SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 283	**Hearing Date:**	June 18, 2025
Author:	Haney		
Version:	June 12, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: In-Home Supportive Services Employer-Employee Relations Act

KEY ISSUE

This bill establishes the In-Home Supportive Services (IHSS) Employer-Employee Relations Act, which shifts collective bargaining with IHSS providers from the local level to the state and would make related changes to the Government Code and the Welfare and Institutions Code regulating IHSS services.

ANALYSIS

Existing 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. While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees have no collective bargaining rights absent specific statutory authority establishing those rights. (29 United States Code §§151 et seq.)

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

3) Establishes the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD), which makes it unlawful for public employers to deter or discourage public employees or applicants to be public employees from: a) becoming or remaining members of an employee organization; b) authorizing representation by an employee; or, c) authorizing dues or fee deductions to an employee organization. (Government Code §§3550 et seq.)

4) Establishes the Public Employee Communication Chapter (PECC), which provides California public employee unions with specific rights designed to provide them with meaningful access to, and the ability to effectively communicate with, their represented members. (Government Code §§3555 et seq.)

5) Establishes the Public Employment Relations Board (PERB), a quasi-judicial administrative agency charged with administering certain statutory frameworks governing employer-employee relations, resolving disputes, and enforcing the statutory obligations and rights of public agencies, their employees, and employee organizations. (Government Code §§3541 et seq.)

6) Excludes information about IHSS workers from public disclosure requirements but requires the counties, public authorities, or non-profit consortiums that are their designated employers for purposes of collective bargaining to provide specified information to unions to facilitate their communications to and contacts with IHSS workers. (Government Code §7926.300)

7) Requires under the Bagley-Keene Open Meeting Act that state and public agencies conduct deliberations and take actions openly, as specified. (Government Code §11120)

8) Provides in-home supportive services to aged, blind, or disabled persons unable to perform those services themselves and without which they cannot safely remain in their homes. (Welfare and Institutions Code §§12300 et seq.)

9) Authorizes a county board of supervisors to elect to either contract with a nonprofit consortium to provide for the delivery of in-home supportive services or establish, by ordinance, a public authority to provide for the delivery of in-home supportive services. (Welfare and Institutions Code §12306.1)

This bill:

1) Establishes the In-Home Supportive Services (IHSS) Employer-Employee Relations Act ("IHSSEERA") to shift collective bargaining with IHSS providers from the county or public authority to the state. The IHSSEERA deems the state, instead of the county or the public authority, the employer of record of individual IHSS providers in each county for purposes of collective bargaining.

2) Provides that notwithstanding IHSSEERA, the IHSS recipient maintains the right to hire, fire, and supervise the work of the individual providing services and that specified requirements of overtime, workweek and other elements of the IHSS program remain the same.

3) Requires the state to assume the responsibilities set forth in IHSSEERA on January 1, 2026.

4) Requires the state to assume a predecessor agency's rights and obligations under an existing memorandum of understanding (MOU) with a recognized employee organization until the expiration of that MOU.

5) Provides for the merging of existing bargaining units of IHSS providers and requires all recognized employee organizations to negotiate jointly on behalf of all represented bargaining units to reach a single MOU with the employer. The MOU may contain addenda reflecting regional or county-level terms of employment.

6) Requires the state to follow certain collective bargaining procedures and present the MOU to the Legislature for approval by majority vote.

7) Grants PERB jurisdiction over IHSSEERA, authorizes PERB to adopt related regulations, including emergency regulations, and makes regulations exempt from specified rulemaking requirements.

8) Requires mediation for the state and IHSS employee unions to resolve differences but provides a binding arbitration process if mediation fails. Permits the Legislature to reject the arbitration panel's decision by a majority vote of the Legislature.

9) Requires the Department of Social Services (DSS) to appoint an advisory committee to provide ongoing advice and recommendations regarding IHSS. DSS must designate an employee to provide ongoing support to the advisory committee.

10) Makes the state the employer of record for IHSS workers and applies to the state, in relation to those workers, the provisions of the Public Employee Communication Chapter (PECC) which prohibits subject employers from interfering with a union's rights, as specified, to communicate and access the workers they represent.

11) Applies the provisions of the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD) act to the state, which make it unlawful for public employers to deter or discourage public employees or applicants to be public employees from: a) becoming or remaining members of an employee organization; b) authorizing representation by an employee; or, c) authorizing dues or fee deductions to an employee organization.

12) Excludes information about IHSS workers from public records disclosure requirements but requires the state, or a county, public authority, or nonprofit consortium regulating IHSS workers to provide specified information to unions to facilitate the unions' communication to and contact with IHSS workers.

13) Excludes the IHSS statewide bargaining advisory committee established by this bill from the Bagley-Keene Open Meeting Act's requirements.

14) Requires a county or city and county to continue to have its public authority or nonprofit consortium perform the functions set forth in the county ordinance, as specified.

15) Requires IHSS employee orientation to include any other information that a memorandum of understanding, appendix, or side letter between recognized employee unions and the state requires be communicated to prospective IHSS providers.

16) Requires, on January 1, 2026, a county or city and county, a public authority or a nonprofit consortium contracting with a county, when providing for the delivery of IHSS services to comply with, and be subject to, all provisions of any memorandum of understanding or addenda, appendices, or side letters thereto between the state and recognized employee organizations, as specified.

17) Requires the state to assume, and be liable for, any act by a county or city and county, a public authority, or a nonprofit consortium contracting with a county, that is in violation of a memorandum of understanding or addenda, appendices, or side letters.

18) Allows those violations to be adjusted through a grievance procedure contained in a memorandum of understanding between the state and recognized employee organizations and makes specified remedies cumulative not exclusive.

COMMENTS

1. Background:

The IHSS program provides in-home assistance to low-income aging adults and individuals with disabilities, allowing these individuals to receive care safely in their homes. Generally, IHSS providers are family members of the IHSS program participant, although participants may also choose a provider from a list of local providers. The projected program caseload for fiscal year 2024-25 is over 716,000 providers serving over 717,000 recipients.

A mix of federal, state, and local resources fund IHSS provider wages and benefits. The federal government's share of cost is based on the Medi-Cal Federal Medical Assistance Percentage, the state's share covers state minimum wage augmentations, local entities pay for locally-negotiated increases above the state minimum wage, and IHSS recipients may pay a share of cost based on their income. Thus, IHSS provider wages vary across California, from the minimum wage of $16.50 per hour in Siskiyou County to $22 per hour in San Francisco County. The median IHSS provider wage in California is $18.13 per hour.

A 2012 state law established the IHSS Statewide Authority to serve as the employer of record of IHSS providers for purposes of collective bargaining. However, the authority covered only a small number of counties, and the Legislature repealed the law in 2017. Current statute designates local public authorities as the employer of record for collective bargaining purposes with IHSS providers, while requiring the state to administer payroll, workers' compensation, and benefits. This bill shifts collective bargaining with IHSS providers from the local level to the state level for all counties. However, it is unclear whether the state would directly bear responsibility for any future wage and benefit increases negotiated between the state and the IHSS workers' unions or whether the state would fund such increases from existing realignment funds directed to the counties. In the latter case, IHSS provider compensation increases would presumably encroach upon county services for other county administered programs barring any increase in realignment funds.

With respect to this committee's remit, consolidating collective bargaining for IHSS workers under state auspices would potentially provide more uniform and professional standards for IHSS provider services and improved IHSS worker compensation and benefits that may attract increased providers to the field.

Concerns raised by Counties, Public Authorities (PAs), and County Welfare Directors

The California State Association of Counties (CSAC), the California Association of Public Authorities for IHSS (CAPA), and the County Welfare Directors Association of California (CWDA) have expressed the following concerns:

"If collective bargaining transfers to the state, it should do so in a manner that works effectively for all entities involved. With that in mind, counties and PAs have drafted amendments for several key areas of this bill and are engaging with the author and sponsors in a collaborative manner. These issues include:

- Providing clarity that the state would be responsible for the full nonfederal share of cost for any negotiated wage and benefit increases agreed to in state bargaining. Under state bargaining, the state would be solely responsible for agreeing to wage and benefit

increases and counties would have no ability to manage the associated costs within Realignment funding and county budgets. A recent analysis by the UC Berkeley Labor Center clearly highlighted that county IHSS costs are growing faster than Realignment revenues and that there will be decreased funding for health, mental health, and other social services programs within realignment if counties have a share of cost in IHSS state bargaining increases.

- Eliminating several items included within the scope of representation. There are currently items within the scope of representation outlined in this bill that are functions performed by PAs and not currently bargained at the local level including provider registries, backup providers, and provider orientations. It is essential for PAs and counties to have input on any changes to these items as these would be new mandates on counties and because county and PA input can help ensure that the changes will work at the local level. This currently occurs through the legislative and budget process where the Legislature, Administration, counties, PAs, and consumers can all engage directly and provide input. Our organizations believe that any changes to these items should continue to be handled in this manner if collective bargaining is moved to the state level.

- Ensuring full funding is provided in order for counties to comply with any new program requirements. As currently drafted, this bill would legally hold counties and PAs accountable for program changes agreed to between the state and provider unions in state collective bargaining, yet provide no assurance that funding will be provided for counties and PAs to meet these new mandates."

It is the committee's understanding that the author and the above referenced groups continue to work on developing amendments related to the concerns expressed above.

2. Need for this bill?

According to the author:

"The current structure of the IHSS collective bargaining process is not conducive to filling the impending long-term care shortage or establishing a living wage standard for these essential workers. The demand for long-term care is expected to grow drastically over the next decade. According to the Department of Finance, the population of older adults who will need long-term services and supports (LTSS) is expected to grow by more than 40 percent between 2019 and 2030, from 6 million to over 8.6 million. However, the availability of quality home care providers is becoming a dwindling resource due to unlivable wages for the work's difficult demands. Wages and benefits vary between each county, but no county pays providers a living wage. The average living wage in California is $43.44 per hour. In comparison, as of February 2025, the average IHSS worker makes only $18.13 per hour. Additionally, access to health benefits also vary. In fact, as of January 2025, providers in 23 counties have no access to health or dental benefits through the IHSS program."

3. Proponent Arguments

According to Service Employees International Union, California:

"IHSS is a life-saving program for recipients and a cost-saving alternative for our State. However, the program is struggling to recruit and retain the caregivers necessary to maintain this resource. If California does not adequately invest in this workforce, older adults and those living with disabilities will not receive the proper care that they need, caregivers will continue to live in poverty, and the public expense of caring for these populations will only increase.

While IHSS wages vary across California from the minimum wage of $16.50 in Siskiyou County to $22 in San Francisco, there is not a single county that pays IHSS providers a living wage. The average living wage in California for one adult and one child is $43.44 per hour compared to the median IHSS wage at $18.13. This gross disparity has resulted in a growing shortage in the IHSS workforce, resulting in gaps in care for our most vulnerable communities.

The fragmented nature of the IHSS program, as a county-administered program, is not conducive to standardizing an equitable living wage across this industry. AB 283 will help transition collective bargaining from the county level to the statewide level, resulting in a streamlined bargaining process and the professionalization of the IHSS workforce by providing livable wages and benefits. This bill will also ensure more equitable distribution of long-term care funds and allow the state to meet its long-term care demands."

4. Opponent Arguments:

According to Kern County:

"**Loss of Local Control and Oversight** Counties play a critical role in administering IHSS, ensuring services meet the unique needs of vulnerable residents. Centralizing employer responsibilities at the state level would remove county discretion in managing provider relationships, making it more difficult to address local challenges, respond to workforce shortages, and maintain service continuity. Existing local public authorities and nonprofit consortia have established effective structures for managing IHSS employment. AB 283 disregards these in favor of a one-size-fits-all approach.

Financial Implications for Counties Though AB 283 shifts the employer-of-record status to the state, it lacks clear funding assurances. Counties currently contribute to IHSS provider wages, and without statutory guarantees, they may continue to bear financial responsibilities without having a role in employment decision-making. This could result in increased costs and reduced budget flexibility at the county level.

Potential Disruptions to IHSS Service Delivery Transitioning to a state-managed employer structure introduces uncertainty for both providers and recipients. Counties have built systems to manage provider enrollment, training, and case management that ensure timely delivery of services. AB 283 could disrupt these systems, cause delays, and create confusion during implementation—ultimately affecting the most vulnerable residents who rely on IHSS.

While Kern County shares the goal of improving provider rights and wages, AB 283 undermines local authority, imposes fiscal risk, and threatens service continuity. For these reasons, the Kern County Board of Supervisors strongly opposes AB 283."

5. Dual Referral:

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

6. Prior/ Related Legislation:

AB 288 (McKinnor, 2025) would create state collective bargaining rights for private sector employees whose rights are unprotected by an incapacitated National Relations Labor Board and require PERB to adjudicate those rights. *This bill is pending before the Senate, Labor, Public Employment and Retirement Committee.*

AB 1672 (Haney, 2023), substantially similar to this bill, would have created the In-Home Supportive Services Employer-Employee Relations Act to shift collective bargaining over In-Home Support Services (IHSS) provider wages, benefits, and conditions of employment from the local level to the state level. *The bill was referred to the Senate Labor, Public Employment and Retirement Committee but not heard at the request of the author.*

SB 90 (Committee on Budget and Fiscal Review, Chapter 25, Statutes of 2017, Section 4) repealed provisions relating to the IHSS Statewide Authority, the IHSS Fund, and the IHSSEERA.

SB 1036 (Committee on Budget and Fiscal Review, Chapter 45, Statutes of 2012) established the IHSSEERA.

SB 1008 (Committee on Budget and Fiscal Review, Chapter 33, Statutes of 2012) implemented the Duals Demonstration Pilot Projects to achieve savings, and expanded the number of counties in which dual demonstration sites may be established, from four to eight, relating to coordinate care services.

SUPPORT

Service Employees International Union, California (Co-sponsor)
United Domestic Workers of America, Local 3930 (Co-sponsor)
American Federation of State, County and Municipal Employees
California Federation of Labor Unions
Democratic Club of Claremont
Office of San Diego County Supervisor Joel Anderson
Orange County Employees Association
The Arc and United Cerebral Palsy California Collaboration

OPPOSITION

County of Kern

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1181	**Hearing Date:**	June 18, 2025
Author:	Haney		
Version:	May 23, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Firefighters: personal protective equipment

KEY ISSUE

This bill requires the Occupational Safety and Health Board (Board) to modify its existing safety order, by January 1, 2027, in a manner that addresses National Fire Protection Association (NFPA) performance standards for PPE that result in the use of perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other hazardous substances in firefighting personal protective garments and auxiliary firefighting PPE.

ANALYSIS

Existing law:

1) Establishes the Department of Industrial Relations (DIR) in 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)

2) 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.)

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

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

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

6) Requires, commencing January 1, 2022, a person that sells firefighter personal protective equipment (PPE) to provide a written notice to the purchaser, if the firefighter PPE contains intentionally added PFAS chemicals. (Health and Safety Code §13029 (b)(1))

7) Makes a violation of 6), above, subject to a penalty of up to $5,000 for a first violation and up to $10,000 for a subsequent violation. (Health and Safety Code §13029(d)(1))

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

This bill:

1) Makes various findings and declarations regarding the toxic and carcinogenic nature of perfluoroalkyl and polyfluoroalkyl substances (PFAS).

2) Defines "auxiliary firefighting PPE" as personal protective equipment other than firefighting personal protective garments, including self-contained breathing apparatuses and other respiratory protection products, hearing protection, protective communication devices, and fall-protection products.

3) Defines "firefighting personal protective garments" as any garments designed, intended, or marketed to be worn by firefighting personnel in the performance of their duties, designed with the intent for use in fire and rescue activities, including jackets, pants, shoes, gloves, and helmets.

4) Requires, by January 1, 2027, the Board in consultation with DIR to modify its existing safety order regarding firefighter PPE in a manner that addresses NFPA performance standards that are not relevant or applicable to how firefighters utilize their PPE and that result in the use of PFAS, fluoropolymers, flame retardants, and other hazardous substances in firefighting personal protective garments and auxiliary firefighting PPE.

5) Requires the Board, in modifying the existing safety order, to do all of the following:

    a. Use scientific research to create a standard for firefighter PPE used in California that includes performance standards that are relevant and applicable to how firefighters utilize their equipment while being the most protective of firefighters' health and safety, using the 2025 NFPA 1970 Standard on Protective Ensembles for Structural and Proximity Firefighting, Work Apparel, Open-Circuit Self-Contained Breathing Apparatus for Emergency Services, and Personal Alert Safety Systems as a floor.
    b. Mandate that firefighter PPE certified for use in California be free of PFAS and any other hazardous substances that might pose long-term environmental and human health risks. The modified safety order shall require manufacturers of firefighter PPE to certify that their products meet the new standards.
    c. Provide for an implementation date that applies to auxiliary firefighting PPE to be later that the implementation date for firefighting personal protective garments.
    d. Consider an implementation timeline that may include phasing out firefighter PPE that is in use at the time the safety order is modified.

6) Requires Cal/OSHA, by July 1, 2026, to provide a report to the Governor and Legislature on progress toward implementation of the modified PPE safety standards.

COMMENTS

1. Background:

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

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

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

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

A study by the Centers for Disease Control and Prevention and the National Institute for Occupational Safety & Health found that firefighters have higher risks of certain types of cancer than the general population and that firefighters have a higher rate of cancer-related deaths.[3] According to the International Association of Firefighters, 66 percent of firefighter deaths between 2002 and 2019 were due to cancer. Across the nation and in California, there are existing efforts to protect firefighters by banning the use of PFAS. In May 2024, San

[1] "Per- and Polyfluoroalkyl Substances (PFAS)," FDA, April 29, 2024, Per- and Polyfluoroalkyl Substances (PFAS) | FDA
[2] Maizel AC, et al., "Per- and Polyfluoroalkyl Substances in New Firefighter Turnout Gear Textiles,". National Institute of Standards and Technology, Gaithersburg, MD, NIST Technical Note (TN) NIST TN 2248. https://doi.org/10.6028/NIST.TN.2248
[3] National Institute for Occupational Safety and Health. (2016). Findings from a study of cancer among U.S. fire fighters.

Francisco became the first major American city to ban PFAS from PPE gear, requiring the city's fire department to provide PFAS-free gear to its firefighters by June 30, 2026.

The National Fire Protection Association (NFPA) and PFAS

The NFPA is an international nonprofit established in 1896 comprised of firefighter professionals, industry representatives, and others concerned with fire safety. The NFPA sets the performance, durability, and safety standards for firefighter PPE. In 2024, the NFPA standards council adopted the NFPA 1970 Standard on Protective Ensembles for Structural and Proximity Firefighting, Work Apparel, Open-Circuit Self-Contained Breathing Apparatus for Emergency Services, and Personal Alert Safety Systems. The NFPA 1970 standard does not ban the use of PFAS in turnout gear, however it does establish mandatory PFAS testing requirements for manufacturers and optional labeling guidelines. PFAS-free turnout gear is available, but alternatives can be less breathable and offer less thermal protection.[4] Furthermore, strict performance tests, that don't always reflect how firefighters use their PPE, make it difficult for PFAS-free gear to comply with the NFPA 1970 Standard.

This Bill

In California, the Board is tasked with creating standards for firefighter PPE. In doing so, the Board is required to, every five years, review all revisions to the NFPA standards pertaining to PPE and determine whether the revisions provide a greater degree of personal protection than the state safety orders. If they do, the Board must consider modifying the state safety orders and render a decision by July 1 of the subsequent year.

AB 1181 would require, by January 1, 2027, the Board to modify its existing safety order regarding PPE in a manner that addresses NFPA performance standards that are not relevant or applicable to how firefighters utilize their PPE and that result in the use of PFAS, fluoropolymers, flame retardants, and other hazardous substances in firefighting personal protective garments and auxiliary firefighting PPE. In modifying the order, the Board shall among other things, use scientific research to create a standard for PPE used in California that includes performance standards that are relevant and applicable to how firefighters utilize their equipment while being the most protective of firefighters' health and safety and consider an implementation timeline that may include phasing out PPE that is in use at the time the safety order is modified. AB 1181 would also require Cal/OSHA, by July 1, 2026, to provide a report to the Governor and Legislature on progress toward implementation of the modified PPE safety standards.

2. Need for this bill?

According to the author:

"Twenty years ago heart disease was the biggest threat to firefighter health. Today, cancer has replaced heart disease as the biggest killer of firefighters. The International Association of Fire Fighters attributes 66% of fire fighter deaths between 2002 and 2019 to cancer. Research has established that PFAS are a known carcinogen, indicating their potential to cause cancer. PFAS are also found in fire fighter turn out gear…

[4] Jesse Roman, "New Gear, New Challenges," NFPA, November 18, 2024, https://www.nfpa.org/news-blogs-and-articles/nfpa-journal/2024/11/19/new-gear-new-challenges

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

Under AB 1181, CalOSHA and OSHSB will be able to evaluate the recently-adopted NFPA standard and make adjustments to the tests that better reflect the functional use of firefighter PPE. In doing so, California can ensure that harmful chemicals are not added to PPE for the sole purpose of passing a light, flame or liquid test that has no meaningful impact on the protection of the firefighter wearing the equipment."

3. Proponent Arguments:

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

"PFAS are a family of synthetic chemicals that have been found to be harmful to both human health and the environment, largely because they are persistent in both the body and in nature. PFAS are released into the air, water, and soil in areas where they are stored and used and can be absorbed into the human body through inhalation, drinking water, or through contact.

'Per- and Polyfluoralkyl Substances in New Firefighter Turnout Gear Textiles, published by the National Institute of Standards and Technology in 2023, found measurable instances of numerous PFAS substances in the jackets and pants of firefighter PPE, and notes that 'employment as a firefighter has been found to correlate with higher serum PFAS concentrations, especially for those directly engaged in firefighting activities.'…

PFAS is mainly concentrated in the pants and jackets of turnouts within in the inner moisture barrier layer, found between the outer shell and the inner thermal liner of the composite material. The performance, durability, and safety standards for turnouts are governed by standards set by the National Fire Protection Association (NFPA). NFPA standards follow revision cycles to allow for regular updates, and in 2024 the NFPA updated the standards for PPE for firefighters after a significant drafting and revision process.

While the newly renumbered NFPA Standard 1970 modified the stringent UV light degradation resistance test to more closely align with the actual wear and usage of PPE, the updated standard did not address the overly burdensome vertical flame test. The only way for a manufacturer to meet this standard, which similarly to the prior UV light test does not reflect the actual performance needs or usage of PPE, is with the addition PFAS or other toxic flame-retardant materials.

Under AB 1181, CalOSHA and OSHSB will be able to evaluate the recently-adopted NFPA standard and make adjustments to the tests that better reflect the functional use of firefighter PPE. In doing so, California can ensure that harmful chemicals are not added to PPE for the sole purpose of passing a light, flame or liquid test that has no meaningful impact on the protection of the firefighter wearing the equipment."

4. Opponent Arguments:

None received.

5. Prior Legislation:

AB 589 (Gallagher, 2025) would prohibit the Board from adopting a safety order or regulation that requires firefighter PPE to be replaced more frequently than once every 15 years. *This bill was set for hearing in the Assembly Labor and Employment Committee, but was pulled from the agenda at the request of the author.*

AB 2408 (Haney, 2024) would have 1) prohibited, commencing July 1, 2026, any person from manufacturing, selling, distributing, or purchasing for future use, any firefighter PPE containing intentionally added PFAS chemicals; and 2) required the OSHSB, within one year of the NFPA updating their standards to include PFAS-free turnout gear, to align their standards on PFAS-free turnout. *This bill was held in the Senate Appropriations Committee.*

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

AB 2515 (Papan, Chapter 1008, Statutes of 2024) prohibited a person from manufacturing, distributing, selling, or offering for sale a menstrual product that contains regulated PFAS.

AB 1817 (Ting, Chapter 762, Statutes of 2022) prohibited, beginning January 1, 2025, a person from manufacturing, distributing, selling, or offering for sale in the state a new textile article, as defined, that contains regulated PFAS.

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

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

SUPPORT

California Professional Firefighters (Sponsor)
Breast Cancer Prevention Partners
California Environmental Voters
California Federation of Labor Unions
Clean Water Action
Cleanearth4kids.org
Environmental Working Group
National Stewardship Action Council
Natural Resources Defense Council
San Francisco Bay Physicians for Social Responsibility

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 288	**Hearing Date:**	June 18, 2025
Author:	McKinnor		
Version:	April 21, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Employment: labor organization.

KEY ISSUE

This bill attempts to create state jurisdiction for the Public Employment Relations Board over unfair labor practice charges by private sector employees regulated by the National Relations Labor Act. Specifically, the bill does the following:

- Prohibits the state and its political subdivisions from directly or indirectly denying, burdening or abridging specified rights (except as necessary to serve a compelling state interest achieved by the least restrictive means) to workers whose collective bargaining rights the National Relations Labor Board (NLRB) fails to address, as specified.
- Grants private sector workers the right to petition the Public Employment Relations Board (PERB), as specified, to vindicate their right to organize and collectively bargain.
- Defines "worker" based on the worker's status in relation to the NLRB's inefficacy to protect the worker's rights under the National Relations Labor Act (NLRA).
- Authorizes PERB to adjudicate "expansively" private sector workers' petitions using its decisions, rules, and regulations or NLRB's precedent; to order employers (but not unions) to "binding mediation"[1]; and to order any appropriate remedy, including injunctive relief and penalties.
- Authorizes state courts of competent jurisdiction to review any PERB action pursuant to this bill's provisions.

ANALYSIS

Existing 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. While the NLRA and the decisions of its National Labor Relations Board (NLRB) often provide persuasive precedent in interpreting state collective bargaining law, public employees have no collective bargaining rights absent specific statutory authority establishing those rights. (29 United States Code §§151 et seq.)

[1] The term "binding mediation" has no meaning in California law and this bill does not define this term. The committee assumes that the author intends to require either mediation or binding arbitration. However, the bill's language is vague. Generally, California labor relations statutes provide, as the statutory default, mediation through PERB's State Mediation and Conciliation Service (SMCS). If mediation fails, some statutes require "fact finding", a process that results in a formal recommendation by mediators that the governing board may adopt and impose. Some statutes permit the parties to agree in their memorandum of understanding (i.e., collective bargaining agreement) to provide another form of dispute resolution, including binding arbitration. It is unusual to require binding arbitration in the statute. (See e.g., Government Code §§ 3501(e), 3505.2, 3505.8, 3548 and §3548.5)

2) Provides under the U.S. Constitution that federal law preempts state law when the two conflict. (U. S. Const., Art. VI, cl. 2.)

3) Requires under U.S. Supreme Court jurisprudence that "[w]hen an activity is arguably subject to §7 or §8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board". (*San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 245 (1959) [2]

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

5) Establishes the Public Employment Relations Board (PERB), a quasi-judicial administrative agency charged with administering certain statutory frameworks governing *California* state and local public employer-employee relations, resolving disputes, and enforcing the statutory duties and rights of public agency employers, employees, and employee organizations. (Government Code §3541 et seq.)

6) Establishes the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD), which makes it unlawful for public employers to deter or discourage public employees or applicants to be public employees from: a) becoming or remaining members of an employee organization; b) authorizing representation by an employee; or, c) authorizing dues or fee deductions to an employee organization. (Government Code §§3550 et seq.)

7) Establishes the Public Employee Communication Chapter (PECC), which provides California public employee unions with specific rights designed to provide them with meaningful access to, and the ability to effectively communicate with, their represented members. (Government Code §§3555 et seq.)

This bill:

1) Makes the following legislative findings and declarations:

    a. Workers have an inalienable right and a right under the First Amendment to the United States Constitution, to free association and to exercise their right to collectively bargain

[2] As restated by Justice Barret in *Glacier Northwest, Inc. v. International Brotherhood of Teamsters Local Union No. 174*, 598 U.S. 771 (2023), "Preemption under the NLRA is unusual, though, because our precedent maintains that the NLRA preempts state law even when the two only arguably conflict. *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, 245 (1959) ('When an activity is arguably subject to §7 or §8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board'). This doctrine—named Garmon preemption after the case that originated it—thus goes beyond the usual preemption rule. Under Garmon, States cannot regulate conduct 'that the NLRA protects, prohibits, or arguably protects or prohibits.' *Wisconsin Dept. of Industry v. Gould Inc.*, 475 U. S. 282, 286 (1986)."

over the labor they provide to employers, in order to improve their terms and conditions of employment.

b. The National Labor Relations Act (NLRA) was passed in 1935 as a way to codify those rights for the majority of private sector workers by "encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection," through the National Labor Relations Board (NLRB), an agency created by Congress.

c. Over the past several decades, the NLRB has become less effective at vindicating workers' rights, due to a variety of factors such as completely inadequate funding, understaffing, a narrowing of the types of workers who can invoke the protections of the NLRA, and a narrowing of the scope of protected concerted activity.

d. California law has also codified workers' fundamental and First Amendment rights as part of its public policy, stating in Section 923 of the Labor Code that "[workers] have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

e. The NLRB's inefficacy has meant that more and more California workers are being deprived of these rights as employers have become more emboldened than ever. These employers are refusing to bargain and committing other unfair labor practices with impunity. This means that California workers who choose to unionize are often forced to wait for years to have their right to meet their employer at the bargaining table vindicated. That delay incentivizes employers to not bargain in good faith, precludes workers from timely obtaining improved wages and working conditions, undermines union support, and causes workers more instability.

f. The Supreme Court has long recognized that "[i]n dealing with the relation of employer and employed, [a state] legislature has necessarily a wide field of discretion in order that there may be suitable protection of health and safety, and that peace and good order may be promoted through regulations designed to insure wholesome conditions of work and freedom from oppression." *Chicago, B. & Q.R. Co. v. McGuire* (1911) 219 U.S. 549, 570.

g. California has a right and responsibility to protect workers within its borders and to ensure their health and safety, including by vindicating workers' fundamental and First Amendment right to freely associate in order to improve their terms and conditions of employment when the NLRB cannot adequately protect those rights.

2) Adds Section 923.1 to the Labor Code under a chapter that regulates contracts between employees and employers, designates certain contractual promises as against public policy, and sets forth the state's public policy that employees have a right to collective bargaining, as specified.

3) Requires that its provisions be liberally construed to ensure that all workers in California can effectively vindicate their fundamental rights to full freedom of association, self-organization, and designation of representatives of their own choosing, free from retaliation or intimidation by their employer.

4) Specifies that the rights described in the bill require that a worker be allowed to engage in collective action, to organize, form, join, or assist labor organizations, and, when they choose to do so collectively through selected or designated bargaining representatives, to engage in effective and expeditious collective bargaining that results in a collective bargaining agreement addressing their terms and conditions of employment.

5) Prohibits the state and its political subdivisions from, directly or indirectly, denying, burdening, or abridging the described rights except as necessary to serve a compelling state interest achieved by the least restrictive means.

6) Authorizes a worker, as follows, to petition the Public Employment Relations Board (PERB) to vindicate prescribed rights:

   a. A worker subject to the NLRA who loses NLRA coverage because the NLRA is repealed or narrowed, and the worker is not otherwise covered by the Railway Labor Act (45 U.S.C. Sec. 151 et seq.) or any other law that subjects them to PERB's jurisdiction.

   b. A worker who petitions the NLRA to vindicate their collective bargaining rights but has not received a determination or remedy from NLRB within 6 months.

7) Excludes from the bill's provisions workers where other federal or state statutes regulate the workers' labor relations.

8) Authorizes a worker eligible under the bill's provision, or their union, to petition PERB to do the following:

   a. Certify the worker's union as the exclusive bargaining representative for any group of similarly situated workers who have designated the union by a majority vote.

   b. Decide unfair labor practice charges if the NLRB has excessively delayed processing of the charge.

   c. Order the worker's employer to participate in *"binding mediation"*[3] to resolve any differences between the parties that still exist after the parties have not agreed upon and executed a collective bargaining agreement governing their terms and conditions of employment, as specified.

9) Authorizes PERB to do the following to implement the bill's provisions:

   a. Determine whether a majority of similarly situated workers selected a union to exclusively represent them, certify the union upon a positive determination, and order the employer to bargain with that union.

[3] "Binding mediation" (n1)

b. Use its precedents or NLRA precedents to decide unfair labor practice charges "expansively" to guarantee workers' rights, as specified, and to order all appropriate relief for a violation, including civil penalties.

c. Order an employer to submit to "binding mediation"[4] with a worker's employer-recognized or NLRA-certified union:

i. Under NLRB - where the parties have failed to execute a collective bargaining agreement within 6 months of negotiating their first contract and all the following conditions exist:
(a) The worker or union filed unfair labor practice charges with the NLRB alleging that the employer is engaging in bad faith or surface bargaining.
(b) Six months after the ULP charge filing, the NLRB nor an administrative law judge has ordered the employer to engage in good faith bargaining and cease bad faith or surface bargaining and has not authorized the NLRB General Counsel to petition a federal court for such an order.
(c) The NLRB, its general counsel, or their subdivisions have not dismissed and upheld on appeal the dismissal of the respective unfair labor practice charge.

ii. Under PERB:
(a) PERB has certified an exclusive bargaining representative under this bill's provision, has ordered that an employer bargain with the representative, and more than six months have passed without the parties agreeing on and executing a collective bargaining agreement.

d. Order any appropriate remedy, including injunctive relief and penalties, necessary to effect the bill's provision.

10) Authorizes a state court of competent jurisdiction to review any action taken by PERB pursuant to the bill's provisions.

11) Establishes the PERB Enforcement Fund in the State Treasury and requires PERB to deposit any civil penalty collected pursuant to the bill's provisions in the fund.

12) Makes moneys in the fund available to PERB upon appropriation by the Legislature to fund increased workload.

13) Defines "worker" to include all of the following:

a. A worker previously covered by the NLRA if it is repealed or otherwise narrowed so that it no longer covers a certain type, class, classification, or industry of workers.

b. A worker deprived of a functioning NLRB because it cannot execute its statutory duties for reasons such as a lack of quorum, a lack of funding, or because legal challenges have held that the NLRB may not continue to prosecute cases involving that worker.

[4] Ibid.

c. A worker who has filed, or whose union has filed, a representation petition seeking a union election through the NLRB pursuant to the NLRA and if one of the following conditions are met:

   i. More than six months have elapsed since the worker or union filed the representation petition and the NLRB, its general counsel, or their subdivision have not yet scheduled a union election where those workers can decide whether to be represented for purposes of collective bargaining.

   ii. The NLRB, its general counsel, or their subdivision conducted a representation election, the union prevailed but 6 months have elapsed and the NLRB has not certified the union because of filed challenges or objections.

d. A worker who is part of a unit of similarly situated workers under the NLRA where a majority of the bargaining unit has designated a union as their exclusive bargaining representative under then existing NLRB law and have demanded recognition from their employer, or where a majority of similarly situated workers have designated a union as their exclusive bargaining representative through an NLRB election and the NLRB has certified the union as the workers' representative, but only if all of the following conditions are met:

   i. Their employer has refused to recognize or bargain with the worker and their union.

   ii. The worker or their union has filed unfair labor practice charges with the NLRB regarding the employer's refusal to recognize or bargain in good faith.

   iii. More than six months have elapsed since the workers or their representative filed the unfair labor practice charge described in subparagraph (B), but neither the National Labor Relations Board nor an administrative law judge has issued a bargaining order requiring the employer to bargain in good faith, and the National Labor Relations Board has not authorized its general counsel to seek such a bargaining order in federal court under Section 10(j) of the National Labor Relations Act.

   iv. The NLRB, its general counsel, or their subdivisions have not dismissed and upheld on appeal the dismissal of the respective unfair labor practice charge.

e. A worker who is part of a bargaining unit under the NLRA and who designated a representative that has been recognized by an employer or certified by the NLRB if that worker has been engaged in first contract bargaining for over six months without agreeing upon and executing a collective bargaining agreement governing their terms and conditions of employment, but only if all of the following conditions are met:

   i. The worker or their union has filed unfair labor practice charges with the NLRB alleging that the employer is engaging in bad faith or surface bargaining.

   ii. Six months after the ULP charge filing, the NLRB nor an administrative law judge has ordered the employer to engage in good faith bargaining and cease bad

faith or surface bargaining and has not authorized the NLRB General Counsel to petition a federal court for such an order.

iii. The NLRB, its general counsel, or their subdivisions have not dismissed and upheld on appeal the dismissal of the respective unfair labor practice charge.

f. A worker who has been terminated and has filed unfair labor practice (ULP) charges with the NLRB alleging that the employer terminated them in retaliation for engaging in protected concerted activity to improve their terms and conditions of employment, but only if both of the following conditions are met:

i. More than six months after the ULP charge filing, the NLRB nor an administrative law judge has ordered the employer to engage in good faith bargaining and cease bad faith or surface bargaining and has not authorized the NLRB General Counsel to petition a federal court for such an order.

ii. The NLRB, its general counsel, or their subdivisions have not dismissed and upheld on appeal the dismissal of the respective unfair labor practice charge.

g. A worker who has filed any other unfair labor practice charges if more than six months have elapsed since the worker filed the charge and the NLRB regional office where the worker filed the charge has not made a decision to issue a complaint or dismiss the case and upheld on appeal the dismissal of the case.

14) Makes the Act's provisions severable whereby if any of its provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

COMMENTS

1. Background:

Garmon Pre-emption v. NLRB Incapacity

Traditionally, legal authorities recognize that U.S. Supreme Court jurisprudence under *Garmon* and its progeny prevents states from legislating on collective bargaining rights that the federal government regulates through the NLRA. This bill seeks to make a state's rights argument that the NLRA no longer preempts states because the President has incapacitated the NLRB. Therefore, California can and should exercise its independent sovereign police powers to protect private sector employees' collective bargaining rights.

Specifically, President Trump dismissed both the NLRB General Counsel (something President Biden also did upon assuming office) and an NLRB board member (something previously thought prohibited by Congress but currently the subject of lawsuits regarding the President's separation of powers claims of Congressional encroachment on Executive Branch authority). [5]

[5] Michael Lebowich et al., *Breaking: In a Novel Move, President Trump Fires National Labor Relations Board Member and, following Biden precedent, the NLRB General Counsel,* Proskauer Labor Relations Update, January 28, 2025, https://www.proskauer.com/blog/breaking-in-a-novel-move-

The President's actions create a third vacancy on the five-member board, thereby eliminating the board's quorum and its ability to rule on ongoing and new unfair labor practice charges. These actions also leave the agency without its principal staff member, the General Counsel, who otherwise could have continued administering the NLRB agency's statues and precedents while the board was without its quorum. (This is actually the third time the NLRB has not had a quorum and in those prior occasions, the General Counsel was able to continue key aspects of the agency's responsibilities.[6])

In addition, the author cites federal lawsuits by SpaceX and Amazon that challenge the constitutionality of the NLRB's authority as further evidence that the NLRB's capacity to ensure workers' collective bargaining rights might soon be history.[7] The bill's supporters urge the Legislature to take up the mantle to defend workers' federal and state constitutional free speech and free association rights to organize into unions and force employers to collectively bargain with them. Hence, this bill would allow workers with extant NLRB unfair labor practice charges or with future NLRB claims to bring their cases to PERB if they cannot get recourse at the NLRB because of its incapacity.

The bill's supporters argue that *Garmon* preemption of state law no longer applies based on arguments by law school academics and a recent Fourth Circuit Court of Appeals decision in *National Association of Immigration Judges (NAIJ) v. Owen*, No. 23-2235 (4th Cir. 2025). [8] There the court "held that while the CSRA [Civil Service Reform Act] generally precludes district court jurisdiction over such claims, the current functionality and independence of the MSPB [Merit Systems Protection Board] and the Office of Special Counsel (OSC) were in question. The court noted that recent events, including the removal of the Special Counsel and the lack of a quorum in the MSPB, raised concerns about whether the CSRA's adjudicatory scheme was functioning as Congress intended."

"The Fourth Circuit remanded the case to the district court to conduct a factual inquiry into whether the CSRA continues to provide a functional and independent review process, as required for the jurisdiction-stripping scheme to apply." [9]

---

president-trump-fires-national-labor-relations-board-member-and-following-biden-precedent-the-nlrb-general-counsel

[6] Michael Lebowich et al., *U.S. Supreme Court Temporarily Stays NLRB Board Member Reinstatement; Board to Stay Again Without a Quorum*, Proskauer Labor Relations Update, April 10, 2025, https://www.proskauer.com/blog/us-supreme-court-temporarily-stays-nlrb-board-member-reinstatement-board-to-again-without-a-quorum.

[7] Andrea Hsu, *Accused of violating worker rights, SpaceX and Amazon go after labor board*, All Things Considered, National Public Radio, November 18, 2024, https://www.npr.org/2024/11/18/nx-s1-5192918/spacex-amazon-nlrb-labor-board-elon-musk.

[8] Benjamin Sachs, *Going, Garmon, Gone: Why States May Now Be Free to Redesign Labor Law* On Labor, June 4, 2025, https://onlabor.org/going-garmon-gone-why-states-may-now-be-free-to-redesign-labor-law/; Erich Wagner, *Appeals court: Has Trump neutered the Civil Service Reform Act?* Government Executive, June 3, 2025, https://www.govexec.com/workforce/2025/06/appeals-court-has-trump-neutered-civil-service-reform-act/405777/

[9] Justia Opinion Summary, Justia U.S. Law, https://law.justia.com/cases/federal/appellate-courts/ca4/23-2235/23-2235-2025-06-03.html

Supporters argue that the *NAIJ* fact pattern mirrors the events that have transpired at the NLRB and buttresses their assertion that the NLRA no longer preempts the state from legislating private sector collective bargaining. However, in *NAIJ,* the court analyzed whether the CSRA continued to preclude the *federal courts* from adjudicating the claims of federal civil service workers if the MSB was incapacitated. While *NAIJ* may support an argument that if the NLRB cannot function as Congress intended, private sector workers could bring their NLRA claims in *federal* court, it is unclear that it would support state jurisdiction of NLRA claims.

Given the competing arguments, this bill could potentially result in federal litigation to PERB at a time when PERB has significant workload and resource challenges in timely adjudicating the state's current public employer and public employee disputes.

Universal Jurisdiction/ Non-resident Worker Access to PERB

Even if the state could adjudicate NLRA cases, this bill contains technical issues. For example, it is unclear if the bill applies exclusively to California workers and their unions or if non-resident workers and their unions could file NLRA cases with PERB. The language in the legislative findings and declarations refers to protecting workers within California's borders but the bill's statutory provisions appear to give PERB access to any worker who cannot find legitimate redress at the NLRB regardless of their residence. This issue raises the possibility the bill will result in further constitutional conflict if California effectively extends its police powers over other jurisdictions and their residents.

New Strict Scrutiny Standards

The bill's opposition points out that the bill appears to set judicial review standards of legislative actions consistent with fundamental constitutional rights. It is unclear whether those provisions are an attempt to restrict future legislatures from altering or significantly amending the bill's provisions.

"Binding Mediation"

As cited in Footnote 1, this bill requires "binding mediation", which is not defined in the bill and has no meaning under California law. The bill should properly refer to mandatory mediation, fact-finding, binding arbitration, or a combination thereof. Each entails significantly different processes and obligations on the parties. The bill should address those responsibilities and their potential effects on dispute outcomes. As currently written, the requirement is vague and confusing.

PERB law v NLRB law

The Legislature designed PERB to administer California labor law regulating public employer-employee labor relations. In that context, PERB-regulated law provides greater protections to employees and greater restrictions on public employers than the NLRA provides to private sector employees and imposes on private sector employers. For example, the Government Code's Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD) provisions and the Public Employee Communication Chapter (PECC) work together to restrict public employers' anti-union communications or policies and ensure that unions have unfettered access to public employees to advise them of their collective

bargaining rights. The NLRA approaches these issues differently and the courts have consistently interpreted Congress' intent that employers have robust protection of their free speech rights to communicate their views to their employees. It is unclear whether PERB could impose its more employer-restrictive rules on private sector employers but this bill's mandate for PERB to apply NLRA precedent *or* PERB's rules "expansively" to protect employees' collective bargaining rights indicates that the bill intends for PERB to do this. Again, this may result in litigation.

Unintended Consequences to PERB and Public Sector Collective Bargaining Rights

Litigation over this bill could haul PERB and California's public sector labor laws before federal courts, including the U.S. Supreme Court, and provide the federal judiciary an opportunity to revisit past precedents supporting public sector collective bargaining. It would not be the first occasion in recent times that long-held precedents thought to be inviolable face new scrutiny.

Conclusion

Given recent attacks on employees' collective bargaining rights, one can understand the author and supporters' motivation. However, if the bill moves forward the author should address practical issues, including but not limited to those raised above: such as clearly defining whether it applies to only California residents, whether the parties are required to participate in mediation or binding arbitration, the appropriateness of applying PERB's rules rooted in California public labor law to parties to NLRA claims, and establishing guardrails to ensure there is no detrimental effect on PERB's primary mission of resolving labor disputes between California public employers and their employees.

2. Author's Amendments and Request to Take Them in Committee:

The author has requested amendments to the bill that seek to strengthen the case for California's exercise of its police power to protect employee rights. At the time of this writing, the author is awaiting a final RN version from Legislative Counsel. Thus, the committee has not seen the final version of the author amendments. However, based on drafts provided by the author, the amendments generally do the following:

- Revise the legislative findings and declarations to better articulate the rationale for California exercising its police power to defend employee rights.
- Clarify the conditions when employees lose access to the NLRB and can access PERB.
- Add language to permit PERB to determine and certify organizing elections in NLRB representation disputes.
- Add language to permit PERB to decide pending objections or challenges to NLRB elections.
- Clarify that the worker's chosen representative may file ULPs at PERB.
- Other technical and clarifying amendments.

3. Need for this bill?

According to the author:

"California has a responsibility to ensure that workers can freely exercise their inalienable rights, including their right to organize and to freely assemble with their coworkers. These rights are not only guaranteed in the Federal Constitution and in California's constitution, but the state Labor Code, Section 923, also declares that the public policy of the state of California is for workers to have the freedom to organize free from interference or intimidation and the right to collectively bargain. The state cannot sit idly by as workers are systematically denied the right to organize due to employer intransigence and federal agency inaction, delays, and potential inability to make decisions because of a lack of a quorum or because of pending court cases enjoining the NLRB from acting or finding the NLRB to be unconstitutional.

This bill is California's opportunity to be bold and to make clear that it will not allow its residents' rights to be violated, and that it is ready and willing to act when federal law is insufficient to protect workers. This bill respects the framework of federal labor law and requires workers covered by the NLRA to seek redress first before the NLRB. But if workers are unable to get a timely remedy at the federal level, this bill ensures the state can step in to vindicate their fundamental rights. It makes the right to organize meaningful in California by clarifying that all workers subject to the jurisdiction of the NLRA as of January 1, 2025, who are not able to freely exercise the right to organize and collectively bargain because they have not received a response or remedy from the NLRB within the specified statutory timelines can seek relief at the state level from PERB."

4. Proponent Arguments

According to the California Federation of Labor Unions:

"The right for workers to join a union and bargain collectively is essential to economic security and human dignity. The right to free assembly, to organize, to form a union, to collectively bargain, and to take collective action to improve wages and working conditions are codified under the National Labor Relations Act (NLRA) for private sector workers and the National Labor Relations Board (NLRB) is the independent federal agency tasked with enforcing the NLRA and protecting workers' rights under the law.

The ability of the NLRB to effectively protect workers seeking to organize is currently threatened by legal challenges filed by corporations to undermine their authority. SpaceX and Amazon have both filed numerous lawsuits alleging that the NLRB is unconstitutional. Those lawsuits are just a few among more than two dozen challenges to the legitimacy of the NLRB by employers.

Even before these legal challenges, the NLRB has struggled to provide effective relief for workers seeking to organize. The recent surge in union organizing resulted in an increase in election filings that has more than doubled since 2021 and went up 27% from 2023 to 2024. The increase in election cases filed has also increased unfair labor practices cases, which were up 22% from 2023 to 2024. The surge in activity, however, resulted in fewer resolved cases, with 46% more cases unresolved in 2024 than 2023. At the same time as cases skyrocket, the NLRB continues to be underfunded and understaffed. Since the early 2000s staffing in field offices has shrunk by 50% and in 2011, when there was a similar surge in cases filed, the NLRB had 62% more field staff.

The impact on workers is profound. The Economic Policy Institute did a case study of union drives at Starbucks, Amazon, and Trader Joes, and found that corporate union busting and delay tactics have a powerful chilling effect on workers who are intimidated out of supporting the union or cannot afford to wait years for a first contract. Even with hundreds of unfair labor practice charges, workers are still thwarted by the lack of enforcement and progress on their unionization drives. An understaffed NLRB is no match for the nearly $400 million corporations spend every year on 'union avoidance' consultants and anti-union campaigns."

5. Opponent Arguments:

According to the California Chamber of Commerce:

"The NLRA provides for workers' rights to organize. The NLRA exclusively governs those rights. The NLRB is an independent federal agency established by the NLRA. Its primary role is to enforce labor laws related to union activities and collective bargaining by investigating and prosecuting unfair labor practices in the private sector. It also oversees representation elections seeking to certify or decertify unions as the representative of employees. The NLRB has regional offices located throughout the country.

Because the NLRA establishes and solely governs workers' rights to organize, courts have repeatedly held that states are prohibited from regulating this space under the longstanding doctrine of preemption. AB 288's attempt to give PERB the ability to adjudicate issues in lieu of the NLRB is a clear example of *Garmon* preemption. See *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 244 (1959).

The present lack of a quorum at the NLRB and hypothetical scenarios about what *may* happen does not allow AB 288 to escape preemption. The NLRA is still law, and it continues to be enforced by the NLRB's regional offices. Those offices are continuing to process elections, certifications, petitions, and unfair labor practice charges. This is also not the first time the NLRB has operated without a quorum."

6. Dual Referral:

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

7. Prior / Related Legislation:

AB 283 (Haney, 2025) would establishes the In-Home Supportive Services (IHSS) Employer-Employee Relations Act to shift collective bargaining with IHSS providers from the county or public authority to the state and provide PERB jurisdiction of labor relations between the state and IHSS workers. *This bill is currently pending before the Senate Labor, Public Employment and Retirement Committee.*

AB 672 (Caloza, 2025) would grants PERB the right, upon timely application, to intervene in a civil action arising from a labor dispute involving public employee strike actions that PERB claims implicates the constitutionality, interpretation, or enforcement of a statute

administered by PERB. *This bill is currently pending before the Senate Labor, Public Employment and Retirement Committee.*

AB 1340 (Wicks, 2025) would establish the Transportation Network Company (TNC) Drivers Labor Relations Act to require PERB to protect TNC drivers collective bargaining rights under the Act. *This bill is currently pending before the Senate Labor, Public Employment and Retirement Committee.*

SCA 7 (Umberg, 2023) would have established a broad-based constitutional right for any person in California to form or join a union and for that union to represent the person in collective bargaining with the person's respective employer. *This measure died in the Senate Elections and Constitutional Amendments Committee.*

AB 2524 (Kalra, Chapter 789, Statutes of 2022) transferred jurisdiction over Santa Clara Valley Transportation Authority's employer-employee labor relations disputes from superior court to PERB.

SB 598 (Pan, Chapter 492, Statutes of 2021) transferred jurisdiction over Sacramento Regional Transit District's employer-employee labor relations disputes from superior court to PERB.

SUPPORT

California Federation of Labor Unions (Co-sponsor)
International Brotherhood of Boilermakers, Western States Section (Co-sponsor)
SEIU California State Council (Co-sponsor)
California Teamsters Public Affairs Council (Co-sponsor)
AFSCME California
Air Line Pilots Association
Alliance San Diego
Association of Flight Attendants
Bluegreen Alliance
Building Justice San Diego
California Alliance for Retired Americans
California Catholic Conference
California Coalition for Worker Power
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Environmental Voters
California Federation of Teachers
California IATSE Council
California Nurses Association
California Professional Firefighters
California Safety and Legislative Board of Smart – Transportation Division
California School Employees Association
California State Pipe Trades Council
California Teachers Association
California Working Families Party
Center on Policy Initiatives
Coalition for Humane Immigrant Rights of Los Angeles

Coalition of Black Trade Unionists, San Diego County Chapter
Culver City Democratic Club
Employee Rights Center
Engineers & Scientists of California, Local 20, IFPTE
International Alliance of Theatrical Stage Employees
International Brotherhood of Electrical Workers, Local 1245
Koreatown Immigrant Workers Alliance
Los Angeles Alliance for a New Economy
Los Angeles Black Worker Center
Northern California District Council of Laborers
Office & Professional Employees International Union, Local 30
Partnership for the Advancement of New Americans
Peace Officers Research Association of California
Pillars of the Community
Professional & Technical Engineers, Local 21, IFPTE
SAG-AFTRA
San Diego Black Workers Center
San Mateo County Central Labor Council
San Mateo Labor Council
SEIU Local 1000
Sheet Metal Workers' Local Union No. 104 (SMART)
Sheet Metal, Air, Rail, and Transportation Workers, Local 105
South Bay Labor Council
State Building and Construction Trades Council of California
UAW Region 6
Unite Here
United Food and Commercial Workers
United Nurses Associations of California/Union of Health Care Professionals
United Steelworkers District 12
United Taxi Workers of San Diego
Utility Workers Union of America
Writers Guild of America West

OPPOSITION

California Chamber of Commerce

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 694	**Hearing Date:**	June 18, 2025
Author:	McKinnor		
Version:	June 11, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Department of Industrial Relations: advisory committee: occupational safety and health

KEY ISSUE

This bill requires the Department of Industrial Relations (DIR) to contract with specified academic institutions to conduct a study to evaluate the understaffing and vacancies within the Division of Occupational Safety and Health (Cal/OSHA) and requires the academic institutions to convene an advisory committee to advise on the study and provide findings and recommendations to DIR, the Governor, and the Legislature.

ANALYSIS

Existing law:

1) 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 §6300-6413.5)

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

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

4) Establishes the University of California (UC) as a public trust to be administered by the Regents of the UC; and, grants the Regents full powers of organization and government, subject only to such legislative control as may be necessary to ensure security of its funds, compliance with the terms of its endowments, statutory requirements around competitive bidding and contracts, sales of property and the purchase of materials, goods and services (Article IX, Section (9)(a) of the California Constitution).

5) Requires the DIR to contract with the University of California, Los Angeles Labor Center to conduct a study evaluating opportunities to improve worker safety and safeguard employment rights in the janitorial industry. Authorizes the university to subcontract the responsibility for conducting the study to other specified entities. (Labor Code §1429.6)

6) Requires the University of California, Los Angeles Labor Center and its subcontractors, if any, to issue a report no later than May 1, 2026, that includes information on the janitorial workforce such as data on injuries, demographics, workers' compensation, and production rates based on cleaning frequency. (Labor Code §1429.6)

This bill:

1) Makes findings and declarations relevant to Cal/OSHA's ongoing, multiyear understaffing and vacancy crisis, particularly in their enforcement division, and the fact that the health and safety of California workers depends on a fully staffed Cal/OSHA, therefore, California needs to enact new and urgent strategies to address the ongoing staffing vacancies with the goal of increasing and diversifying the pool of candidates for enforcement positions.

2) States it is the intent of the Legislature to develop recommendations for the design of a Cal/OSHA Compliance Safety and Health Officer (CSHO) workforce development pipeline program, and any relevant policy improvements to aid in the effective implementation of that program, in order to expand and diversify the candidates who may fill these positions.

3) Defines, among others, the following terms:

    a. "Academic institution" means a public college or university accredited by a commission recognized by the United States Department of Education.
    b. "Compliance Safety and Health Officers" means personnel in the safety engineer and industrial hygienist classifications of the Division of Occupational Safety and Health.
    c. "The University of California" means the University of California, Berkeley Labor Occupational Health Program and the University of California, Los Angeles Labor Occupational Safety and Health Program.

4) Requires the DIR to contract with the University of California, Berkeley Labor Occupational Health Program and the University of California, Los Angeles Labor Occupational Safety and Health Program (UC), within 120 days of an appropriation by the Legislature, to conduct a study to evaluate the understaffing and vacancies within the division and make recommendations to DIR, the Department of Human Resources (CalHR), and the Legislature on policies the state shall use to establish career pathways to the CSHO classification.

5) Authorizes the UC to subcontract, in whole or in part, the responsibility for conducting the study to another academic institution.

6) Requires the UC and its subcontractors, if any, to conduct the study and issue a report that includes, but is not limited to, all of the following:

    a. Literature review related to Cal/OSHA's understaffing and vacancy problem, impacts of these problems at statewide, regional, or industry levels and models for workforce development programs that could increase the career pathways for CSHOs.
    b. An analysis to identify primary causes of Cal/OSHA's CSHO vacancies.
    c. Recommendations to address CSHO understaffing and vacancies, including recommended timeline and strategies to implement a workforce training program. In making these recommendations, the study and committee shall consider all of the following:

i. How to improve the effectiveness of hiring and retention and decrease the hiring time for the CSHO positions.
ii. A summary of relevant Cal/OSHA CSHO position responsibilities, skills, and tasks, as specified.
iii. An analysis of different workforce development and training models including third-party certification and apprenticeship.
iv. Identification of current programs, institutions, or organizations in the field that could partner in a new workforce development training program, as specified.
v. An analysis of external workforce populations who may have matching skill sets and experience that would make them effective candidates for a CSHO workforce training program, including linguistic and cultural competencies that match the diverse California workforce, as specified.
vi. Recommendations on CSHO qualities and skills that would encourage worker engagement with Cal/OSHA, as specified.
vii. Identification of core curriculum components for the eventual development of a workforce training program for CSHOs.

7) Requires the UC to convene an advisory committee to make recommendations regarding the scope of the study and provide the findings and recommendations described above to Cal/OSHA.

8) Requires the advisory committee to meet at least once while the study is being conducted, and at least two times to review findings and recommendations.

   a. Requires the committee to hold at least one public meeting while the study is being conducted and one additional public meeting to gather input on recommendations and findings.
   b. Requires Cal/OSHA, CalHR, and the Division of Apprenticeship Standards to provide timely responses to requests for information from the committee.

9) Provides that the advisory committee be composed of at least 15, and not more than 17, members and shall include all of the following members:

   a. One member from Cal/OSHA.
   b. One member from CalHR.
   c. One member from the Division of Apprenticeship Standards.
   d. One member for each representing union of Cal/OSHA's enforcement and administrative classifications, including one member from the union representing safety engineers, one member from the union representing industrial hygienists, and one member from the union representing administrative staff in Bargaining Unit 1.
   e. One member from a statewide organization that represents labor unions in the high-risk industries of the building and construction trades, and one member for the representing union for proprietary workers from refineries, as specified.
   f. One member from a statewide organization representing public and private sector unions, as specified.
   g. Three members from community-based nonprofit organizations that have at least five years of experience advocating on behalf of workers to address health and safety issues in the workplace, and represent diverse geographies.
   h. One member from the California Community Colleges with experience in workforce development training for health and safety-related careers.

i. One member from an academic institution.
j. One member who has worked for or on behalf of employers in California related to compliance with occupational health and safety provisions of the Labor Code and related regulations for more than five years, and who has more than five years of experience in either interacting with or working with Cal/OSHA staff.
k. At least two members shall represent areas of the state with high proportions of workers who are at high risk of unhealthy or unsafe working conditions due to immigration status, language barriers, geographic isolation, and high violation industries, as determined by the UC, including, but not limited to, the San Joaquin Valley area.

10) Prescribes entities responsible for appointing the members of the advisory committee, as specified, including requiring the UC to appoint specified members by selecting from individual who submits an application with, and developed by, the UC.

11) Requires the advisory committee to hold at least one meeting within 60 days of DIR entering into the contract with the UC.

12) Requires, eighteen months after entering into the contract with the UC, the report to be completed and the DIR to post the completed report on Cal/OSHA's internet website and forward the completed report to the members of the advisory committee, the Governor, and the Chairs of the Assembly Committee on Labor and Employment and the Senate Committee on Labor, Public Employment and Retirement.

13) Requires the UC and any of its subcontractors, in conducting the study, to consider and be guided by the recommendations of the advisory committee, if any, only so long as the recommendations would not substantially increase the cost of the study or cause the report to be issued after the required submission.

14) Specifies that implementation of these provisions be subject to an appropriation made by the Legislature for these express purposes.

COMMENTS

1. Background:

Cal/OSHA Duties and Responsibilities:
Cal/OSHA is tasked with protecting and improving the health and safety of workers in California through, among other things, the setting and enforcement of standards, providing outreach, education and assistance to workers and employers, as well as issuing permits and approvals for various things. A key element of Cal/OSHA's responsibilities is the enforcement of health and safety standards which are investigated based on the following:

- Complaints filed by workers, reports of serious violations received from law enforcement, or reports of accidents resulting in a serious injury or illness or death.
- Targeted and programmed inspections in high hazard industries with high rates of preventable injuries and illnesses.
- Citations, special orders, and orders to take special actions after an investigation of hazards in a workplace.
- Orders prohibiting use where there is an imminent hazard.

Cal/OSHA Vacancies and Understaffing:
Like many state departments in recent years, DIR has been struggling to fill staff vacancies for some of their divisions including Cal/OSHA. As noted by the Assembly Labor and Employment Committee analysis of this bill:

"Cal/OSHA continues to suffer from significant understaffing and high turnover, particularly in its enforcement division. The CSHO position—critical for conducting field investigations of worker complaints of health and safety violations-- has one of the highest vacancy rates across the division. According to DIR's internal data, as of August 2024, Cal/OSHA had 124 vacant CSHO positions, constituting a 46% vacancy rate. The vacancy rate is even higher in certain geographic areas. For example, the Santa Ana office had a 73% vacancy rate while the San Francisco office had a 66% vacancy rate. Even more troubling is the ratio of CSHO to worker in California—1 inspector to every 130,000 workers. This ratio is much higher than in the neighboring states of Washington and Oregon, which have ratios of 1 to 26,000 workers and 1 to 24,000 workers, respectively. To put it another way, perhaps more starkly, California employs 7.7 CSHOs *per million workers*.

Cal/OSHA's staffing crisis has affected its ability to conduct inspections and effectively enforce the health and safety laws designed to protect workers. A 2022 annual evaluation of Cal/OSHA's programs, conducted by federal OSHA, found that the division is failing to proactively inspect workplaces and prevent work-related accidents. According to the evaluation, 'Cal/OSHA cannot conduct planned inspections of high hazard employers at the national average[1]' due to short staffing. Only 18.5 percent of Cal/OSHA's inspections are programmed compared to a national average of 40 percent.[2] The lack of proactive inspections can contribute to dire outcomes for workers—from preventable injuries to death. In fact, over 500 workers in California were killed on the job in 2022.[3]"

Cal/OSHA Pending State Audit:
The impact of DIR's staff vacancies were highlighted through a May 2024 State Auditor report on the Labor Commissioner's Office (LCO) titled, "*Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers*."[4] Among other things, the State Auditor reported that field offices have insufficient staffing to process wage claims – some offices had a vacancy rate of 30 percent or more. The Auditor estimated that the LCO needs hundreds of additional positions under its existing processes to resolve its backlog and that contributing to the high vacancy rate is an ineffective and lengthy hiring process and non-competitive salaries for several positions.

In response to similar issues facing Cal/OSHA, the chair of the Assembly Labor and Employment Committee, Assemblymember Liz Ortega, submitted an audit request to the Joint Legislative Audit Committee (JLAC) to examine the urgent staffing crisis at Cal/OSHA. The audit was approved by JLAC and is expected to be completed sometime this summer.

Among other things, the Cal/OSHA audit will include a review of the following:

---

[1] Miller, Maya. *"Overworked and Underprotected: Cal/OSHA is experiencing a staffing crisis. Here's how that endangers California workers."* Sacramento Bee, February 22, 2024, updated January 7, 2025.
[2] *Ibid.*
[3] U.S. Bureau of Labor Statistics, Fatal Work Injuries in California- 2022.
[4] https://www.auditor.ca.gov/wp-content/uploads/2024/05/2023-104-Report.pdf

- The nature and number of complaints that Cal/OSHA receives;
- The number of workplace complaints that Cal/OSHA investigated;
- The number of complaints investigated that resulted in a citation and resulting fines and amounts actually collected;
- The average time from the receipt of a complaint to initiating an investigation and to closing the complaint;
- Whether the fines serve as an effective tool to encourage compliance with health and safety laws; and
- A review of Cal/OSHA's staff vacancies.

The results of this audit could help inform the University of California study and the advisory committee process, proposed by this bill, as they study the staffing issues at Cal/OSHA and make recommendations for creating more effective pipelines into the CSHO classification.

2. Need for this bill?

According to the author:

"California's health and safety enforcement agency, Cal/OSHA, is facing a severe staffing crisis, with a 46% vacancy rate in its enforcement division as of August 2024. As a result, California's inspector to worker ratio is 1:121,000, compared to neighboring Oregon's 1:24,000 and Washington's 1:26,000. This results in a dramatic decrease in citations issued and a decline in workplace safety enforcement as fewer citations are issued and more letters are sent to employers instead of inspections. In addition, only 11 Compliance Safety and Health Officers (CSHOs) statewide are certified bilingual–while 5 million of the state's 19 million workers speak languages other than English. Ultimately, these staffing issues are a direct threat to the health and safety of California's diverse workers who largely report feeling abandoned by Cal/OSHA.

AB 694 will address these issues by creating an advisory committee and study tasked with assessing and developing recommendations to increase and diversify Cal/OSHA's CSHO workforce, including a training program that will create a pathway for people without college degrees to enter enforcement jobs. This initiative will also assess how to recruit workers from diverse industries as a means to increase the cultural, linguistic and worksite specific knowledge of the workforce. The bill will leverage partnerships between labor unions, worker advocacy organizations, and academic institutions to successfully implement the recommendations."

3. Proponent Arguments:

According to proponents:

"Because of occupational segregation, Black and Latinx immigrant workers have historically been funneled into occupations with poor working conditions and continue to encounter higher injury, illnesses, and fatality rates. For workers in these dangerous and low-paying industries—warehousing and manufacturing, meatpacking and poultry-processing, and agriculture—where the workforce consists overwhelmingly of immigrant non-English speakers, having a resourced and capacitated agency is critically important. When our most

vulnerable workers can't rely on the department to enforce existing health and safety standards, let alone new groundbreaking ones, all workers' health and safety is impacted negatively.

To end the years-long Cal/OSHA safety inspector understaffing crisis, the Department must go beyond current recruitment approaches and instead address the underlying causes of these vacancies. The Department's inability to hire and retain enforcement staff is a consequence of the current minimum qualifications and lack of viable workforce pipeline pathways. These core barriers keep experienced, dedicated and diverse California workers from filling these positions. AB 694 will address these issues by creating an advisory committee and study tasked with assessing and developing recommendations to increase and diversify Cal/OSHA's Compliance Safety and Health Officer workforce, including a training program that will create a pathway for people without college degrees. This initiative will also assess how to recruit workers from diverse industries, and partner with labor unions, worker advocacy organizations, and academic institutions to successfully implement the recommendations….

We need a strong and functional Cal/OSHA now more than ever. These vacancies threaten workers cleaning up toxic wildfire zones in Los Angeles, Martinez oil refinery workers who experienced another explosion this month, avian flu spreading among California dairy workers, and the States' ability to enforce new regulations coming online to protect California workers from construction falls, workplace violence, lead, and indoor heat. It is critical to remember that the Cal/OSHA understaffing crisis is a direct threat to the health, safety and very life of California workers."

4. Opponent Arguments:

None received.

5. Double Referral:

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

SUPPORT

California Farmworker Coalition (Co-Sponsor)
California Labor for Climate Jobs (Co-Sponsor)
Southern California Coalition for Occupational Safety and Health (Co-Sponsor)
Alchemist CDC
American Federation of State, County and Municipal Employees, AFL-CIO
Asian Pacific Islander Forward Movement
Brotherhood of Locomotive Engineers and Trainmen
California Association of Professional Scientists, UAW Local 1115
California Certified Organic Farmers
California Climate & Agriculture Network
California Coalition for Worker Power

California Federation of Teachers, A Union of Educators & Classified Professionals
California Food and Farming Network
California Immigrant Policy Center
California League of United Latin American Citizens
California Nurses Association
California Nurses for Environmental Health & Justice
California School Employees Association
California Teachers Association
Center for Ecoliteracy
Center for Food Safety
Central California Environmental Justice Network
Central Coast Alliance United for a Sustainable Economy
Centro Binacional Para El Desarrollo Indigena Oaxaqueño (CBDIO)
Ceres Community Project
CLEAN Carwash Worker Center
Climate and Society Center Professor Clair Brown, UC Berkeley
Communities for a Better Environment
Community Alliance With Family Farmers
Farms2people
Food & Water Watch
Food Access LA
Food & Water Watch
Fullwell
Greenpeace
HEAL Food Alliance
Industrious Labs
LA Food Policy Council
Latino Coalition for a Healthy California
Leadership Counsel Action
Lideres Campesinas, California
Marin Food Policy Council
Mixteco Indigenous Community Organizing Project
National Council for Occupational Safety and Health
National Employment Law Project
National Union of Healthcare Workers
North Bay Jobs With Justice
Nurses Alliance of SEIU California
Pesticide Action & Agroecology Network
Professional Engineers in California Government
Roots of Change
San Francisco Bay Physicians for Social Responsibility
Santa Clara County Wage Theft Coalition
SEIU California
Service Employees International Union, Local 1000
Sierra Harvest
SMART - Transportation Division
Stand.earth
Strippers United INC
Sunflower Alliance
TODEC Legal Center

United Auto Workers Region 6
United Food and Commercial Workers Union, Western States Council
United Steelworkers District 12
United Steelworkers Local 675
What We All Deserve
Worksafe
350 Bay Area Action

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 378	**Hearing Date:**	June 18, 2025
Author:	Valencia		
Version:	February 3, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Jazmin Marroquin		

SUBJECT: Education finance: Classified School Employee Summer Assistance Program

KEY ISSUE

This bill would authorize a joint powers authority (JPA), formed pursuant to existing law, and its classified employees to participate in the Classified School Employee Summer Assistance Program.

ANALYSIS

Existing law:

1) Establishes the Classified School Employees Summer Assistance Program (CSESAP) to provide a participating classified school employee one dollar for each one dollar that the classified employee elects to have withheld from their monthly paycheck. (Education Code §45500 et seq.)

   a. Authorizes a local education agency (LEA) to elect to participate in the CSESAP, and requires the LEA to notify classified employees in writing that it has elected to participate for the next school year. Once a LEA elects to do so and notifies classified employees, the LEA is prohibited from reversing its decision to participate for the next school year beginning after the end of the fiscal year in which moneys are appropriated for these purposes.

   b. Requires a classified employee who elects to participate in the Program to notify the LEA in writing, on a form developed by the California Department of Education (CDE), by March 1 during the fiscal year in which moneys are appropriated for these purposes. In addition, the classified employee must specify the amount to be withheld from their monthly paycheck during the applicable school year (up to 10 percent) and whether they choose to have the amounts withheld paid out during the summer recess period in either one or two payments.

   c. Provides that for participation, a classified employee is eligible if the employee has been employed with the LEA for at least one year at the time the employees elects to participate in the Program, or if the employee is employed by the LEA in the employee's regular assignment for 11 months or fewer out of a 12-month period, excluding any hours worked outside of the regular assignment.

   d. Provides that for the 2020 through 2023 school years, for purposes of determining a classified employee's total months employed by the LEA, the employing LEA must exclude any hours worked by the employee as a result of an extension of the academic year directly related to the COVID-19 pandemic, if the hours are in addition to the

employee's regular assignments and prevent the employee from being eligible for this Program.

e. Prohibits a classified employee from participating in the Program if the employee's regular annual pay received directly from the LEA is more than $62,400 for an entire school year at the time of enrollment. Here, the LEA must exclude any pay received by the employee during the previous summer recess period for purposes of determining the employee's regular annual pay received directly from the LEA.

f. Requires a LEA that elects to participate in the Program to notify the CDE in writing, as prescribed, that is has elected to participate by April 1 during a fiscal year in which moneys are appropriated for these purposes. The LEA also must specify the number of employees that have elected to participate in the Program and the total estimated amount to be withheld from participating employee's paychecks for the applicable school year.

g. Provides that the CDE must notify participating LEAs in writing by May 1 during the fiscal year in which moneys are appropriated for these purposes, of the estimated amount of state match funding that a participating employee can expect to receive as a result of the employee's participation. If the funding is insufficient to provide a one-to-one dollar match that has been withheld from the employee's month paycheck, the CDE must notify the LEA of the expected prorated amount of state match funds that the participating employee can expect to receive as a result of the employee's participation.

h. Requires participating LEAs to notify participating employees, by June 1 during a fiscal year in which moneys are appropriated for the purposes, the estimated amount of state match funds that a participating employee can expect to receive as a result of participating in the Program. After receipt of that notification, an employee may withdraw their election to participate in the Program or reduce the amount to be withheld from their paychecks by notifying the employed LEA no later than 30 days after the state of the school instruction for the applicable school year.

i. Authorizes a school employee who separates from employment with a LEA during the applicable school year to request any pay withheld from their paycheck from the LEA.

j. Authorizes a school employee, due to economic or personal hardship, to request any pay withheld from their paycheck from the LEA. However, under certain circumstances, a classified employee who requests any pay withheld by the LEA must not be entitled to receive any state match funds.

k. Prescribes the process for CDE and LEAs participating in the Program related to funds for these purposes.

l. Requires participating LEAs to pay participating classified employees the amounts withheld according to the employee's choice, plus the amount apportioned by the CDE attributable to the amounts withheld from those paychecks during the applicable school year, and the amount to be paid to the employee during the summer recess period in either one or two payments according to the employee's option.

m. Specifies that state match funds received by classified employees participating in the Program must not be considered to be compensation for purposes of retirement benefits

in the California Public Employees' Retirement System or the California State Teachers' Retirement System.

n. Specifies that funding of the Program is contingent upon an Annual Budget Act appropriation, as specified.

o. Defines "local education agency" to mean a school district or county office of education.

p. Defines "month" to mean 20 days or four weeks of 5 days each, including legal holiday.

q. Defines "program" to mean the Classified School Employee Assistance Program.

r. Defines "regular assignment" to mean a classified employee's employment during the academic school year, excluding the summer recess period.

s. Defines "summer recess period" to mean the period that regular class sessions are not being held by a local educational agency during the months of June, July, and August. Pay earned by a classified employee with limited employment during the months of June, July, or August that is not for the summer session shall not be excluded, as specified.

2) Creates the Joint Exercise of Powers Act, which authorizes two or more public agencies, if authorized by their legislative or other governing bodies, to enter into an agreement to jointly exercise any power common to the contracting parties, as specified. (Government Code §6502)

3) Specifies that unemployment compensation benefits, as specified, with respect to service in an instructional, research, or principal administrative capacity for an educational institution are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms, as specified, if the individual performs services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms. (Unemployment Insurance §1253.3(b))

This bill:

1) Adds a JPA, formed pursuant to existing law, to the definition of a local education agency for purposes of the Classified School Employee Summer Assistance Program, thereby authorizing a JPA and its classified employees to participate in the program.

COMMENTS

1. Background:

Classified School Employees Summer Assistance Program

The Classified School Employees Summer Assistance Program (CSESAP) allows a classified employee working for a TK-12 district or a county office education to set aside a portion of their monthly paycheck (up to 10 percent) during the school year to receive up to a dollar-for-dollar match from the State during the summer when work is not available. The classified employee must be making less than $62,400 annually at the time of enrollment.

Classified employees often work about 9 or 10 months per year due to the length of a typical school year. According to the authors and sponsors, these classified employees often have trouble finding short-term employment during the summer months and are not eligible for unemployment benefits during the summer, unless they are laid off.

CSESAP was established in 2019 and the State has appropriated more than $350 million to the CSESAP through the school year 2025-26. These funds are allocated to LEAs by the California Department of Education during the summer of the subsequent fiscal year during which withholdings were made.

JPAs
Existing law provides the ability for two or more public agencies to join together, under a joint powers authority (JPA), to enter into an agreement to jointly exercise common power to provide services.

School districts and county offices of education may form JPAs for various purposes to serve the needs of their communities and share resources across LEAs. According to the author, there are approximately 54 JPAs in California that include school districts. The author points to the Southwest Transportation Agency as an example, which offers services for 13 school districts in Fresno County to provide transportation for 7,000 students.

Existing law does not include employees of JPAs to be eligible for the CSESAP. This bill, AB 378 proposes to include JPAs in the definition of "local education agency" for purposes of the CSESAP, therefore authorizing its classified employees to participate in the program.

2. Need for this bill?

According to the author:

"Joint power authorities (JPAs) are not part of the LEA definition, which prohibits their participation in the Classified School Employee Summer Assistance Program, leaving many low-wage classified school employees without a source of income when the school year has ended.

AB 378 proposes to expand the definition of local educational agencies to include joint power authorities in the eligibility requirements for the Classified School Employee Summer Assistance Program."

3. Proponent Arguments

According to the sponsors, the California School Employees Association:

"Since its creation in 2018, CSESAP has provided critical support to low-wage classified school employees during the summer. CSESAP allows classified school employees making less than $62,400 annually to set aside up to ten percent from their monthly paychecks during the school year to receive up to a dollar-for-dollar match from the state during the summer when work is unavailable. This program is especially important because classified school employees are ineligible to receive unemployment insurance during the summer and finding short-term work is very difficult.

Education Code currently allows employees of school districts or county offices of education (COEs) to participate in CSESAP, but it does not allow employees of JPAs to participate in the program. Like their counterparts at school districts and COEs, classified employees at JPAs often work less than 12 months and provide critical services to students, including school transportation and school meals. There are 54 active education JPAs in California according to the Department of Education. AB 378 will ensure that all classified school employees can benefit from CSESAP and the financial stability it offers during the summer months."

4. Opponent Arguments:

None received.

5. Prior Legislation:

SB 114 (Committee on Budget and Fiscal Review, Chapter 48, Statutes of 2023) provided for statutory changes necessary to enact the K-12 and childcare related statutory provisions of the Budget Act of 2023, including clarifying the intent of the Legislature on how classified employees are defined for purposes of the CSESAP.

AB 185 (Committee on Budget and Fiscal Review, Chapter 571, Statutes of 2022) was a budget trailer bill that defined "month" for purposes of the CSESAP.

AB 181 (Committee on Budget and Fiscal Review, Chapter 52, Statutes of 2022) was a budget trailer bill that included $35 million in one-time Proposition 98 funding for the CSESAP.

AB 1691 (Medina, 2022) would have added clarifying language to the existing CSESAP and to the new Classified Community College Employee Summer Assistance Program (CCCESAP) as established recently by AB 183 (Committee on the Budget), Chapter 54, Statutes of 2022. *This bill was ordered to the Senate Inactive file.*

AB 167 (Committee on Budget and Fiscal Review, Chapter 252, Statutes of 2021) was a budget trailer bill for statutory changes necessary in Education Code to enact the Budget Act of 2021, including specifying that for the CSESAP, funds appropriated for purposes of the program in any year may be used to provide $1 of state matching funds for every $1 dollar withheld from participating classified employee monthly paychecks.

AB 130 (Committee on Budget and Fiscal Review, Chapter 44, Statutes of 2021) was a budget trailer bill that included $60 million in one-time Proposition 98 funds, available over a three-year period, for the CSESAP.

SB 75 (Committee on Budget and Fiscal Review, Chapter 51, Statutes of 2019) was a budget trailer bill for statutory changes necessary in Education Code to enact the Budget Act of 2019-20, including an appropriation for $36 million in one-time Proposition 98 funding for the CSESAP, created in the 2018-19 budget. This bill also made changes to the program to allow the funds to be available over three years, increased the minimum salary requirements, and made other minor and technical changes.

AB 114 (Committee on Budget, Chapter 413, Statutes of 2019) was a budget trailer bill for statutory changes in Education Code to implement the 2019-20 Budget Act, including provisions that amended the CSESAP to ensure eligible employees were able to participate, including those who worked during precious summer breaks but not within the period for which they applied for the program, among other technical amendments.

AB 1808 (Committee on Budget, Chapter 32, Statutes of 2018) was a budget trailer bill that included $50 million in one-time Proposition 98 funding for the CSESAP.

SUPPORT

California School Employees Association (Sponsor)
American Federation of State, County and Municipal Employees
California Federation of Labor Unions
California State Council of Service Employees International Union (SEIU California)
CFT- a Union of Educators & Classified Professionals

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 393	**Hearing Date:**	June 18, 2025
Author:	Connolly		
Version:	May 23, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Personal services contracts: state employees: physician positions

KEY ISSUE

This bill requires the California Department of Corrections and Rehabilitation (CDCR) and the Department of State Hospitals (DSH) to take specified actions before entering into a personal services contract to fill a Bargaining Unit 16 (BU-16) physician position.

ANALYSIS

Existing law:

1) Creates the state civil service that includes every officer and employee of the state except a limited number of specified, exempted officers and employees. Existing law also requires that the state make "permanent appointment and promotion in the civil service under a general system based on merit ascertained by competitive examination." Case law and custom refer to this provision as the merit principle and it governs the administration of the state's civil service system. (CA CONST. art. VII, §1 and §4)

2) Establishes the State Personnel Board (SPB) to enforce the civil service statutes and prescribe probationary periods and classifications, adopt other rules authorized by statute, and review disciplinary actions. (CA CONST. art. VII, §2 and §3)

3) 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)

4) 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 (Government Code §3512 et seq.)

5) Establishes strict standards for the use of personal services contracts to achieve cost savings. Among others, all of the following conditions must be met:

    a. The contracting agency must clearly demonstrate that the proposed contract will result in overall cost savings to the state.
    b. The contract does not cause the displacement of civil service employees.
    c. The savings are large enough to ensure that they will not be eliminated by private sector and state cost fluctuations that could normally be expected during the contracting period.
    d. The amount of savings clearly justify the size and duration of the contracting agreement.
    e. The contract is awarded through a publicized, competitive bidding process.

(Government Code §19130(a))

6) Provides that personal services contracting, for non-cost savings reasons, shall also be permissible when specified conditions are met, including when the services contracted are not 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. (Government Code §19130(b))

7) Requires any state agency proposing to execute a personal services contract to achieve cost savings to notify the SPB of its intention. All organizations that represent employees who perform the type of work to be contracted and any person or organization which has filed with the SPB a request for notice shall be contacted, as specified, and given a reasonable opportunity to comment on the proposed contract. (Government Code §19131)

8) Authorizes any employee organization to request, within 10 days of being notified, the SPB to review any contract proposed to achieve cost savings. Upon such a request, the SPB shall review the contract, as specified. (Government Code §19131)

9) Requires the SPB, at the request of an employee organization that represents state employees, to review the adequacy of any non-cost savings proposed or executed contract. (Government Code §19132)

10) Provides that unless a non-cost savings personal services contract is necessary due to a sudden and unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services, the contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted. (Government Code §19132)

11) Authorizes the SPB to establish necessary standards and controls over DGS' approval of contracts to assure that the approval is consistent with the merit employment principles and requirements contained in Article VII of the California Constitution. The SPB shall have discretion to establish the substantive provisions of the standards. However, the SPB and DGS shall establish the specific procedures for contract review pursuant to such standards jointly. (Public Contracting Code §10337)

This bill:

1) Requires CDCR and DSH, before entering into a personal services contract to fill a BU-16 physician position, including a psychiatrist, to do all of the following:

    a. Prepare an analysis comparing the hourly cost of a contractor to a civil service BU-16 physician.

        i. Specifies that for purposes of the above-mentioned analysis, the applicable department shall utilize current civil service physicians set forth in the collective bargaining agreement between the State of California and BU-16, when arriving at the cost of civil service physicians.

b. Utilize an available civil service physician before hiring a contractor, if the cost of the contractor exceeds that of a civil service physician.

c. Provide a report, no later than January 15 of each year, to BU-16, the Senate Committee on Budget and Fiscal Review, and the Assembly Committee on Budget.

   i. Specifies the report shall contain details regarding the number of required analyses completed in the prior fiscal year, the number and cost of contractors employed, and the number of civil service physicians utilized in extra shifts and the cost thereof.

COMMENTS

1. Background:

Bargaining Unit 16 (BU-16)
BU-16 represents roughly 1,600 state physicians, surgeons, and psychiatrists who work in institutionalized settings, such as prisons and state hospitals. Nearly three-fourths of these employees work for either CDCR or DSH.[1] BU-16's current memorandum of understanding (MOU) went into effect on July 1, 2023 and expires next month on July 1, 2025. Negotiations between the Union of American Physicians and Dentists (UAPD), which represents BU-16, and the Sate are ongoing.

According to the Legislative Analyst's Office (LAO), BU-16 had a vacancy rate of about 32 percent in 2023.[2] This was substantially higher than the statewide average vacancy rate of about 20 percent.[3] The LAO also found that BU-16's vacancy rates varied across facilities and occupations. For example, the vacancy rate for psychiatrists was 46 percent compared to 23 percent for family medicine physicians.[4] Overall, the LAO concluded that the state has significant challenges recruiting and retaining physicians and psychiatrists.

State Personnel Board (SPB) and Personal Services Contracts
Existing law establishes strict standards for the use of personal services contracts. Agencies can enter into a personal services contract to achieve cost savings or for specified, non-cost related reasons. Contracts intended to achieve cost savings are only permissible if 11 different conditions are satisfied. For example, contracts cannot cause the displacement of civil service employees. Non-cost savings personal services contracts are only permissible in a limited number of situations, such as when the services in question are not available within the civil service or cannot be performed satisfactorily by civil service employees. These standards exist to limit the state's reliance on contractors and to ensure civil service employees perform state work.

Any state agency proposing to execute a personal services contract must notify all organizations that represent state employees who perform the type of work covered by the contract. The SPB has the authority to review proposed contracts to ensure compliance with

---

[1] "State Workforce: Bargaining Unit Profiles," Legislative Analyst's Office, https://www.lao.ca.gov/stateworkforce/BargainingUnits?unit=16#:~:text=Profile%3A%20Employees%20represented%20by%20Unit,as%20prisons%20and%20state%20hospitals.
[2] Nick Schroeder, "MOU Fiscal Analysis: Bargaining Unit 16 (Physicians, Dentists, and Podiatrists)," September 7, 2023, https://lao.ca.gov/Publications/Report/4801
[3] Ibid.
[4] Ibid.

existing law. Upon request by an employee organization, the SPB must direct a state agency to transmit the proposed or executed contract for review. The SPB delegates the review of personal services contracts to its Executive Officer. However, if an employee organization requests it, the Executive Officer must grant the organization the opportunity to present its case against the contract and the reasons why the contract should be referred to the SPB for a hearing. Upon a showing of good cause by the organization, the Executive Officer must schedule the disputed contract for a hearing before the SPB. Contracts subject to review shall not become effective unless the SPB grants its approval.

This bill
AB 393 would require CDCR and DSH to take the following actions before entering into a personal services contract to fill a BU-16 physician position.

a. Prepare an analysis comparing the hourly cost of a contractor to a civil service BU-16 physician, as specified.
b. Utilize an available civil service physician before hiring a contractor, if the cost of the contractor exceeds that of a civil service physician.
c. Provide a report, no later than January 15 of each year, to BU-16, the Senate Committee on Budget and Fiscal Review, and the Assembly Committee on Budget on the number and costs of contractors employed in the prior fiscal year.

2. Author Amendments:

The author plans to amend the bill in committee to include psychologists represented by Bargaining Unit 19. As amended CDCR and DSH would be required to take specified actions before entering into a personal services contract to fill a BU-16 physician position or a BU-19 psychologist position.

3. Need for this bill?

According to the author:

"Historically, California has contracted out civil service positions within the California Department of Corrections and Rehabilitation (CDCR) and California Correction Health Care Services (CCHCS) at exorbitant rates that are two to three times the average compensation for civil service positions within the department.

For example, in a 2020 ruling the California State Personnel Board found that CCHCS had failed to justify several contracts and violated the prohibition on state agencies contracting out work that civil service employees can perform adequately and competently. The Board found that 'even if considerable effort is necessary in order to recruit civil service staff, CCHCS is legally obligated to do so.' In one of the contracts, the board found that 'CCHCS knew…staffing levels were inadequate to service the needs of the prison inmate population, yet it did not take any action to obtain addition positions. Instead, it resorted to a private contractor to fill its needs at a higher cost.'

AB 393 will help promote a more effective and cost-saving use of civil service physicians and psychiatrists within the most recent MOU. This bill also contains a robust reporting requirement that will allow both BU-16 and BU-19 physicians and psychologists, CDCR,

and the Legislature to evaluate the cost-effectiveness of current practices regarding contracting out for physicians within CDCR"

4. Proponent Arguments:

The American Federation of State, County and Municipal Employees, co-sponsors of the measure, argue:

"In order to fill gaps in vacancies, the state has relied on contracting out the work traditionally done by staff to outside contractors at three times the amount of the rate it pays its civil service employees. This pervasive outsourcing has continued for so long that the size and the true costs of this hidden workforce are now unknown and have mushroomed beyond any intent of the Legislature.

According to the Legislative Analyst's Office (LAO), 'A decade or so ago, the average state vacancy rate hovered between 10 percent and 15 percent. While there is a significant range of vacancy rates across the bargaining units, the share of vacant positions has grown significantly for all bargaining units.' This presents many challenges for these employees who are often forced to work mandatory overtime, or take on more caseloads, or shift their job duties to perform work that these employees do not traditionally do.

The state's reliance on outsourced medical and mental health contractors has reached an alarming point of abuse. While the state has always utilized private contractors, its reliance spiked to an all-time high during the COVID-19 pandemic. Regrettably, even after the state of emergency concluded, the utilization of private physicians, psychiatrists, psychiatrists, nurses, licensed clinical social workers, and psychiatric technicians persisted, indicating a sustained trend that necessitates rectification.

Furthermore, the state employee unions operating within CDCR and DSH have encountered challenges in obtaining accurate information concerning the use of private sector medical and mental health staff. This includes data on the cost comparison between outsourced staff and their state employee counterparts and the quality-of-care metrics employed to evaluate the effectiveness of contracted employees. The need for transparency and comprehensive data is crucial to informed decision-making and optimizing the effectiveness of our healthcare services.

For these reasons we support AB 393 (Connolly and Addis) and urge an 'AYE' vote…"

5. Opponent Arguments:

None received.

6. Prior Legislation:

AB 339 (Ortega, 2025) would require a local agency to give a recognized employee organization no less than 120 days' written notice before issuing a request for proposals, request for quotes, or renewing or extending an existing contract, to perform services that are within the scope of work of the job classifications represented by the recognized employee organization; and also provides a process to reopen the parties' memorandum of

understanding in response to the contract. *AB 339 is pending hearing in Senate Labor, Public Employment and Retirement Committee.*

AB 775 (Arambula, 2024) would have amended existing law authorizing state agencies to use personal services contracts under specified circumstances to require the DSH to establish a physician registry for the Patton State Hospital under a three-year pilot program. *This bill was held in Senate Appropriations Committee.*

AB 2860 (Arambula, 2023) would have required DSH and CDCR to only fill a vacant supervisor position overseeing healthcare employees in State Bargaining Units 16, 17, 18, 19, or 20, with a permanent full-time civil service employee. *This bill was held in Assembly Appropriations Committee.*

SB 422 (Pan, 2022, Vetoed) 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, who may elect to join the registry. *The Governor vetoed the bill stating:*

> *"This bill is unclear on implementation and does not demonstrate how it would significantly reduce DSH's reliance on contractors. While I am supportive of ideas to reduce state reliance on contractors, the creation of the registry and the determination of associated compensation are matters that are more appropriately handled through the budget and labor negotiations processes."*

AB 657 (Cooper, 2021) would have prohibited specified professionals (generally medical personnel) employed under personal service contracts with state agencies from being under contract for a period that exceeds 365 consecutive days or 365 nonconsecutive days in a 24-month period. *This bill was amended into another issue area.*

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.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1251	**Hearing Date:**	June 18, 2025
Author:	Berman		
Version:	May 23, 2025		
Urgency:	No	**Fiscal:**	No
Consultant:	Alma Perez-Schwab		

SUBJECT: Job postings

KEY ISSUE

This bill requires private employers who publicly advertise a job posting to include in the posting a statement disclosing whether the posting is for an existing vacancy or not and makes a violation of this requirement an unfair competition.

ANALYSIS

Existing law:

1) Establishes within the Department of Industrial Relations, various entities including the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner (LC), and empowers the LC with ensuring a just day's pay and promotes economic justice through robust enforcement of labor laws. (Labor Code §79-107)

2) Under the California Equal Pay Act, prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex or another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, except where the employer demonstrates a wage differential based on one or more factors, as specified. (Labor Code §1197.5)

3) Prohibits an employer from relying on the salary history information of an applicant for employment as a factor in determining whether to offer employment to an applicant or what salary to offer an applicant. Additionally, prohibits an employer from, orally or in writing, personally or through an agent, seeking salary history information, including compensation and benefits, about an applicant for employment. (Labor Code §432.3)

4) Requires an employer, upon reasonable request, to provide the pay scale for a position to an applicant applying for employment or to an employee that is currently employed. Additionally, requires an employer with 15 or more employees to include the pay scale for a position in any job posting. A violation of these provisions authorizes an aggrieved person to file a complaint with the LC, bring a civil action for injunctive relief, and imposes civil penalties upon the employer, as specified. (Labor Code §432.3)

5) Defines, for purposes of the pay scale provisions described above, "pay scale" to mean the salary or hourly wage range that the employer reasonably expects to pay for the position. (Labor Code §432.3)

6) Requires an employer to maintain records of a job title and wage rate history for each employee for the duration of the employment plus three years after the end of the employment in order for the LC to determine if there is a pattern of wage discrepancy. (Labor Code §432.3)

7) Authorizes persons aggrieved by an employers' violation of the pay history or pay scale posting provisions described above, to file a claim with the LC and authorizes the LC to order a civil penalty of no less than one hundred dollars ($100) and no more than ten thousand dollars ($10,000) per violation, as specified. (Labor Code §432.3)

8) Defines "unfair competition" to mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited under the false advertising provisions of the Business and Professions Code. (Business and Professions Code §17200)

9) Provides specific or preventive relief, including, among others, injunctive relief and civil penalties that may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition. (Business and Professions Code §17202-17209)

This bill:

1) Requires every private employer who publicly advertises a job posting to include in the posting a statement disclosing whether the posting is for an existing vacancy for the advertised position or not.

2) Requires that the statement be clear, conspicuous, and written in a legible font.

3) Provides that a violation of these provisions constitutes unfair competition, which includes unfair, deceptive, untrue, or misleading advertising as specified under Section 17200 of the Business and Professions Code.

COMMENTS

1. Background:

Ghost job postings:
Ghost job postings are online postings for positions that a company has no real intention of filling or that may not actually be available. According to a 2024 survey by Resume Builder, hiring managers of approximately 650 companies were asked about their use of this practice and 39 percent reported posting a fake job listing that year.[1] In addition, 39 percent of the hiring managers also reported contacting candidates for the fake job.[2]

According to the survey, companies posted fake job listings to make it appear the company is open to external talent (67 percent), to act like the company is growing (66 percent), to make employees believe their workload would be alleviated by new workers (63%), to have

[1] See https://www.resumebuilder.com/3-in-10-companies-currently-have-fake-job-posting-listed/
[2] *Ibid.*

employees feel replaceable (62 percent), and to collect resumes and keep them on file for a later date (59 percent).[3]

The deceptive practice of ghost job posting, aside from being frustrating and wasting job seekers' time during already stressful circumstances, may also contribute to inaccurate jobs reports that look at job openings when calculating on the status of the job market. Nothing in existing law prohibits this practice.

This bill:
This bill attempts to curve this practice by requiring every private employer who publicly advertises a job posting to include in the posting a statement disclosing whether the posting is for an existing vacancy or not. Violations of this requirement would constitute unfair competition as defined under the Business and Professions Code.

Enforcement of an unfair competition claim may include injunctive relief and civil penalties in actions brought in court by the Attorney General, a district attorney, county counsel, or a city attorney, as specified, in the name of the people of State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association, or by a person who has suffered injury in fact and has lost money or property as a result of the unfair competition.

2. Need for this bill?

According to the author:

"A constituent who had faced a job loss due to layoffs and then struggled to find a new job after more than four months shared the term 'ghost jobs' and a SF Gate article that deeply resonated with him based on his personal experience.

'Ghost jobs,' or fake positions that do not exist, are a disturbing trend and growing problem in the job market. In the SF Gate article, recruiters and career coaches warned that these ghost jobs posted by real companies serve multiple, sometimes insidious purposes.[4]…

Further, NPR did a story on ghost jobs and highlighted that Revelio Labs, a jobs analytics firm, looked at ghost jobs by analyzing how many job postings actually result in a hire.[5] They found that since 2018, the number of hires has dropped compared to job postings. Their chief economist stated, 'We've actually seen that that trend has really exacerbated over the past five years or so.' NPR also explained that the ratio of job openings to unemployed people is a metric that the Federal Reserve looks at to make sure the job market is healthy. Ghost job postings could make it less clear and accurate.

The Ontario province of Canada recently passed legislation to shine a light on ghost job postings by requiring companies to disclose whether a position actually exists.[6]

---

[3] *Ibid.*
[4] https://www.sfgate.com/tech/article/ghost-jobs-california-tech-industry-19871249.php
[5] https://www.npr.org/2024/06/07/1197965117/ghost-jobs
[6] https://www.ola.org/en/legislative-business/bills/parliament-43/session-1/bill-190

Looking for a job is already an arduous, time-consuming, anxiety-ridden, and potentially demoralizing process: searching for desirable job postings, drafting cover letters, tailoring resumes, submitting applications, and then interviewing. Sometimes hundreds of applicants or even more are competing for the same position, which can be stressful especially for those who are currently unemployed. A ghost job posting is just that – a job posting for a position that does not actually exist. These postings unnecessarily add another layer of worry and frustration for those looking for a job….By providing transparency, AB 1251 ensures that Californians seeking employment will no longer be misled by ghost job postings."

3. Proponent Arguments:

The Consumer Federation of California is in support and writes:

"Although many companies find these practices as beneficial for their bottom line, they hurt consumers, leading to frustration and burn out, as well as harming the overall economy, by preventing us from seeing the true condition of the labor market. This is especially true for the tech industry in California, as a recent collaborative document revealed that many tech employers were guilty of posting jobs they had no true intention of hiring for. Thousands of job seekers report submitting hundreds of applications, some even reaching a thousand, without hearing anything back, leaving them feeling devastated and discouraged in an economy that is already straining many households. These practices are anti-consumer, and California, being one of the top economies in the world, should establish guardrails to ensure that job seekers are protected from practices that seek to take advantage of them at such a vulnerable time.

AB 1251 would add much-needed transparency by requiring every private employer to include, in a publicly advertised job posting, a statement in a clear, conspicuous, and legible font disclosing whether the posting is for a vacancy. Additionally, based on existing unfair competition law, a violation of this bill would also constitute unfair competition, which includes unfair, deceptive, untrue, or misleading advertising."

4. Opponent Arguments:

The Tri-County Chamber Alliance is opposed to the measure, although their letter points to provisions no longer found in the bill as the reason for their opposition. They write:

"While transparency in hiring is important, AB 1251's enforcement provisions are unnecessarily punitive and duplicative of existing labor laws. The bill threatens employers with civil penalties and regulatory scrutiny from both the Labor Commissioner and the California Privacy Protection Agency. Its burdensome compliance requirements are particularly concerning for small employers with limited human resources capabilities."

The bill has been amended several times and the provisions regarding Labor Commissioner and CPPA enforcement are no longer in the bill.

5. Double Referral:

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

SUPPORT

Church State Council
Consumer Federation of California

OPPOSITION

Tri-County Chamber Alliance, San Luis Obispo/Santa Barbara/Ventura

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1293	**Hearing Date:**	June 18, 2025
Author:	Wallis		
Version:	April 9, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Jazmin Marroquin		

SUBJECT: Workers' compensation: qualified medical evaluators

KEY ISSUE

This bill requires the administrative director (AD) of the Division of Workers' Compensation (DWC) to develop and make available 1) a template qualified medical evaluator (QME) report form, as specified, and 2) a medical evaluation request form for parties to communicate with a panel QME in advance of a medical-legal evaluation, and 3) requires the AD to, by January 1, 2027, promulgate regulations to establish a process to submit a medical-legal report alleged to be inaccurate or incomplete, as specified, annually evaluate medical-legal reports, and publish the annual report on DWC's internet website.

ANALYSIS

Existing law:

1) Establishes a comprehensive system of workers' compensation, administered by the AD of the DWC, that provides a range of benefits for an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to insure payment of benefits by either securing the consent of the Department of Industrial Relations to self-insure or by obtaining insurance from a company authorized by the state. (Labor Code §§3200-6002)

2) Tasks the AD with appointing QMEs, for two-year terms, in each of the respective specialties required for the evaluation of medical-legal issues, and requires that a QME be a physician licensed to practice in California, spend at least one-third of their time providing direct medical treatment, report specified financial interests, take at least one 12-hour course on writing medical-legal reports, pass a competency exam, and pay an annual fee. (Labor Code §139.2)

3) Requires that, if a workers' compensation judge or Appeals Board rejects a QME's report on the basis that it fails to meet the minimum standards for those reports, the workers' compensation or Appeals Board make a specific finding to that effect and give notice to the QME and to the AD. (Labor Code §139.2(d)(2))

4) Requires that the medical director of DWC continuously review the quality of comprehensive medical evaluations and reports prepared by QMEs and the timeliness with which evaluation reports are prepared and submitted. (Labor Code §139.2(i))

5) Prescribes specific procedures and timelines for QME selection and evaluation for injured workers that are and are not represented by an attorney. (Labor Code §§4061, 4062.1, and 4062.2)

6) Prescribes specific procedures and timelines for parties to provide information to the QME regarding records prepared or maintained by the employee's treating physician(s) and/or medical and nonmedical records relevant to determination of the medical issue; requires that any communication with the QME be in writing and served upon the opposing party 20 days in advance of the evaluation; and prohibits ex parte communication with a QME by either party. (Labor Code §§4062.3(a)-(i))

7) Requires that, upon completing a determination of the disputed medical issue, the QME summarize the medical findings on a form prescribed by the AD and serve the formal medical evaluation and the summary form on the employee and employer; and requires that the medical evaluation address all contested medical issues arising from all injuries reported on claim forms prior to the employee's initial appointment with the QME. (Labor Code §4062.3(j))

This bill:

1) Requires the administrative director (AD) to develop and make available a template qualified medical evaluator (QME) form, which will include all necessary statutory and regulatory requirements for a complete report that constitutes substantial evidence.

    a. Specifies that the use of a template QME report form does not constitute prima facie evidence that a report is complete, accurate, or compliant with applicable statutory or regulatory requirements.

2) Requires the AD to develop and make available a medical evaluation request form for communicating with a panel QME, as specified, in advance of a medical-legal evaluation.

3) Requires the Division of Workers' Compensation (DWC) to adopt regulations to implement these changes by January 1, 2027.

4) Requires the AD to promulgate regulations, by January 1, 2027, to do all the following:

    a. Establish a process by which a party to a case may submit a medical-legal report that is alleged to be inaccurate or incomplete to the medical director.
    b. Annually evaluate medical-legal reports, including all medical-legal reports submitted in accordance with the report submission process and all medical-legal reports rejected and noticed in accordance with existing law.
    c. Publish the annual report submitted pursuant to existing law on the division's internet website.

COMMENTS

1. Background:

Workers' Compensation
Under the California workers' compensation system, if a worker is injured on a job, the employer must pay for the worker's medical treatment, and provide monetary benefits if the

injury is permanent. In return for receiving free medical treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. This simple premise is sometimes referred to as the "grand bargain." To receive this care and workers' compensation benefits, the worker must be able to demonstrate that the injury arose out of and in the course of employment.

QME Process

If a dispute occurs between the injured worker and the employer over whether an injury is work-related, a worker's capacity to return to work, the existence or extent of a permanent disability, the ability to engage in the worker's usual occupation, or the need for specific or future medical treatment, the injured worker may request a QME.

A QME is a physician who is certified by the DWC Medical Unit and examines injured workers, evaluates disability, and writes medical-legal reports. These reports are used to determine an injured worker's eligibility for workers' compensation benefits. QMEs must meet educational and licensing requirements to qualify, and must also pass a test and participate in ongoing education on the workers' compensation evaluation process. QMEs include medical doctors, osteopaths, chiropractors, dentists, optometrists, podiatrists, psychologists, and acupuncturists.

As the Assembly Committee on Insurance describes, when a QME is requested, DWC uses a computer program to randomly generate a "panel" (i.e. a list of three QMEs) based on the requested medical specialty and the proximity to the worker's residence. The next step in the QME process differs depending on whether or not the injured worker is represented by an attorney. If unrepresented, the injured worker selects a QME from the panel and makes an appointment within 10 days. If represented, the injured worker and the employer each eliminate one QME from the panel, and the injured worker makes an appointment with the remaining QME within 10 days. At this point, the QME reviews medical records and evaluates the injured worker, and, within 30 days of the evaluation, writes and distributes to the parties a "medical-legal report," which addresses the issues of the dispute and includes findings by the QME that a WCJ may need to resolve the dispute.

2019 State Auditor Report on QME Reporting and Review

In 2019, the California State Auditor released an audit of the DWC related to its oversight and regulation of QMEs in response to a request by the Joint Legislative Audit Committee. The audit found, in part that "DWC [had] not continuously reviewed medical-legal reports for quality and [had] not tracked when workers' compensation judges have rejected medical-legal reports that failed to meet minimum standards." Medical-legal reports must provide medical evidence that can help judges resolve disputes related to workers' compensation claims, which makes the quality of these reports especially important. Inaccurate or incomplete reports can potentially delay resolution of disputes and workers' receipt of benefits, and they can increase costs for employers involved in the disputes.[1]

To resolve some of the issues that were identified, the audit recommended DWC to take the following actions by April 2020 in order to ensure that DWC monitors and reviews QME

[1]California State Auditor, "Department of Industrial Relations - Department of Industrial Relations Its Failure to Adequately Administer the Qualified Medical Evaluator Process May Delay Injured Workers' Access to Benefits", https://information.auditor.ca.gov/reports/2019-102/auditresults.html

report quality and timeliness and to ensure the efficient resolution of workers' compensation claims:

- Create and implement a plan to continuously review the quality and timeliness of QME reports, including time frames for review, methodology for selecting reports to review, and the minimum number of reports to be reviewed annually.
- Develop and implement a process for annually reporting to DWC's AD its findings on the quality and timeliness of QME reports and recommended improvements to the QME system.
- Create written policies and implement a consistent process for ensuring that workers' compensation judges and the Workers' Compensation Appeals Board (Appeals Board) inform DWC of QME reports they rejected for not meeting minimum standards.
- Create written policies and implement a process for tracking QME reports rejected by workers' compensation judges and the Appeals Board for not meeting minimum standards. DWC should consider and include these reports in its annual review of report quality and recommend improvements to the QME system.

This bill, AB 1293, seeks to resolve and bolster these efforts by requiring the AD to promulgate regulations by January 1, 2027 that create processes for parties to a case to submit medical-legal reports that are alleged to be inaccurate or incomplete. The regulations must also require an annual evaluation of medical-legal reports, including all reports submitted, or reports rejected by workers' compensation judges or the Appeals Board, and require that the reports be published on the DWC website to improve transparency and accountability.

This bill additionally seeks to improve the quality of QME reports by requiring the AD to develop a template QME report form that includes all necessary statutory and regulatory requirements for a complete report that constitutes substantial evidence. The bill clarifies, however, that use of the template alone is not sufficient to establish a report as substantial evidence that is complete, accurate, and compliant with existing law. Finally, the bill seeks to streamline the QME process by requiring the AD to develop a medical evaluation request form designed to facilitate communication of relevant information with a QME to produce a substantive report.

2. Need for this bill?

According to the author:

"The Panel QME process is vital for resolving disputes in the workers' compensation system. Disputes can delay and interrupt the delivery of care and be critical in determining eligibility for indemnity benefits. When dispute resolution is delayed, injured workers suffer, and employers increased costs. The State Auditor reviewed the Panel QME system in 2019 and, among other problems, observed that the state was not doing enough to ensure the quality and completeness of these reports. That report found that one of the only DWC reviews of reports, conducted in 2015, found that 85% of the reviewed reports were insufficient in some way. This is unacceptable.

The California Workers' Compensation Institute (CWCI), in a 2024 report, found that reimbursement rates for these reports had increased by 52% between 2021 and 2023. With increased pay, higher quality should follow. AB 1293 attempts to take additional steps to improve report quality and completeness by modifying existing statutory requirements for the DWC to review the quality of reports and creating new tools for parties in the system that will lead to higher quality reports."

3. Proponent Arguments:

According to the sponsors, the California Coalition on Workers' Compensation (CCWC):

"The various parties in the [workers' compensation] system – claims administrators, doctors, injured workers, attorneys – experience a wide range of disputes that need to be resolved quickly and effectively to avoid delays. Some disputes require the use of the state-administered Panel QME Process, whereby the Division of Workers' Compensation sends a panel of three independent doctors who are available to complete a medical legal report to resolve the dispute. In 2022 the state received 192,600 requests for QME Panels and assigned 141,239 Panels[2]. These are not minor disputes being resolved – these reports determine whether temporary disability continues, whether a requested medical treatment is appropriate, or how much permanent impairment a worker has suffered from the injury.

Unfortunately, the Panel QME reports are frequently inadequate for the purpose of resolving disputes in the system. Resolution of disputes is frequently delayed so a supplemental report can be prepared or so the parties can depose the Panel QME. These delays harm injured workers and increase costs for employers. AB 1293 seeks to improve the quality of Panel QME reports with the aim of resolving disputes faster. "

4. Opponent Arguments:

None received.

SUPPORT

California Coalition on Workers Compensation (Sponsor)
Acclamation Insurance Management Services
Agile Occupational Medicine
Allied Managed Care
Association of California Healthcare Districts
California Alliance of Self-insured Groups
California Association of Joint Powers Authorities
California Association of Joint Powers Authorities (CAJPA)
California Attractions and Parks Association
California Chamber of Commerce
California Joint Powers Insurance Authority
California League of Food Producers
California Restaurant Association
California State Association of Counties
Coalition for Small and Disabled Veteran Businesses
Coalition of Small and Disabled Veteran Businesses

[2] CHSWC 2023 Annual Report, Page 117

Flasher Barricade Association
Keenan
Public Risk Innovation, Solutions, and Management (PRISM)
Rural County Representatives of California
Rural County Representatives of California (RCRC)
Self-insured Schools of California
The Greater Coachella Valley Chamber of Commerce
Urban Counties of California (UCC)

OPPOSITION

None received.

-- END --

SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Lola Smallwood-Cuevas, Chair
2025 - 2026 Regular

Bill No:	AB 1362	**Hearing Date:**	June 18, 2025
Author:	Kalra		
Version:	February 21, 2025		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Jazmin Marroquin		

SUBJECT: Foreign labor contractor registration: agricultural workers

KEY ISSUE

This bill extends the foreign labor contractor registration requirements and oversight under the Labor Commissioner to all foreign labor contractors, including all foreign labor visas and farm labor contractors, as defined.

ANALYSIS

Existing law:

1) Establishes within the Department of Industrial Relations (DIR), various entities including the Division of Labor Standards Enforcement (DLSE) under the direction of the Labor Commissioner, and empowers the Labor Commissioner with ensuring a just day's pay in every workplace and promotes economic justice through robust enforcement of labor laws. (Labor Code §79-107)

2) Requires, on and after July 1, 2016, a person acting as a **foreign labor contractor** to register with the Labor Commissioner, as specified. (Business and Professions Code §9998.1.5)

    a. Requires the Labor Commissioner, by August 1, 2016, to post on its internet website the name and contact information for all registered foreign labor contractors and a list of the names and contact information for any foreign labor contractors denied renewal or registration. (Business and Professions Code §9998.1.5)

    b. Prohibits the Labor Commissioner from registering a person to act as a foreign labor contractor, or renewing a registration, until specified conditions are met, including a written application, a surety bond, and a registration fee. (Business and Professions Code §9998.1.5)

    c. Requires persons who know or should know that they are using a foreign labor contractor to procure foreign workers to disclose specified information to the Labor Commissioner. (Business and Professions Code §9998.2)

    d. Requires a foreign labor contractor to disclose specified information in writing to each foreign worker, in that worker's primary language, at the time of the foreign worker's recruitment. The information, among other things, must include a form specified by the Labor Commissioner that informs workers about their rights, including a notice that workers cannot be forced to pay processing, placement, transportation, or legal fees, which, by law, are the responsibility of the foreign labor contractor. The statement must also inform workers of their contractual rights and protections afforded to them under the

federal Trafficking Victims Protection Act of 2000. (Business and Professions Code §9998.2.5)

e. Prohibits a foreign labor contractor from engaging in certain activities, including making false or misleading claims about the terms and conditions of work, recruiting minors, intimidating or in any manner discriminating against a foreign worker or a member of the workers' family in retaliation for the foreign worker's exercising a legal right under the foreign labor contractor law, or promising workers that they will be offered an opportunity for citizenship or legal permanent residence in the United States. (Business and Professions Code §9998.3-9998.7)

f. Subjects any person who violates these provisions to civil penalties and civil actions for damages or injunctive relief. (Business and Professions Code §9998.8)

3) Defines, for purposes of the **foreign labor contractor** registration program, the following terms:

a. "Person" as any natural person, company, firm, partnership or joint venture, association, corporation, limited liability company, or sole proprietorship. (Business and Professions Code §9998.1(a))

b. "Foreign labor contracting activity" to mean recruiting or soliciting for compensation a foreign worker who resides outside of the United States in furtherance of that worker's employment in California, including when that activity occurs wholly outside the United States. (Business and Professions Code §9998.1(b))

i. Specifies that "foreign labor contracting activity" does not include the services of an employer, or employee of an employer, if those services are provided directly to foreign workers solely to find workers for the employer's own use.

c. "Foreign worker" as any person seeking employment who is not a United States citizen or permanent resident but who is authorized by the federal government to work in the United States, including a person who engages in temporary nonagricultural labor pursuant to Section 101(a)(15)(H)(ii)(b) of the federal Immigration and Nationality Act (8 U.S.C. Sec. 1101(a)(15)(H)(ii)(b)). (Business and Professions Code §9998.1(c))

d. "Foreign labor contractor" as any person who performs foreign labor contracting activity, including any person who performs foreign labor contracting activity wholly outside the United States, except that the term does not include any entity of federal, state, or local government. (Business and Professions Code §9998.1(d))

i. "Foreign labor contractor" does not include a person licensed by the Labor Commissioner as a talent agency under Chapter 4 (commencing with Section 1700) of Part 6 of Division 2 of the Labor Code, or a person who obtained and maintains full written designation from the United States Department of State under Part 62 of Title 22 of the Code of Federal Regulations.

4) Specifies that the provisions regulating **foreign labor contractors** *only apply* to "nonagricultural workers," as defined by Section 1101(a)(15)(H)(ii)(b) of Title 8 of the federal Immigration and Nationality Act. (Business and Professions Code §9998)

5) Further specifies that the provisions regulating **foreign labor contractors** *does not apply* to:

   a. Any person duly licensed as a "farm labor contractor," as any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to these persons,

   b. Any person exempt from the licensing requirement in Section 1682.5 of the Labor Code, or

   c. Any employer employing agricultural workers, as defined by Section 1101(a)(15)(H)(ii)(a) of Title 8 of the federal Immigration and Nationality Act.

   (Business and Professions Code §9998)

6) Requires the Labor Commissioner to issue a license to any person acting as a **farm labor contractor**, as specified, and establishes civil penalties for any person who violates these provisions. (Labor Code §1683)

   a. Prohibits the Labor Commissioner from issuing a license to a person to act as a farm labor contractor, or renewing that license, until specified conditions are met, including a written application, a surety bond, and a license fee, as specified. (Labor Code §1683-1699)

   b. Permits the Labor Commissioner to revoke, suspend, or refuse to renew a license if the farm labor contractor fails to comply with specified state or federal laws, or has been found by a court or administrative agency to have committed sexual harassment of an employee. (Labor Code §1690)

   c. Requires every licensed farm labor contractor to, among other things, make specified disclosures to employers and workers, maintain specified records, promptly pay all moneys owed to workers, conspicuously post information related to workers' rights, provide mandated training, including sexual harassment prevention training for all supervisors and farm workers, and comply with all federal law requirements, including the Migrant and Seasonal Agricultural Workers Protection Act. (Labor Code §1695-1696)

7) Establishes, under the federal Migrant and Seasonal Agricultural Worker Protection Act (MSPA), employment standards for migrant and seasonal farmworkers related to wages, housing, transportation, disclosures and recordkeeping. The MSPA also requires farm labor contractors to register with the U.S. Department of Labor. (29 U.S.C. Sections 1801, et seq.; 29 C.F.R. Part 500.)

8) Authorizes, under the federal Immigration and Naturalization Act, the lawful admission of temporary foreign workers who have no intention of abandoning their country of origin or becoming citizens or legal permanent residents in the United States. Distinguishes between

foreign temporary workers (H-2A workers) who perform agricultural labor or services of a temporary or seasonal nature, and foreign temporary workers who perform nonagricultural labor or services (H-2B workers) of a temporary or seasonal nature. (8 U.S.C. 1101 (a) (15) (H) (i)-(ii).)

This bill:

1) Repeals the provision specifically applying the foreign labor contractor registration requirements and oversight of the Labor Commission to only "nonagricultural workers" as defined.

2) Repeals the provision excluding any licensed farm labor contractors, any person currently exempt from the farm labor licensing requirement, and any employer employing agricultural workers, as defined in the federal Immigration and Nationality Act, from the foreign labor contractor registration requirements and oversight of the Labor Commissioner.

3) Makes a series of legislative findings and declarations related to foreign labor recruiters.

COMMENTS

1. Background:

Foreign Labor Visas
While employers in the United States may recruit foreign nationals to work in the country with the protection of specific visas granted by the federal government on a temporary or permanent basis, the individuals must first obtain authorization to work in the U.S. A nonimmigrant visa provides temporary status and work authorization and immigrant visas grant permanent residency status.

Most employment-based nonimmigrant visas require employer sponsorship where the employer files for a specific visa with the U.S. Citizenship and Immigration Services (USCIS) on behalf of the prospective employee. Some circumstances also require U.S. Department of Labor (DOL) approval to demonstrate that the foreign national will not displace U.S. workers. Below are some of the most common visa classifications under which a foreign national may temporarily work or train in the U.S:

- H-1B: Specialty occupations in fields requiring highly specialized knowledge, specified fashion models, or certain services of an exceptional nature, as specified.
- H-2A: Temporary agricultural workers.
- H-2B: Temporary nonagricultural workers performing other services or labor.
- H-3: Trainees or special education exchange visitors.
- I: Representatives of foreign media.
- L-1A: Intra-company transferees (executives, managers).
- L-1B: Intra-company transferees (employees with specialized knowledge).
- O-1: Individuals with extraordinary ability or achievement in the sciences, arts, education, business, or athletics.
- P-3: Foreign nationals who perform, teach, or coach a program that is culturally unique.
- R-1: Temporary religious workers.

According to the Economic Policy Institute, California is the state with the largest number of migrant workers, with at least 300,000 nonimmigrants who were "temporary workers" in a list of visa programs included by U.S. Department of Homeland Security (DHS) in 2019.

Foreign Labor Contractors and the Legislative History on this Bill
California's foreign labor contractor laws were enacted in 1988 to regulate individuals – ie foreign labor contractors – who, for compensation, recruited or solicited persons abroad to work as temporary migrant workers in the U.S.

Recruitment abuses are well-documented and temporary migrant workers often find themselves facing abuse before arriving in the U.S. by having to pay exorbitant and illegal fees to labor recruiters to secure employment in the U.S. In 2013, SB 516 (Steinberg) was introduced to make several changes to foreign labor contractor laws aimed at strengthening the law and provide more protections to foreign workers. SB 516 was vetoed but later reintroduced and signed into law the next year with SB 477 (Steinberg, Chapter 711).

Among other things, SB 477 required foreign labor contractors to register with the Labor Commissioner, which included payment of a licensing fee and the posting of a surety bond. Foreign labor contractors were also required to make certain disclosures to workers and employers about their rights and responsibilities and the law imposed penalties on any employer who used an unregistered foreign labor contractor. SB 477 also expanded the remedies available to foreign workers aggrieved by a violation of the law, and extended the prohibition against retaliation to include acts of retaliation against a worker's family members.

SB 477 expressly exempted two categories of foreign workers: foreign workers recruited by talent agencies, because talent agencies were already licensed and subject to protective regulations, and holders of J-1 visas that authorize persons participating in an educational or cultural program to work while they are in the United States. The changes enacted with SB 477 were to various codes within Chapter 21.5 of the Business and Professions Code including Section 9998.1, which amended the definitions of "foreign labor contractor," "foreign labor contracting activity," and "foreign worker" as noted under existing law above.

The changes made to the foreign labor contractor provisions under SB 477, however, did not amend section 9998, which limited the chapter's applicability to only "nonagricultural workers" as defined by Section 1101(a)(15)(H)(ii)(b) of Title 8 of the federal Immigration and Nationality Act, which are H-2B visas. The chapter also expressly stated that it did *not* apply to a "farm labor contractor" or to any employer of H-2A agricultural workers.

This bill, AB 1362, would repeal Section 9998 from the Business and Professions Code to the foreign labor contractor requirements, deleting the limitations noted above and applying foreign labor contractor provisions to all visa categories, except those explicitly exempted, and to farm labor contractors engaging in foreign labor contracting.

Foreign Labor Contractors vs. Farm Labor Contractors
Although this bill would ensure that foreign labor contractor requirements cover all foreign visa categories, opponents argues that "H-2A visas were simply not intended to be covered by the program because of the lack of necessity to do so because the H-2A visa program is already regulated by a restrictive application and enforcement program at the federal level

and California has a specific farm labor contractor (FLC) licensing program that is managed by the California Labor Commissioner's Office."

While both foreign labor contractor and farm labor contractor provisions contain registration and bonding requirements with the Labor Commissioner, the laws appear to regulate two different steps in the process of engaging in foreign labor. Specifically, the foreign labor contractor statute contains provisions that are focused on the *recruitment* activities to bring foreign workers to the country, whereas the farm labor contractor provisions address processes and protections for workers once they are working in the country.

As the 2022 Senate Judiciary Committee analysis on AB 364 (Rodriguez, 2022), which is essentially identical to this bill, points out: "It is true that California law requires farm labor contractors to register with the Labor Commissioner, pay fees, and post a surety bond (Lab. Code § 1682 et seq.) Up to that point, the requirement of the existing farm labor contractor laws do match quite closely with what this bill asks of foreign labor contractors. Thus, to the degree that farm labor contractors are also engaging in the recruitment of H2-A workers abroad, these components of the two programs are at least arguably duplicative.

The rest of the requirements that this bill would impose on foreign labor contractors, however, diverge distinctly from what existing law demands of farm labor contractors. As detailed earlier in this analysis, the Foreign Labor Contractor Law addresses what happens during the recruitment process (prohibiting, for example, the charging of recruitment fees and falsely holding out the prospect of permanent immigration into the United States). The farm labor contractor law, by contrast, largely addresses what happens once the workers have already taken the job and are in California.

Among other things, the farm labor contractor law requires the farm labor contractor to register with the county agricultural commission, ensure that the workers are adequately covered by workers' compensation coverage, obtain training in the prevention of sexual harassment, assure that workers are paid appropriately, and maintain safe and healthy working conditions. (Labor Code § 1682 et seq.) None of these provisions relates to what happens when the farmworker is still living abroad and weighing the decision whether or not to accept a job in California.

Thus, [the sponsors of the bill] seems to be correct in its conclusion that: "[t]he simple fact is that no provisions in California law currently address the vulnerability of migrant workers coming to California at the point of recruitment."

For the same reason, even the bonding requirements that both the farm labor contractor law and the foreign labor contractor law contain are not as duplicative as they might at first appear. They insure against harms from that would emerge from abusive behavior at different stages of the process. As a result, though a California farm labor contractor who also recruits foreign workers from abroad could, under this bill, be required to put up two separate surety bonds with the Labor Commissioner, one bond would cover against harms resulting from unlawful behavior in the recruitment process, while the other bond would cover against harms arising during the work itself."

2. Need for this bill?

According to the author:

"Roughly 350,000 immigrants come to California annually on temporary work visas. These workers are commonly recruited for seasonal or temporary work in the United States through Foreign Labor Recruiters (FLRs). However, FLRs have been able to employ fraudulent and illegal tactics to recruit workers for decades because there has been no uniform Federal mechanism to prevent and hold FLRs accountable for their unlawful tactics.

In 2014, California passed SB 477 (Steinberg) to address this lack of regulation of FLRs by requiring them to register with the Labor Commissioner, requiring employers to hire registered FLRs, and, most importantly, providing protections and remedies for the foreign workers solicited and recruited to work temporarily in California. SB 477 also prohibited FLRs from charging workers recruiting fees, specified fair contractual terms in the recruiting and employment process, provided legal remedies for workers harmed by violations of the law by both FLRs and employers, outlawed retaliation against workers exercising their rights under the law, and imposed a bonding requirement on FLRs to provide funds to cover violations.

These requirements should cover all foreign labor recruiters who recruit workers under all visa categories with only two exceptions: J-1 visas and talent agency recruiters (who are already governed under a more restrictive licensing program). Unfortunately, SB 477 has been interpreted as being limited solely to FLRs recruiting workers under H-2B visas, leaving many temporary and seasonal workers vulnerable to exploitation.

Human traffickers have exploited this loophole by operating outside of specified but unintended limitations. Such practices have especially harmed vulnerable temporary agricultural workers (H-2A visa holders) who make up the temporary visa category with the most documented instances of human trafficking. Labor and sex trafficking continue to be a pervasive issue in the solicitation and hiring of foreign workers under all visa categories. In limiting the scope of SB 477 to FLRs recruiting under the H-2B visa, the remaining 345,000 temporary foreign workers coming to California annually are left without essential protections from human trafficking and abuse.

It is also important to distinguish FLRs from the existing Farm Labor Contractor registration. On top of FLRs recruiting across all visa categories, not just H-2A visas, these two entities operate at different points in the recruitment process. FLRs operate outside the U.S., recruiting workers in their home countries before they reach their employers—this stage of recruitment is largely unregulated, leading to wage theft, debt bondage, and human trafficking. While Farm Labor Contractors are regulated as employers within the U.S. — they hire and manage workers once they arrive in the U.S.

AB 1362 closes the SB 477 loophole by making it clear that all foreign labor recruiters are covered with only two exceptions: J-1 visas and talent agency recruiters. Specifically, this bill would strike Section 9998 of the Business and Professions Code, which inadvertently narrowed SB 477's scope.

As a result, the bill would make it so that FLRs recruiting workers under all visa categories, including but not limited to A-3, B-1, H-1B, H-1C, H-2A, H-2B, L-1, O-1, 1, P-3, and TN visas are covered. By covering all foreign labor recruiters, AB 1362 will ensure that immigrant workers such as domestic workers, agricultural workers, and nurses are protected against wage theft, human trafficking, and other labor violations."

3. Proponent Arguments:

According to the sponsors, the Sunita Jain Anti-Trafficking Initiative, Pilipino Workers Center of Southern California, Santa Clara Wage Theft Coalition, Coalition for Humane Immigrant Rights (CHIRLA), Farmworker Justice, Freedom United, and Justice At Last:

"The temporary visa program creates a specific vulnerability to trafficking. Based on false promises made by fraudulent foreign labor recruiters (FRLs), workers often take on exorbitant debt to pay for a legal visa to come to California and then, due to false promises and coercion, are trafficked into exploitative situations. AB 1362 provides a vital framework for addressing this systemic exploitation and ensuring California remains a leader in combating human trafficking.

The Agriculture Community and business communities' assertions that the protections under AB 1362 for H-2A workers are duplicative or unnecessary are deeply flawed. Farm Labor Contractors have consistently been documented as some of the worst offenders in cases of wage theft and worker abuse across California. AB 1362 is specifically designed to protect workers at the critical point of recruitment, where they face the highest risk of exploitation. It is essential to note that the provisions governing Farm Labor Contractors and the unique protections outlined in AB 1362 for Foreign Labor Recruiters are distinct and complementary, with no overlap.

Farm Labor Contractors involved in the recruitment of foreign H-2A workers must be required to register under AB 1362. This ensures consistent and uniform protections for all temporary visa workers entering California. Furthermore, the fact that the National Human Trafficking Hotline reports H-2A workers as the largest category of abuse cases underscores the pervasive exploitation by Foreign Labor Recruiters and the glaring inadequacies in the enforcement of current laws regarding H-2A workers.

Without these critical protections, such exploitation will undoubtedly persist. AB 1362 is a necessary and timely measure to uphold workers' rights and reaffirm California's leadership in combating labor trafficking and abuse."

4. Opponent Arguments:

According to the opposition, including the California Association of Winegrape Growers, California Chamber of Commerce, California Farm Bureau, and Nisei Farmers League:

"This bill unnecessarily expands the provisions of California's foreign labor contracting regulations to include agricultural workers under the H-2A visa program. The H-2A visa program was NOT overlooked during the discussion and negotiations of SB 477 (Steinberg) in 2014 which created the foreign labor contracting registration program. H-2A visas were simply not intended to be covered by the program because of the lack of necessity to do so because the H-2A visa program is already regulated by a restrictive application and enforcement program at the federal level and California has a specific farm labor contractor (FLC) licensing program that is managed by the California Labor Commissioner's Office.

Under the present federal regulations employers must, among other requirements, demonstrate the need to hire an H-2A visa holder, pay the highest of the Adverse Effect

Wage Rate (AEWR), the prevailing wage determined by a prevailing wage survey, or the applicable statutory minimum wage, guarantee work hours, and provide housing at no cost to the worker. H-2A employees must also receive a copy of their work contract in a language that they understand.

In addition, California also has a unique FLC licensing program that is managed and enforced by the California Labor Commissioner's Office and already covers farm labor contractors and, in fact, served as a model for the creation of SB 477. This program was specifically referenced as a model in the Assembly Committee on Judiciary analysis for SB 477, 'currently California law requires licensing of farm labor contractors only. This has curtailed human trafficking-related abuses…' As a result, expanding the California foreign labor contracting regulation to cover agricultural workers – who are already covered federally and are already covered by a program that preceded and inspired the foreign labor contracting regulation – makes little sense."

5. Double Referral:

This bill has been double referred, and should it pass our committee today, will be sent to Senate Judiciary for a hearing.

6. Prior Legislation:

AB 364 (Rodriguez, 2022, Vetoed) was identical to this bill, but did not include findings and declarations. *This bill was vetoed by Governor Newsom*. In his veto message, the Governor stated:

> "This bill requires all foreign labor contractors to meet the same requirements as nonagricultural labor contractors, including to register with the California Labor Commissioner, pay a fee, and post a bond.
>
> Many foreign labor contractors are already regulated through federal and state agencies and this bill would create a redundant process for many of the contractors covered by this bill. For example, California already has its own program requiring farm labor contractors to be licensed by the Labor Commissioner's Office.
>
> Additionally, while supportive of a broader purpose to protect foreign laborers from human trafficking and other abuses, this bill creates uncertainty by bringing within the scope of foreign labor contractor regulation visa programs that would not normally be considered worker visa programs, such as intracompany transfers of foreign workers to the U.S."

AB 1913 (Kalra, 2018) was identical to AB 364. *This bill failed passage on the Assembly floor*.

SB 477 (Steinberg, Chapter 711, Statutes of 2014) established a registration and oversight process for foreign labor contractors with the Labor Commissioner, including enumerated protections for temporary foreign workers who are recruited to work in California.

SB 516 (Steinberg, 2013, Vetoed) was nearly identical to SB 477, but it specified a contractor registration fee of $500. *This bill was vetoed by Governor Brown*.

SUPPORT

Coalition for Humane Immigrant Rights (CHIRLA) (Co-sponsor)
Farmworker Justice (Co-sponsor)
Freedom United (Co-sponsor)
Justice At Last (Co-sponsor)
Pilipino Workers Center (Co-sponsor)
Santa Clara County Wage Theft Coalition (Co-sponsor)
Sunita Jain Anti-trafficking Initiative (Co-sponsor)
American Apparel & Footwear Association
Asian Americans Advancing Justice Southern California
Bet Tzedek
Bet Tzedek Legal Services
California Federation of Labor Unions
California Rural Legal Assistance
California State Council of Service Employees International Union (SEIU California)
Center for Human Rights and Constitutional Law
Central Valley Justice Coalition
Centro Binacional Para El Desarrollo Indigena Oaxaqueño
Centro De Los Derechos Del Migrante
Coalition to Abolish Slavery and Trafficking
Economic Policy Institute
Former Mayor Steinberg
Justice in Motion
Los Angeles County Democratic Party
National Domestic Workers Alliance
Praeveni U.S. INC.
San Francisco Safehouse
Sister Warriors Freedom Coalition
South Asian Network
The Women's Employment Rights Clinic (WERC) At Ggu
UFCW- Western States Council
Verité
Worksafe

OPPOSITION

California Association of Winegrape Growers
California Chamber of Commerce
California Farm Bureau
Nisei Farmers League

-- END --