance, and high resistance to scratches, stains, and heat. In 2021, it surpassed all other materials to become the predominant countertop product in the U.S. for residential and commercial applications, with a market size of \$17.7 billion⁶. Demand for artificial stone countertops is expected to continue growing at 9.6 percent annually through 2026, solidifying the material's position as the most popular type of countertop material used in the country⁷.

2. Cal/OSHA Emergency Temporary Standard (ETS) on Respirable Crystalline Silica (RCS):

On December 14, 2023, the Board approved Cal/OSHA's ETS on RCS. Prior to this, the existing standard was designed to monitor silicosis in large industries. This made its

¹ "Silicosis: An Industry Guide to Awareness and Prevention," Natural Stone Institute, 2020, [2020_Silicosis_Tech_Module_UPDATE.indd \(naturalstoneinstitute.org\)](https://www.naturalstoneinstitute.org/2020_Silicosis_Tech_Module_UPDATE.indd)

² "Hazard Alert: Worker Exposure to Silica during Countertop Manufacturing, Finishing and Installation," Occupational Safety and Health Administration (OSHA) and National Institute for Occupational Safety and Health (NIOSH) 2015, <https://www.osha.gov/sites/default/files/publications/OSHA3768.pdf>.

³ "Silicosis: An Industry Guide to Awareness and Prevention," Natural Stone Institute, 2020, [2020_Silicosis_Tech_Module_UPDATE.indd \(naturalstoneinstitute.org\)](https://www.naturalstoneinstitute.org/2020_Silicosis_Tech_Module_UPDATE.indd)

⁴ Occupational Exposures to Respirable Crystalline Silica: Initial Statement of Reasons," Department of Industrial Relations, 2024, [*Occupational Exposures to Respirable Crystalline Silica Non Emergency ISOR](https://www.dir.ca.gov/DIR/occe/occupational-exposures-to-respirable-crystalline-silica-non-emergency-isor)

⁵ Ibid.

⁶ Tustin AW, et al. "An outbreak of work-related asthma and silicosis at a US countertop manufacturing and fabrication facility," American Journal of Industrial Medicine, October 20, 2021;65(1):12-19, <https://pubmed.ncbi.nlm.nih.gov/34671999/>.

⁷ Paolucci V, et al. "Silicosis in Workers Exposed to Artificial Quartz Conglomerates: Does It Differ From Chronic Silicosis?" Archivos de Bronconeumologia. December 2015;51(12):e57-e60. <https://archbronconeumol.org/en-silicosis-trabajadores-expuestosconglomerados-artificiales-articulo-S1579212915001883>.

application to the slab fabrication industry, which primarily consists of small shops, difficult. Additionally, the old standard contained three loopholes, 1) it allowed employers to avoid implementing key protections by claiming they were infeasible; 2) it allowed employers to exempt themselves by claiming RCS exposure was below the allowable level; and 3) it allowed employers to conduct air monitoring on a single day and exempt themselves from the standard if the results showed exposures below the allowable level.

The new ETS standard (CCR §5204) includes important revisions to protect workers engaged in high-exposure trigger tasks. Below is a sample of some of the new requirements.

Definitions and General Safety Requirements

- Defines “high-exposure trigger task” as machining, crushing, cutting, drilling, abrading, abrasive blasting, grinding, chiseling, carving, gouging, polishing, buffing, fracturing, intentional breaking, or intentional chipping of artificial stone that contains more than 0.1 percent by weight crystalline silica, or natural stone that contains more than 10 percent by weight crystalline silica. High-exposure trigger tasks also includes clean up, disturbing, or handling of wastes, dusts, residues, debris, or other materials created during the above-listed tasks.
- Requires trigger tasks to be covered by the ETS regardless of employee exposures, exposure assessments, or objective data. This closes the loopholes in the old standard.
- Requires employers to assess an employee’s exposure to RCS, monitor the workplace, and notify each affected employee in writing of the corrective actions taken to reduce exposure.
- Requires employers to establish a regulated area wherever an employee’s exposure to RCS is high.
- Prescribes specified engineering controls and work practices for all high-exposure trigger tasks, including effective wet methods and respirators.
- Provides that failure to comply with engineering controls shall be considered an imminent hazard and is subject to an Order Prohibiting Use (OPU) by Cal/OSHA. The OPU allows Cal/OSHA to take immediate steps to stop a hazardous process or close the facility.

Exposure Plan and Medical Surveillance

- Requires employers to develop a written exposure control plan, as specified, and requires the plan to be available to employees.
- Requires employers to provide medical surveillance at no cost to the employee, as specified.

Training Requirements

- Requires employers to ensure that each employee covered by the standard can demonstrate knowledge and understanding of, among other things, the health hazards and symptoms of silicosis, tasks that may result in exposure to RCS, and how to properly use and implement engineering controls.
- Requires employers to make a copy of the standard readily available to each employee.

Reporting and Recordkeeping

- Requires employers, within 24 hours of receiving information regarding a confirmed silicosis case or lung cancer related to RCS exposure, to report specified information to the California Department of Public Health and Cal/OSHA.
- Requires employers to maintain an accurate record of all exposure measurements taken to assess employee exposure, of all objective data relied upon to comply with the standard, and of all employees covered by the medical surveillance requirement, as specified.
- Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen days after the request for access is made.

Impact of the ETS Standard Thus Far

Under the ETS, Cal/OSHA has already conducted 29 inspections of artificial stone fabrication shops and issued 13 OPU⁸. Previously, it took several months to open an investigation and issue citations before an employer was required to reduce RCS exposure. To date, the data indicates that the ETS is an effective tool and that Board should adopt the standard beyond its one-year timeframe.

3. Committee Comments:

Silicosis is a deadly disease that disproportionately affects young, Latino immigrants⁹. The actions taken by the state thus far are the first steps in a larger effort to ensure the slab fabrication industry is safe. Having said that, the committee raises the following concerns:

- Provisions in this bill impose several requirements on DIR, all within a swift timeline (please see the chart below). Several of these requirements overlap. For instance, DIR is directed to both develop a licensing process on or before January 1, 2026 and start granting licenses on January 1, 2026. Furthermore, the ability to receive a license depends in part on demonstrating that all the employees in a shop have completed specified training. However, the requirement for all employees in a slab shop to complete this training does not go into effect until July 1, 2026.

Given DIR's staffing challenges, is it appropriate to impose so many new requirements so quickly? The author should work with DIR to determine a suitable timeline that does not conflict with itself.

- Provisions in this bill direct DIR to consult with representatives of “approved apprenticeship programs” to adopt a training curriculum, however it is not clear what this means. It seems that the author is referring to programs approved by the Division of Apprenticeship Standards (DAS), however the bill later explicitly references DAS approved programs. This makes it appear that the earlier referenced “approved apprenticeship programs” are not approved by DAS. The author should clarify what “approved apprenticeship programs are.

⁸ Occupational Exposures to Respirable Crystalline Silica: Initial Statement of Reasons,” Department of Industrial Relations, 2024, [*Occupational Exposures to Respirable Crystalline Silica Non Emergency ISOR](#)

⁹ Reyes and Carcamo, “California workers who cut countertops are dying of an incurable disease,” LA Times, September 24, 2023, [California workers who cut countertops are dying of silicosis - Los Angeles Times \(latimes.com\)](#)

- Within one year of DIR developing a training curriculum, all employees in a slab shop are required to have completed DIR’s training or be enrolled in or a graduate of a DAS approved apprenticeship program that covers fabrication activities. DIR’s approved training curriculum requires classroom instruction and supervised hands-on activities.

Is one year enough time to train all 4,000 plus workers in the slab fabrication industry when classroom instruction and hands-on activities are required?

- Provisions in this bill require DIR to submit three separate reports to the Legislature.

Are the reporting requirements in this bill too onerous? Does directing DIR to do this diminish their capacity to enforce other provisions in the bill?

- Lastly, the author should thoroughly review Cal/OSHA’s ETS to ensure that the provisions of this bill are complementary.

4. Timeline of AB 3043:

<p>On or before July 1, 2025</p>	<p>DIR shall consult with representative of approved apprenticeship programs to adopt a training curriculum.</p> <p>DIR in consultation with the LWDA, Cal/OSHA, and CDPH must submit a report to the Legislature.</p>
<p>On or before January 1, 2026</p>	<p>DIR shall develop an application and licensing process for a “slab product fabrication activity” license.</p> <p>DIR shall accept an application for and grant a license to a fabrication shop that demonstrates satisfaction of specified requirements.</p>
<p>Beginning January 1, 2026</p>	<p>DIR shall maintain a publicly accessible database with specified information.</p>
<p>July 1, 2026</p>	<p>All individual performing slab fabrication activities in a shop must be certified pursuant to DIR’s training curriculum.</p>
<p>On or before January 1, 2027</p>	<p>DIR in consultation with the LWDA, Cal/OSHA, and CDPH must submit a report to the Legislature.</p>
<p>On or before January 1, 2029</p>	<p>DIR in consultation with the LWDA, Cal/OSHA, and CDPH must submit a report to the Legislature.</p>

5. Need for this bill?

According to the author:

“Since 2010, there have been over 1,000 reported cases of silicosis in stone workers worldwide. The California Department of Public Health (CDPH) has identified over 100 countertop workers with silicosis. Between 2019 and 2022, 52 artificial stone workers were diagnosed with silicosis, 51 of whom were Latino immigrants. Twenty of the patients had advanced disease at diagnosis, and ten have died. Four workers received lung transplants; five are still under evaluation. Their median age was 45, with an average work history of 15 years...

On December 14, 2023, the Occupational Safety and Health Standards Board (Cal/OSHA) approved emergency temporary standards (ETS) to protect workers from silicosis.

Although releasing emergency temporary is a positive step in the right direction, questions arise as to why regulations were issued after the spike in silicosis cases occurred and whether or not the state has the necessary resources currently appropriated to enforce these new regulations to prevent future increases of silicosis cases from occurring.

AB 3043 establishes a system for tracking artificial stone to ensure that fabrication shops are implementing the state ETS and encourage state enforcement.”

6. Proponent Arguments:

The sponsors of the measure, the State Building and Construction Trades, state:

"AB 3043 is needed because there is an epidemic occurring right now in Southern California. Many cases of incurable and fatal lung problems from exposure to silica dust in stone fabrication workers have been reported around the world and in the United States, including several cases among relatively young workers in California...

A state law is needed to help Cal/OSHA blunt the effects of a global epidemic. Cal/OSHA needs help because they are critically understaffed and, right now, without a confirmed Chief, while trying to keep 18 million workers safe. According to a February 2024 story from the Sacramento Bee, Cal/OSHA suffers from a 34% vacancy rate with a 37% vacancy rate among health and safety inspectors. The Cal/OSHA Bureau of Investigations, charged with investigating every workplace fatality, is operating with two investigators for the whole state. While AB 3043 will not remedy those paltry statistics, it will require better training of fabricators and their employers. It will require fabrication employers to register with the state to obtain a license to do fabrication and pay a fee for that privilege that will then be used to provide resources to Cal/OSHA. And perhaps most importantly, it will require the Department of Industrial Relations to consult with representatives of state-approved apprenticeship programs to adopt a training curriculum regarding the safe performance of fabrication activities. The hope is that with a robust registration, licensing, and training system in place, Cal/OSHA will be able to focus on the parts of the industry that remain underground and refuse to get licensed. In short, it will allow Cal/OSHA to go after the bad actors.”

7. Opponent Arguments:

The International Surface Fabricators Association is opposed unless amended to the measure, requesting:

“We ask you to consider changes to allow the spirit of the legislation — workplace safety and oversight — to shine through. Specifically, we request your consideration to remove language in the following areas:

Delete Section 6359.3 from AB 3043 [training requirements]. We fully believe in the need for training regarding the safe execution of fabrication activities. However, the CalOSHA regulations governing this industry already include comprehensive employee training requirements. California’s regulatory framework requires every employer engaged in fabrication activities to ensure that each employee can demonstrate knowledge and understanding of the occupational safety and health standards applicable to countertop fabrication activities. The regulations include a requirement for employers to ensure that employees understand how to properly use and implement engineering controls, work practices, and respiratory protection, including hands-on curriculum, to ensure worker protection. The additional training requirements in AB 3043, specifically the requirement that such curriculum must be delivered through a community college or apprenticeship program, are unnecessary and add extraneous costs to the existing training requirements that employers must already comply with pursuant to the regulations.”

**Every opposition letter on file for AB 3043 was submitted in response to an earlier version of the bill, thus most of the letters reference provisions of the bill that have since been deleted.*

SUPPORT

State Building and Construction Trades Council (Sponsors)
American Lung Association in California
California Labor Federation
City of Los Angeles
County of Los Angeles Board of Supervisors
Dolores Huerta Foundation
Engineered Stone Manufacturers Association
Silica Safety Coalition
Western Occupational & Environmental Medical Association
Individual letters: 6

OPPOSITION

American Marble
Andrew Lauren Surfaces
Block Tops INC.
Brewster Marble Company
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce

California Manufacturers & Technology Association
California Retailers Association
International Surface Fabricators Association
Lepell Tile & Stone INC.
United Marble & Granite INC.

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