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

Bill No:	SB 984	**Hearing Date:**	April 24, 2024
Author:	Wahab		
Version:	April 17, 2024 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Public agencies: project labor agreements

KEY ISSUE

This bill requires specified agencies to identify and select at least three major state construction projects each, which would then be required to be governed by project labor agreements (PLAs) and also requires the Department of General Services to report to the Legislature regarding the use of those PLAs and their advancement of community benefit goals and apprenticeships.

ANALYSIS

Existing law:

1) Establishes procedures for state agencies to enter into contracts for goods and services, including generally requiring that certain contracts by a state agency to construct, alter, improve, repair, or maintain public property be approved by the Department of General Services (DGS). (Government Code §§10300 et seq.)

2) Defines a PLA as a pre-hire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects. (Public Contract Code §2500(b)(1))

3) Requires anyone working on a public works project to be paid prevailing wages, as determined by the Department of Industrial Relations. (Labor Code §1700 et seq.)

4) Provides, beginning January 1, 2026, that a state agency may use, enter into, or require contractors to enter into, a project labor agreement that applies to a project or set of projects with aggregate construction costs in excess of $35,000,000 if the agreement also includes provisions to address community benefits. Community benefits may include partnerships with high road construction careers programs, local hire goals, coordination with programs that assist veterans in transitioning to civilian employment, job fairs for construction apprenticeship or preapprenticeship programs, or other methods agreed upon by the parties to promote employment and training opportunities for veterans and individuals who reside in economically disadvantaged areas. (Public Contract Code §2500.5)

This bill:

1) Requires the following state agencies, by January 1, 2027, to identify and select at least three major construction projects each of $35 million or more and subject those projects to PLAs:
   a) Department of General Services (DGS);
   b) Department of Toxic Substances Control;

c) California State University; and
d) California Supreme Court, any superior court, and court of appeal.

2) Requires, by January 1, 2029, DGS to report to the Legislature every four years regarding the use of the PLAs required by this bill, the advancement of any community benefit goals, and apprenticeships. The report shall be submitted to the Secretary of the Senate, Chief Clerk of the Assembly, and Legislative Counsel, and posted on the DGS website.

3) Defines a "major state construction project" as the erection, construction, alteration, repair, or improvement of any state structure, building, or other state improvement of any kind exceeding a total estimated cost of $35,000,000.

4) Specifies that the requirements contained in this bill do not preclude the use of PLAs on any other projects.

5) Makes the following Legislative findings and declarations:

a) Project labor agreements have proven to be a successful construction management tool for the efficient completion of certain public projects.

b) Project labor agreements also can provide contractors on certain state projects with access to registered apprentices and protect employees on public construction projects without burdening the resources of the Division of Labor Standards Enforcement.

c) The state agencies described in Section 2504 of the Public Contract Code should, to the greatest extent feasible, make use of project labor agreements for major state construction projects and consider the use of project labor agreements for other state projects.

d) The University of California and the California Community Colleges should also, to the greatest extent feasible, make use of project labor agreements for major construction projects funded by state bonds.

COMMENTS

1. Background

In December 2023, President Biden's Executive Order (EO) regarding the use of PLAs for federal construction projects was published in the Federal Register as the Federal Acquisition Regulatory Council's final rule.[1] The rule requires the federal government to secure a PLA for a construction contract with an estimated cost of $35 million or more. Construction means construction, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property. Should an agency determine it appropriate to require a PLA for projects that cost less than $35 million, the rule authorizes them to do so. This rule does not apply to federally assisted projects, although a federal agency is not precluded by the rule from requiring a PLA on a federally assisted project procured by private owners or state/local governments.

[1] National Archives and Records Administration, Federal Register, April 18, 2024, Federal Register :: Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects, 22.503

The rule binds an employer to the terms of a PLA and requires the PLA to include guarantees against strikes, lockouts, and similar job disruptions and prompt, mutually binding procedures for resolving labor disputes. The PLAs are also required to include mechanisms for labor-management cooperation on matters of mutual concern, including productivity, quality of work, safety, and health.

The rule included some exceptions to the PLA requirement. A project would not need to require a PLA if it is determined by the contracting agency to not advance the federal government's interests in achieving economy and efficiency in federal procurement, based on the following factors:

- The project is of short duration and lacks operational complexity.
- The project will involve only one craft or trade.
- The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable.

Additionally, a project could be exempt from the rule if (1) market research indicates requiring a PLA would substantially reduce the number of potential contractors to such a degree that adequate competition at a fair and reasonable price could not be achieved, or (2) requiring a PLA would otherwise be inconsistent with federal statutes, regulations, executive orders, or Presidential memoranda.

On March 28, 2024, Associated Builders and Contractors and its Florida Coast chapter filed a lawsuit in the U.S. District Court for the Middle District of Florida in Jacksonville seeking a national injunction against President Biden's EO. Their complaint asserts the President lacked the authority to impose these regulation.[2]

The previous amendments to this bill specified the California Supreme Court, any superior court, and court of appeal shall each identify three major construction projects to apply PLAs. If it is the intent to require California's judicial branch as a whole to identify three major construction projects, the author may wish to consider amendments to clarify this in the future.

2. Need for this bill?

The author states "Several California cities have banned the use of PLAs either through voter-approved initiatives, or city and county ordinances on the grounds of pre-emption under the National Labor Relations Act (NLRA) and alleging violation of state or local competitive bidding requirements that require public construction contracts to be awarded to the lowest responsible bidder.

Without additions to Public Contract Code specifying the State's interest in protecting employees on state construction projects, as well as furthering community benefit goals such as hiring locals, women, the formerly incarcerated, underrepresented groups and disadvantaged groups, the current law does not adequately address those shortcomings."

[2] ABC Files Lawsuit Against President Biden's…, Associated Builders and Contractors, march 28, 2024, https://www.abc.org/News-Media/News-Releases/abc-files-lawsuit-against-president-bidens-anti-competitive-project-labor-agreement-rule-for-federal-construction-projects

3. Proponent Arguments

The California State Pipe Trades Council, California State Association of Electrical Workers, State Building and Construction Trades Council of California, and Western States Council of Sheet Metal Workers state "PLAs have been around for nearly a hundred years and are proven to control costs, ensure efficient completion of projects, and establish fair wages and benefits for all workers. As an added resource, PLAs provide contractors on state projects with access to registered apprentices and these agreements can be written to engage local populations, provide jobs for underrepresented groups, and develop experience for apprentices. These blue-collar jobs provide family-sustaining wages, a middle-class livelihood, and provide an economic boost to the cities and counties where workers live and work. PLAs allow signatory agencies to prioritize apprenticeship opportunities for people in their own communities.

When projects like the Golden 1 Center in Sacramento or SoFi Stadium in Southern California were constructed under negotiated PLAs, priority apprenticeship slots were created for residents of disadvantaged communities near the projects, even down to the zip code. Similar agreements statewide have prioritized apprenticeship opportunities for members of indigenous tribes, women, veterans, and other specific groups. By leveraging their projects through these agreements, policymakers have found a powerful tool capable of creating great change in their communities.

Project labor agreements provide structure and stability to large-scale construction projects. These agreements help avoid labor-related disruptions, secure the commitment of all stakeholders on a construction site, and advance the interests of the project owners, contractors, and subcontractors, including small businesses. When the rules are in place from the start, workers will not be exploited, projects are safer, and taxpayer investments are protected. Without a PLA, this often leads to out-of-area contractors using out-of-area workers on projects, meaning most of the dollars earned by the construction workforce leave the community as soon as they are earned.

PLAs are the optimal method to deliver public and private projects that guarantee workers earn fair wages for their work while providing public agencies and private customers a construction project that reduces costs, promotes on-time project completion, and delivers higher quality construction using a highly skilled workforce."

4. Opponent Arguments

Construction Employers' Association (CEA) states "CEA members are signatory to the Carpenters and the Laborers and often benefit from PLAs when properly drafted. Unfortunately, because PLAs are generally negotiated without contractor involvement, many do not recognize CEA's subcontracting clauses which obligate CEA members to hire subcontractors that are signatory to either the Carpenters or Laborers. In fact, grievances are routinely filed on PLA projects alleging that work was improperly assigned when there are overlapping jurisdictions. Pursuant to CEA's CBAs however, when there are overlapping jurisdictions, CEA members must contract with firms signatory to the Carpenters or Laborers. This places CEA members in an untenable position, they can either violate their CBAs or they can elect to not take work."

Associated Builders and Contractors of California state "[We] are committed to building taxpayer-funded construction projects with the highest standards of safety and quality and stand ready for the chance to build and maintain California's infrastructure. State funded construction projects provide significant opportunities, particularly to small construction businesses. ABC of California apprenticeship programs are state and federally registered apprenticeship programs employing thousands of apprentices across California. [PLA] mandates unfairly discourage competition from quality, qualified nonunion contractors and their employees and apprentices (who choose not to join a union), and who contribute over $1.83 Billion in state income taxes. Importantly, we believe that any state investment in construction must ensure opportunity to all Californians, regardless of labor affiliation."

5. Dual Referral

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

6. Prior Legislation

SB 574 (Wahab, 2023) would have prohibited a state agency from undertaking a major construction project unless that project was governed by a PLA that included a community benefit goal. *This bill was held in the Senate Committee on Governmental Organization.*

SB 922 (Steinberg, Chapter 431, Statutes of 2011) required all PLAs to incorporate specified provisions, and prohibited state funding assistance, after January 1, 2015, on public works projects of charter cities that have ordinances prohibiting the use of PLAs.

SUPPORT

State Building and Construction Trades Council (Sponsor)
Alameda County Democratic Central Committee
California Labor Federation
California State Association of Electrical Workers
California State Council of Laborers
California State Pipe Trades Council
International Union of Operating Engineers, Cal-Nevada Conference
Western States Council Sheet Metal Workers

OPPOSITION

Associated Builders and Contractors Northern California Chapter
Associated Builders and Contractors of California
Associated General Contractors of California
Associated General Contractors-san Diego Chapter
Associated Roofing Contractors
Burr Plumbing and Pumping INC.
California Chamber of Commerce
California Highway Construction Group, INC.
Carter/Kelly Incorporated
Casey Construction, INC.

Construction Employers' Association
Diede Construction, INC.
Don Celillo Electric
Electrical & Automation Solutions, LLC
Electrical Services Company
Haggerty Construction
Housing Contractors of California
Imp Electrical & Automation Solutions, LLC
J.I. Garcia Construction, INC.
Modesto Executive Electric, INC.
Robert Colburn Electric, INC.
Stephens Construction, INC.
W.E. Lyons Construction
Western Electrical Contractors Association

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

Bill No:	SB 1321	**Hearing Date:**	April 17, 2024
Author:	Wahab		
Version:	March 20, 2024 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Employment Training Panel: employment training program: projects and proposals

KEY ISSUE

This bill includes additional goals and project requirements for the Employment Training Panel (ETP), including meeting Division of Apprenticeship Standards criteria for high road job training programs. This bill would also prohibit a proposal from being considered or approved if, among other things, an applicant is ineligible to bid, be awarded, or subcontract on a public works project. Additionally, the bill would require ETP to provide notice of the intent to award proposals at least 30 days before a meeting to approve or reject a proposed award.

ANALYSIS

Existing law:

1) Establishes the Employment Training Panel (ETP) within the Employment Development Department and charges ETP with performing various duties that promote a healthy labor market in a growing, competitive economy and fund projects that meet specified criteria. (Unemployment Insurance Code §10200)

2) Requires ETP to give funding priority to projects that best meet the following goals:
   a) Result in the growth of the California economy by stimulating exports from the state and the production of goods and services that would otherwise be imported from outside the state.
   b) Train new employees of firms locating or expanding in the state that provide high-skilled, high-wage jobs and are committed to an ongoing investment in the training of frontline workers.
   c) Develop workers with skills that prepare them for the challenges of a high-performance workplace of the future.
   d) Train workers who have been displaced, have received notification of impending layoff, or are subject to displacement, because of a plant closure, workforce reduction, changes in technology, or significantly increasing levels of international and out of state competition.
   e) Are jointly developed by business management and worker representatives.
   f) Develop career ladders for workers.
   g) Promote the retention and expansion of the state's manufacturing workforce. (Unemployment Insurance Code §10205)

3) Establishes apprenticeship and preapprenticeship programs in various trades, to be approved by the Chief of the Division of Apprenticeship Standards (DAS) within DIR in any trade in the state or in a city or geographic area whenever the apprentice training needs justify the

establishment. The DAS is charged with administering apprenticeship law and enforcing apprenticeship standards for wages, hours, working conditions, and the specific skills required for state certification as a journeyperson in an apprenticeable occupation. (Labor Code §3070-3098, §3100)

4) Defines "high road" to mean a set of economic and workforce development strategies to achieve economic growth, economic equity, shared prosperity, and a clean environment. The strategies include but are not limited to, interventions that:
   a) Improve job quality and job access, including for women and people from underserved and underrepresented populations.
   b) Meet the skill and profitability needs of employers.
   c) Meet the economic, social, and environmental needs of the community. (Unemployment Insurance Code ((§14005(r))

5) Defines a "high road training partnership" as an initiative or project that models strategies for developing industry-based, worker-focused training partnerships, including labor-management partnerships. High Road Training partnerships operate via regional, industry- or sector-based training partnerships comprised of employers, workers, and their representatives including organized labor, community-based organizations, education, training, and social services providers, and labor market intermediaries. High Road Training partnerships demonstrate job quality standards and employment practices that include, but are not limited to, the following:
   a) Provision of comparatively good wages and benefits, relative to the industry, occupation, and labor market in which participating workers are employed.
   b) Payment of workers at or above local or regional living wage standards as well as payment at or above regional prevailing wage standards where such standards exist for the occupations in question.
   c) A history of investment in employee training, growth, and development.
   d) Provision of opportunities for career advancement and wage growth.
   e) Safe and healthy working conditions.
   f) Consistent compliance with workplace laws and regulations, including proactive efforts to remedy past problems.
   g) Adoption of mechanisms to include worker voice and agency in the workplace. (Unemployment Insurance Code §14005(s))

6) Requires, for contracted public works projects over $1,000, the payment of prevailing wage. The prevailing wage rate is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification, or type of work within the locality and in the nearest labor market area. (Labor Code §1771)

7) Requires a contractor or subcontractor performing a public works project of more than $25,000, or more than $15,000 for maintenance work, to be registered with DIR to be qualified to bid on, be listed in a bid proposal, or engage in the performance of any public works contract. Notice of this requirement shall be included in all bid invitations and public work contracts. A contract entered into in violation of this requirement shall be subject to cancellation. (Labor Code §1771.1(a)(b)(f))

8) Provides that a subcontractor's failure to register to perform public work shall be grounds for the contractor, with the consent of the awarding authority, to substitute a subcontractor who

is registered to perform public work in place of the unregistered subcontractor. (Labor Code §1771(d))

9) Requires DIR to maintain on its internet website a list of contractors that are currently registered to perform public works. (Labor Code § 1771.1(e))

10) Provides that if the Labor Commissioner or their designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with the above, the contractor or subcontractor shall pay specified penalties. (Labor Code § 1771.1(g))

11) Requires awarding authorities to annually submit to DIR a list of contractors that are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project, pursuant to local debarment or suspension processes. (Labor Code §1771(o))

12) Imposes a civil penalty on contractors or subcontractors who are determined to have knowingly violated specific provisions regulating the employment of apprentices on public works projects; provides that a contractor or subcontractor who is determined to have knowingly committed a serious violation of the apprentice employment provisions may additionally be denied the right to bid on or be awarded or perform as a subcontractor on any public works project for specified periods of time; provides for a review of the civil penalty or debarment by the Labor Commissioner, and; provides for a process to collect the civil penalty. (Labor Code §1777.7)

13) Creates the California Workforce Development Board (CWDB) within the Labor and Workforce Development Agency (LWDA) to provide oversight and continuous improvement of the workforce system in California through policy development, workforce support and innovation, and performance assessment, measurement, and reporting. (Unemployment Insurance Code §14010)

14) Creates the Green Collar Jobs Act of 2008 and charges the CWDB with development of a framework, funding, strategies, programs, policies, partnerships, and opportunities necessary to address the growing need for a highly skilled and well-trained workforce to meet the needs of California's green economy. (Unemployment Insurance Code §§15000 et seq.)

15) Establishes the federal Workforce Innovation and Opportunity Act (WIOA) to require local workforce development boards (local boards) to be established in each area of the state to assist in planning, oversight, and evaluation of local workforce investment, perform various duties, and develop and submit to the Governor a comprehensive four-year local plan in partnership with the appropriate chief local elected official. (20 CFR Parts 603, 651, 652, et al.)

This bill:

1) Directs ETP to additionally give funding priority to projects that:
   a) Develop workers with skills necessary to work with new technologies or methods;
   b) Develop high road jobs for workers, with demonstrated wage progression;
   c) Meet the standards established by DAS for high quality training programs;

   d) Provide support for training needs and gaps, or existing programs, and not replace, parallel, supplant, compete with, or duplicate existing apprenticeship programs that are registered with DAS and serve workers in a region.
   e) Promote hiring, training, and advancement of disadvantaged, marginalized, and underrepresented workers.
      i) This may include participation in an apprenticeship program that is approved by DAS and subject to the State of California Plan for Equal Opportunity in Apprenticeship, or by using other strategies and partnerships to achieve equity goals.

2) Updates minimum standards for ETP proposal consideration to include:
   a) The amount of fringe benefits to be paid to trainees;
   b) Proof of workers' compensation insurance; and
   c) A plan to recruit, hire, and advance workers from disadvantaged, marginalized, or underrepresented communities, including through participation in an apprenticeship program approved by the Division of Apprenticeship Standards and subject to the State of California Plan for Equal Opportunity in Apprenticeship or other strategies and partnerships.

3) Prohibits ETP from awarding funds to applicants that:
   a) Are ineligible to bid, be awarded, or subcontract on a public works project.
   b) Have been issued an order or judgment for violations of labor law that remain unabated or unsatisfied following the period during which an appeal may be made.

4) Requires ETP to provide a 30 day notice of intent to approve or reject a proposal.

5) Adds additional uncodified Legislative findings and declarations that the purpose of ETP statute is to:
   a) Assist existing apprentice, certification, or other training programs in updating training to reflect new technologies or methods, or to address gaps in existing training.
   b) Provide support for training needs and gaps or existing programs, and do not replace, parallel, supplant, compete with, or duplicate existing apprenticeship programs that are registered with DAS and serve workers in a region.

COMMENTS

1. Background

Employment Training Panel

The ETP was established approximately 30 years ago to work directly with employers to upskill employees. Governed by an eight member appointed body representing business, labor, and government, as well as a voting ex officio member, ETP allocates funding to qualified businesses through an employment training tax collected by EDD from businesses, as well as alternative funding intended to support policy initiatives and public sector employers (such as funding from the California Energy Commission under its Clean Transportation Program to provide training in alternative fuels and vehicle technologies). In 2019-20, ETP also administered five pilot programs using alternative funding, including the Clean Transportation Program.

The ETP also funds training for unemployed workers and provides additional incentives to assist small businesses and employers in high unemployment areas of the state and targets

employers that are threatened by out of state competition or that compete in the global economy and provides funds to offset the cost of training. The ETP requires contractors to notify employee representatives of their desire to participate in a contract. Contractors must send a notice of intent to their respective employee representatives explaining the proposed training program and provide the representatives with an opportunity to participate in development of the ETP contract. In addition, the union(s) must send a union support letter to ETP granting their support for the proposed training program and verify that they were able to participate in the development process. Both the notice of intent and union support letter must be submitted along with the complete ETP Application.

The ETP is performance-based and requires employers to provide proof of completed employee training hours, as well as proof that upskilled employees have earned specified wages for specified periods before the employers can be reimbursed. Contract terms last a maximum of two years and all training must be delivered within 21 months or less. Since its inception, ETP has reimbursed employers over $1 billion for training workers in more than 80,000 businesses.

The ETP is also required to annually update a three year strategic plan that addresses the demand for trained workers by industry, type of training, and size of employer. Based on the update, ETP identifies priority industry sectors and authorizes related projects to receive 20 percent more funding than standard reimbursement rates and identifies strategies to meet the needs of small businesses, including, but not limited to, those small businesses with 100 or fewer employees.

Division of Apprenticeship Standards

The DAS creates opportunities for trainees and employees to obtain skills leading to employment. In doing so, employees gain the benefit of a skilled workforce.

DAS has two goals: (1) matching the needs of workers in the acquisition of skills that allow them to obtain and keep a well-paying job with those of employers seeking motivated workers with the skills they need for open positions; and (2) strengthening the alliance among industry, labor, education, and government to recruit workers and teach them the skills needed to support industry. Because it is funded and driven by industry needs, the apprenticeship system provides an effective balance between learning by doing and theoretical instruction while developing workers with marketable skills.[1]

Apprenticeships represents a partnership among industry, labor, education, and government. DAS consults with program sponsors and monitors programs to ensure high standards of vocational training and supplemental classroom instruction. Employees show high morale and company loyalty when an apprenticeship program offers upward mobility through career development and adapts to include training for new skills in demand by industry.[2] The majority of the approximately 93,000 apprentices are in the construction industry, followed by public administration, services, transportation/utilities, and manufacturing.

Apprenticeship Training Hours and ETP Training Requirements

[1] About the Division of Apprenticeship Standards, Department of Industrial Relations, April 12, 2024, https://www.dir.ca.gov/das/DAS_overview.html
[2] Ibid.

An ETP contract will usually require completion of between eight and 200 hours of training from an approved curriculum and an employee retention period of 90 consecutive days employed on a permanent fulltime basis with a single employer. A DAS-approved apprenticeship program also requires a specified number of vocational training and classroom instruction hours.

Prevailing Wage and Eligible Contractors and Subcontractors
California's prevailing wage laws ensure that the ability to get a public works contract is not based on paying lower wage rates than a competitor. All bidders are required to use the same wage rates when bidding on a public works project. Current law requires DIR to maintain on its website a list of contractors that are currently registered to perform public works. Additionally, existing law gives DIR the authority to bar ineligible contractors from bidding on projects for a period of one to three years, depending on the severity of their public works violations. The DIR is also required to publish on its website a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project, as specified. Similarly, violators of public works laws can be debarred by cities, counties, and awarding bodies. These mechanisms can assist ETP in determining eligibility for contracts.

Workers' Compensation
The Legislature is considering the policy of sole proprietorship businesses with no direct employees carrying workers' compensation insurance. Business and Professions Code §7125 provides that only four classes of contractors that have no employees shall carry workers' compensation insurance. As of January 1, 2026, licensed contractors with no employees will be required to carry workers' compensation insurance. However, a bill currently pending in the Legislature would remove this requirement. The rationale is that is the contractor does not have direct employees, so there would be no reason to carry the coverage. Employees of a public works project would still be covered under a workers' compensation policy because existing law requires public works project contractors and subcontractors with employees to carry workers' compensation.

Suggested Clarifying Amendments
1) The author may wish to consider a minor clarification that the term "high road" used in the bill is consistent with the definition set forth in Unemployment Insurance Code §14005(r):

> Unemployment Insurance Code §10200(b)(6):
>
> Develop high road jobs ***pursuant to section 14005(r),*** and or career ladders for workers with demonstrated wage progression.

2) The intent of this bill is to add minimum standards for ETP to utilize when considering proposals. As such, the author may wish to consider the following clarifying amendment.

> Unemployment Insurance Code §10205(e)(1):
>
> Establish minimum standards for the consideration of proposals, which shall include, but not be limited to**~~, any of the following~~***:*

3) Because the Legislature is still considering whether or not to require sole proprietors with no direct employees to carry workers' compensation insurance and existing law already

requires public works project contractors and subcontractors with employees to carry workers' compensation, the committee recommends the following amendment to ensure compliance with all labor and health and safety laws:

Unemployment Insurance Code §10205(e)(1):

~~**(F) Proof of current workers' compensation insurance coverage.**~~

(F) An attestation of compliance with all state and federal labor and health and safety laws.

2. Need for this bill?

The author states "Existing training programs must reflect new technologies and close gaps in training to provide California workers with effective high quality training. The Employment Training Panel (ETP) application requirements lack guardrails necessary to ensure the program is actually adhering to its mission of creating high-wage, high-skill jobs. In the coming years, the federal government will be investing billions of dollars in California for climate and infrastructure projects, and it is critically important our workforce receives the best training possible to fulfill the need for the highly skilled workforce these projects demand. SB 1321 requires new applicants for ETP funding to expand on the amount of fringe benefits, wages, and wage progression they plan to pay their trainees. It would also require applicants to outline a plan to recruit, hire, and advance workers from disadvantaged, marginalized, or underrepresented communities to promote accessibility. This bill not only ensures that trainees are provided quality benefits and wages, it will promote diversity, so that our skilled workforce mirrors our diverse communities."

3. Proponent Arguments

According to California Labor Federation and Western States Council of Sheet Metal Workers, "In order to maximize limited funding, stronger guardrails are needed at the ETP to prioritize the highest quality programs. Currently, employer apprenticeship programs that are not approved by the Division of Apprenticeship Standards (DAS) are eligible for funding. The DAS approves programs that meet state and federal standards and requirements for apprenticeships, including proving that a training program does not duplicate any existing DAS apprenticeship programs. If an employer or sponsor of an apprenticeship is not registered with DAS, the program has not been approved to verify it meets the standards and requirements set by state and federal laws. ETP funds would be better spent on programs that are certified in meeting state and federal standards and that do not unnecessarily duplicate existing programs, wasting scarce public funding.

The current ETP requirements also need updating to ensure that training programs result in high-wage, high-skill jobs. The federal Infrastructure Investment and Jobs Act and the Inflation Reduction Act funding requires some labor standards, including equity standards to ensure recruitment and hiring of disadvantaged and marginalized workers. The ETP and other public funds can build on these federal standards to ensure California has the trained, diverse workforce needed for federally funded projects.

Additionally, public input is a vital part of the ETP approval process because stakeholders can review applicants and raise concerns about employers that are not reflected in the

application itself. However, the ETP only provides public notice of potential awardees 7 days before the Panel makes a funding decision. This is simply not enough time for meaningful public participation. These public funds require a heightened level of transparency and accountability to ensure that they are spent to benefit workers with training for skilled high-road careers."

4. Opponent Arguments

A coalition of opponents state "This bill poses a significant threat to the vital interests of manufacturers and small, diverse businesses throughout the state of California. SB 1321 proposes fundamental changes to the Employment Training Panel (ETP) that would render the very businesses that fund the program ineligible to participate. Such a change would undermine the essence of the ETP, jeopardizing the development and sustainability of California's workforce.

Manufacturers and small businesses play a pivotal role in California's economy, contributing substantially to job creation, innovation, and economic growth. The ETP has long served as a critical resource for these enterprises, offering invaluable support for employee training and development initiatives. By excluding the very businesses that contribute to the ETP through the employment training tax, SB 1321 threatens to deprive them of essential resources necessary for maintaining a skilled workforce and remaining competitive in today's rapidly evolving market landscape.

Furthermore, SB 1321 would exacerbate existing disparities and inequities within the business community by disproportionately impacting small and diverse businesses. These enterprises often operate on narrower margins and rely heavily on programs like the ETP to enhance the skills of their workforce and expand their operations. Excluding them from participation in the ETP would not only hinder their ability to compete but also undermine efforts to promote diversity, equity, and inclusion in California's business ecosystem."

5. Prior Legislation

AB 1121 (Haney, Chapter 465, Statutes of 2023) required agencies that award public works contracts to publish and annually update a list of contractors ineligible to contract or subcontract on a public works project because of debarment or suspension by local authorities.

AB 1766 (Labor and Employment, Chapter 133, Statutes of 2023), among other things, struck Legislative intent language that ETP programs not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs.

AB 1106 (Cervantes, 2021) would have required ETP to establish a pilot program to serve the employment training needs of small businesses. *This bill was held in the Senate Committee on Appropriations.*

AB 1270 (E. Garcia, Chapter 94, Statutes of 2015) made necessary changes to existing workforce development statutes to conform to the new federal guidelines under WIOA while preserving core elements of California's workforce development policies.

SUPPORT

California Labor Federation (Co-Sponsor)
Western States Council of Sheet Metal Workers (Co-Sponsor)
California State Association of Electrical Workers
California State Pipe Trades Council
Smart - Transportation Division (SMART-TD)
State Building and Construction Trades Council

OPPOSITION

Cal Asian Chamber of Commerce
Cal Chamber
California Manufacturing Technology Association
Cupertino Chamber of Commerce
Danville Area Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
Livermore Valley Chamber of Commerce
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Modesto Chamber of Commerce
Oceanside Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Simi Valley Chamber of Commerce
Tulare Chamber of Commerce
West Ventura County Business Alliance

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

Bill No:	SB 1070	**Hearing Date:**	April 24, 2024
Author:	Padilla		
Version:	March 14, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: State civil service: temporary assignments or loans

KEY ISSUE

This bill would authorize state agencies to accept academic appointees from private California institutions of higher education in temporary assignments or loans of employees to the government agency or to temporarily assign or loan state employees to private California institutions of higher education.

ANALYSIS

Existing law:

1) Requires that every officer and employee of the state be included in the civil service unless the state constitution specifically provides an exemption and requires every civil service permanent appointment and promotion to be made under a general system based on merit ascertained by competitive examination. (CA CONST. art. VII, § 1)

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

3) Designates a limited number of specific state government positions that are exempt from the civil service. (CA CONST. art. VII, § 4)

4) Authorizes temporary appointments to a position for which there is no employment list but prohibits any person from serving in one or more positions under temporary appointment longer than 9 months in 12 consecutive months. (CA CONST. art. VII, § 5)

5) Establishes the State Civil Service Act for the following purpose:

    a) To facilitate the operation of Article VII of the Constitution.
    b) To promote and increase economy and efficiency in the state service.
    c) To provide a comprehensive personnel system for the state civil service. (Government Code (GC) § 18500 et seq.)

6) Requires the following for the civil service:

    a) Positions involving comparable duties and responsibilities are similarly classified and compensated.

b) Appointments are based upon merit and fitness ascertained through practical and competitive examination.
c) State civil service employment is made a career by providing for security of tenure and the advancement of employees within the service insofar as consistent with the best interests of the state.
d) The rights and interests of the state civil service employee are given consideration insofar as consistent with the best interests of the state.
e) Applicants and employees are treated in an equitable manner without regard to political affiliation, race, color, sex, religious creed, national origin, ancestry, marital status, age, sexual orientation, disability, political or religious opinions or nonjob-related factors.
f) Tenure of civil service employment is subject to good behavior, efficiency, the necessity of the performance of the work, and the appropriation of sufficient funds. (GC § 18500 (c))

7) Creates the California Department of Human Resources (CalHR) and vests the department with the powers, duties, and authorities necessary to operate the state civil service system pursuant to Article VII of the California Constitution, the Government Code, the merit principle, and applicable rules duly adopted by SPB. (GC § 18502)

8) Requires the appointing power (i.e., state agency or department officials with authority to make appointments to the civil service) in all cases not excepted or exempted by virtue of Article VII of the Constitution to fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions, in strict accordance with the State Civil Service Act and the rules prescribed from time to time under the Act, and not otherwise. (GC) § 19050)

9) Requires, except as specified in the State Civil Service Act, that appointments to vacant positions be made from employment lists. (GC § 19050)

10) Permits an appointing authority, subject to SPB approval, to enter into arrangements with personnel agencies in other jurisdictions for the purpose of exchanging services and effecting transfers of employees. (GC § 19050.2)

11) Defines "between jurisdiction" to mean situations where an employee is on a temporary assignment or loan to a federal, county, city, or local agency, board, commission, department, district or similar non-state governmental entity. (CAL. CODE REGS., tit. 2, § 438. 1 (c) (2024))

12) Defines "transfer" to mean both (a) the appointment of an employee to another position in the same class but under another appointing power and (b) the appointment of an employee to a different class to which the employee satisfies the minimum qualifications and that has substantially the same level of duties, responsibility, and salary as determined by board rule. (GC § 18525.3)

13) Permits SPB to prescribe rules governing the temporary assignment or loan of an employee (TAL) within an agency or between agencies for a period not to exceed two years or between jurisdictions for a period not to exceed four years for any of the following purposes: (1) to provide training to employees; (2) to enable an agency to obtain expertise needed to meet a

compelling program or management need; or (3) to facilitate the return of injured employees to work. The TAL statute also does the following:

a) Deems TALs to be in accord with the State Civil Service Act limiting employees to duties consistent with their class and permits employees to use TAL experience to meet minimum requirements for promotional as well as open examinations.
b) Guarantees TAL employees the absolute right to return to their former position.
c) Requires the employee's consent for any temporary assignment or loan.
d) Provides that the employee may use out-of-class experience, as specified, to meet minimum requirements for promotional as well as open examinations only if the employee obtained the experience in good faith properly verified under SPB prescribed standards.
e) Authorizes an appointing authority to extend a TAL between educational agencies or jurisdictions for up to two additional years upon a finding by the Superintendent of Public Instruction (SPI) or the Chancellor of the California Community Colleges (CCC), and with the approval of SPB's Executive Officer that the extension is necessary in order to substantially complete work on an educational improvement project.
f) Authorizes the SPI or the CCC to extend a TAL of any local educator who is performing the duties of a nonrepresented classification while on loan to a state educational agency for as many successive two-year intervals as necessary with the concurrence of the educational agency or jurisdiction. Public and private colleges and universities shall be considered educational agencies or jurisdictions within the meaning of this section.
g) Authorizes SPB to extend a TAL within an agency or between agencies for up to two additional years in order for an employee to complete an apprenticeship program. (GC § 19050.8)

This bill:

1) Includes higher education institutions as "jurisdictions" for the purposes of temporarily assigning or loaning employees to a government agency or temporarily receiving employees of a government agency under the TAL statute.

2) Clarifies that higher education institutions may engage in TAL only for two of the three TAL statute purposes (i.e., to provide training to employees or to enable an agency to obtain expertise needed to meet a compelling program or management need; not to facilitate the return of injured employees to work).

3) Prohibits a TAL between an institution of higher education and a government agency from exceeding two years, except the parties may agree to extend the TAL for up to an additional two years.

4) Requires that employees from an institution of higher education participating in TAL be academic appointees of that institution of higher education.

5) Defines an "academic appointee of an institution of higher education" to mean someone in an employment relationship with an institution of higher education who is primarily engaged in teaching or research and whose duties are closely related to the instructional or research functions of the institution of higher education. Faculty, graduate student researchers, and

staff researchers affiliated with an institution of higher education are ordinarily academic appointees.

6) Defines "institutions of higher education" to mean the following:

    a) (1) the California Community Colleges, (2) the California State University, and each campus, branch, and function thereof, and (3) each campus, branch, and function of the University of California.
    b) Nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, and that are formed as nonprofit corporations in California and are accredited by an agency recognized by the United States Department of Education.

COMMENTS

1. Background

State constitutional law, SPB rules, and the State Civil Service Act, require that only state civil services employees selected through a merit system may perform state government work except for very limited exceptions. The historical rationale for our current system is to avoid a patronage system where powerful special interests award state jobs based on political fealty or economic interdependence rather than on technical skill and dispassionate analysis.

This bill seeks to broaden a narrow statutory exception that allows state agencies to temporarily assign or loan their employees to, or receive employees from, other state agencies and departments and other non-state governmental agencies, including local governments and public institutions of higher education. The original exception provides opportunities for public employees to transfer among different state agencies or between different levels of government to provide or receive technical experience without formally leaving their position for a new position. Thus, the California Department of Education may send employees to and receive employees from local public schools and state colleges and universities. Additionally, the existing statute, in this educational context, attempts to authorize private California university employees to also participate in what some refer to as talent exchanges.

This bill appears to broaden the ability of California private universities to loan their academic employees to all state governmental agencies, modeling a long-time federal program that allows private universities to place their employees in federal agencies. Non-California public and private universities are not included in the bill.

Committee Concerns

- Despite supporters' admirable intentions to provide meaningful expertise from elite educational institutions to incorporate their employees' latest research to applied governance, it is not clear that the bill in its current draft meets constitutional requirements as discussed above. However, SPB could provide guidance on how to ensure that the program conforms to constitutional norms through specific statutory drafting or regulatory rulemaking.

- It is unclear what management responsibilities talent exchange participants would have over state civil service employees and whether those relationships would conform to collective

bargaining agreements regarding public employees' working conditions and disciplinary protections. The author could address these concerns by requiring SPB, in consultation with state employee representatives, to develop uniform terms in the talent exchange agreements.

- The existing TAL statute appears to allow talent exchange participants to use their temporary assignment or loan experience to qualify for open and promotional exams and civil service positions in state government. If this is the case, agencies and participants could use this provision to circumvent civil service exam and state appointment processes and provide privileged opportunities to favored candidates to secure permanent positions in state government. This appears to run counter to the merit principle as required by the constitution. The author could partially address this concern by limiting the application of TAL experience to entry-level positions.

- The existing TAL statute permits public college and university employees who are not academic appointees to participate in the program (though it is not clear whether they actually do). This bill would eliminate that authorization by requiring that college and university employees, private and public, be academic appointees in order to participate. Thus, college and university classified employees, including administrative managers, would not be able to participate. The author could address this concern by clarifying that non-academic employees continue to be eligible to participate in the program.

- It is unclear whether limiting participation to private *California* colleges and universities could implicate federal constitutional issues related to equal protection or other federal laws prohibiting states from giving preference to their residents over those from other states. The bill is less likely to implicate federal legal issues if the program is limited exclusively to California governmental institutions or open to all public and private universities.

- Under the TAL statute, multiple funding sources may support the talent exchanges, including private foundation support of individual academic professorships. Such support raises concerns of undue or inappropriate influence in the formation of government policy. The author could address this concern by adopting appropriate ethics rules, disclosure requirements, and other methods as developed through the experience of the federal government's program.

- The bill's supporters appear to assume a one-way exchange of university employees going to the state government despite the bill's authorization that state employees may participate at the universities. It is unclear how balanced the exchange is and how much opportunity is actually available for state employees to work at the universities. This author could address this concern by requiring participating agencies and institutions to report data to CalHR and SPB regarding the actual number, origin, and destination of the participants and other data relevant to ensuring an equitable participation rate at universities by state employees. Centralizing the program at SPB or CalHR could also ensure that participants do not misuse the program to skirt the civil service system to obtain state government positions for favored candidates.

Notwithstanding the above-mentioned concerns, the committee recognizes the immense potential that the proposed talent exchanges could provide to state agencies facing multiple challenges including staffing and retention issues, modernization concerns, and the immediate need to adapt to technical and environmental change.

2. Recommended Committee Amendments:

While the author may wish to address several concerns above if the bill moves forward, the committee recommends the following amendment to address a key issue regarding ethics disclosure:

19050.8. (b)…

(3) Prior to any assignment or loan, employees of institutions of higher education who are temporarily assigned or loaned pursuant to paragraph (1) of this subdivision (b) shall complete and file an ethics disclosure form with the State Personnel Board and the receiving government agency that the State Personnel Board shall develop and that shall provide at a minimum the following:

(A) Identifying information on the source of funding of the employee's position at the institution of higher education.
(B) Identifying information on any private industry support the employee receives through positions held outside of the institution of higher education.
(C) Any other information the State Personnel Department requires to ensure against the employee affecting public policy in a manner that inures to the employee's personal benefit.
(D) Inclusion of corresponding state ethics requirements for state employees.
(E) A reasonable manner that provides public access to the disclosed information.

3. Need for this bill?

According to the author:

"State agencies often cannot compete for the top technical talent, particularly in emerging science and technology fields. But talent exchanges that allow university researchers to temporarily serve in state government have a proven track record at the federal level for building agency expertise, promoting collaboration between government and academia, and facilitating recruitment pipelines into government service."

"Current law impedes the development of a robust talent exchange program. While Government Code Section 19050.8 seems to say that both public and private universities are eligible to engage in talent exchanges with California state agencies, regulations implementing that provision of law only allow public universities to engage in talent exchange programs. As the law currently stands, therefore, nonprofit private universities are shut out of potential productive partnerships with state agencies."

3. Proponent Arguments

According to the University of Southern California:

"[SB 1070] would leverage an existing model of talent exchanges between government and higher education institutions to provide state agencies with access to the deep wells of expertise housed in California's world-class universities and community colleges. It would do so by clarifying existing law while ensuring that talent exchanges complement and do not compete with the civil service system."

Access to talent, especially in emerging science and technology fields, is crucial for California's government and the economic growth of the state. California has taken important strides in technology regulation, but there continue to be challenges. According to a recent report, while 60% of new PhD graduates specializing in AI chose to work in industry and about a quarter entered academia, less than 2% decided to work in government. In 2023, nearly eight in ten state chief information officers said they lacked the workforce necessary to meet their current needs. In short, technological expertise is concentrated in our universities and our companies—not in our government."

According to Stanford University:

"Stanford University was founded almost 150 years ago with a mission to contribute to the world by educating students for lives of leadership and contribution with integrity; advancing fundamental knowledge and cultivating creativity; leading in pioneering research for effective clinical therapies; and accelerating solutions and amplifying their impact. Stanford advances that mission when its researchers and faculty lend their expertise to government to better serve the public interest. SB 1070 (Padilla) is an important tool that can elevate, expedite, and formalize voluntary partnerships between higher education institutions like Stanford and state government."

"Access to technical talent is crucial for California's government and the economic growth of the state. For example, the COVID-19 pandemic demonstrated the urgency of incorporating public health and clinical experts into government decision-making. Similarly, emerging science and technology policy in spaces like artificial intelligence (AI) and cybersecurity demand unique technical expertise. Much of that expertise is concentrated in our universities and private companies—not our government. In 2023, nearly eight-in-ten state chief information officers said they lacked the workforce necessary to meet their current needs."

"Talent exchanges have existed at the federal level for over fifty years, with the federal Intergovernmental Personnel Act (IPA) enabling government agencies to build expertise, benefit from collaboration between government and academia, and facilitate recruitment pipelines into government service. The IPA has allowed numerous Stanford affiliates to serve the public by offering their skills and deep expertise to the federal government."

4. Opponent Arguments:

None received.

5. Prior Legislation:

SB 105 (Steinberg, Chapter 310, Statutes of 2013) implemented the Governor's plan for immediate population reductions in California State Correctional facilities .and, among other things, temporarily made the private California City Correctional Center in California City an agency or jurisdiction for the purpose of exchanging services pursuant to the TAL statute and related rules.

SB 290 (McCorquodale, Chapter 316, Statutes of 1987) authorized an appointing authority, subject to SPB approval, to enter into arrangements with personnel agencies in other jurisdictions for the purposes of exchanging services and effecting transfers of employees.

SUPPORT

Abundance Network
America Forward
Association of Independent California Colleges & Universities
California Institute of Technology
Federation of American Scientists
Partnership for Public Service
Stanford University
University of Southern California
From individuals (7)

OPPOSITION

None received.

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

Bill No:	SB 1100	**Hearing Date:**	April 24, 2024
Author:	Portantino		
Version:	April 4, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Discrimination: driver's license and car ownership

KEY ISSUE

This bill amends the California Fair Employment and Housing Act (FEHA) to make it unlawful to discriminate against a person for housing or employment on the basis that the person does not have a driver's license or own a car.

ANALYSIS

Existing federal law:

1) Makes it an unlawful employment practice for an employer with 15 or more employees to fail or refuse to hire, or to discharge, or otherwise discriminate against an individual with respect to their compensation, terms, conditions, or privileges of employment, on the basis of their race, color, religion, sex, or national origin. Makes it an unlawful employment practice to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive them of employment opportunities or adversely affect their employment because of their race, color, religion, sex, or national origin. (42 U.S.C. § 2000e-2.)

2) Makes it an unlawful employment practice for an employer to fail or refuse to hire, discharge, or otherwise discriminate against an individual with respect to their compensation, terms, conditions, or privileges of employment, because of their age, and makes it an unlawful employment practice to limit, segregate, or classify employees or applicants for employment in any way that would deprive or tend to deprive them of employment opportunities or adversely affect their employment because of their age. (29 U.S.C. § 623.)

3) Requires, pursuant to the Americans with Disabilities Act (ADA), that all state and local government employers and all private employers with 15 or more employees, provide reasonable accommodation to qualified employees or applicants with disabilities, as defined, unless to do so would cause the employer undue hardship. (42 U.S.C. §§ 12101-12117, 12201-12213.)

4) Defines a "qualified individual" as an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job. (42 U.S.C. § 12111(8).)

5) States that "reasonable accommodation" may include making existing facilities used by employees readily accessible to and usable by individuals with disabilities, job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. (42 U.S.C. § 12111(9).)

6) Defines an "undue hardship" as an action requiring significant difficulty or expense, when considered in light of the following factors, among other things:

   a) The nature and cost of the accommodation needed under this Act;
   b) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
   c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
   d) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity. (42 U.S.C. § 12111(10).)

7) Specifies that the ADA supersedes state law, except where state law provides greater protections for individuals with disabilities. (29 C.F.R. § 1630.1(c) (2).)

Existing state law:

1) Makes it an unlawful employment practice, unless based upon a bona fide occupational qualification or security regulations, for an employer to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment, of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of the individual. (Government Code (GC) § 12940(a))

2) Does not prohibit an employer from refusing to hire or discharging an employee with a physical disability, mental disability, or medical condition, or subject an employer to any legal liability resulting from the refusal to employ or the discharge of an employee with a physical or mental disability, if the employee, because of a physical disability, mental disability, or medical condition, is unable to perform the employee's essential duties even with reasonable accommodations, or cannot perform those duties in a manner that would not endanger the employee's health or safety or the health or safety of others even with reasonable accommodations. (GC § 12940(a) (1) - (2))

3) Makes it an unlawful employment practice for an employer to fail to make reasonable accommodations for the known physical or mental disability of an applicant or employee but does not require an accommodation that is demonstrated by the employer or other covered entity to produce undue hardship, as defined, to its operation. (GC § 12940(m) (2))

4) Makes it an unlawful employment practice for an employer to fail to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition. (GC § 12940(n))

5) Defines "reasonable accommodation" to include either of the following:

   a) Making existing facilities used by employees readily accessible to, and usable by, individuals with disabilities; or
   b) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. (GC § 12926(p))

6) Defines "undue hardship" to mean an action requiring significant difficulty or expense, when considered in light of the following factors:

   a) The nature and cost of the accommodation needed;
   b) The overall financial resources of the facilities involved in the provision of the reasonable accommodations, the number of persons employed at the facility, and the effect on expenses and resources or the impact otherwise of these accommodations upon the operation of the facility;
   c) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of its facilities;
   d) The type of operations, including the composition, structure, and functions of the workforce of the entity; and
   e) The geographic separateness or administrative or fiscal relationship of the facility or facilities. (GC § 12926(u))

7) Makes it an unlawful employment practice for an employer or covered entity to discriminate against an individual because they hold or present a driver's license issued under Section 12801.9 of the Vehicle Code (i.e., an "AB 60 driver's license" that does not require the applicant to prove legal residency in the U.S.). (GC § 12926(u))

8) Makes it unlawful for the owner of any housing accommodation to discriminate against or harass any person because of the race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of that person. (GC § 12955 (a))

9) Makes it unlawful for the owner of any housing accommodation to make or to cause to be made any written or oral inquiry concerning the race, color, religion, sex, gender, gender

identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, veteran or military status, or genetic information of any person seeking to purchase, rent, or lease any housing accommodation. (GC § 12955 (b))

10) Makes unlawful other discriminatory practices related to housing and housing accommodation. (GC § 12955 et seq.)

This bill:

1) Makes it an unlawful employment practice for an employer to include a statement in a job advertisement, posting, application, or other material that an applicant must have a driver's license unless both of the following conditions are satisfied:

   a) The employer reasonably expects driving to be one of the job functions for the position.
   b) The employer reasonably believes that satisfying the specified job function using an alternative form of transportation would not be comparable in travel time or cost to the employer.

2) Defines "alternative form of transportation" to include, but not be limited to the following:

   a) Using a ride hailing service.
   b) Using a taxi.
   c) Carpooling.
   d) Bicycling.
   e) Walking.

3) Amends several FEHA provisions regarding unlawful discrimination related to housing accommodations to add the condition of "lack of a driver's license or car ownership" and thus, makes unlawful several specified discriminatory practices related to housing based on whether a person has a driver's license or owns a car.

COMMENTS

1. Need for this bill?

According to the author:

"In California, it is common for property owners and employers to request a driver's license as part of the application process for housing and employment. The law doesn't regulate discrimination against people who do not own cars."

2. Proponent Arguments

According to the sponsor and a coalition of not-for-profit supporters:

"Basing hiring decisions on whether or not a candidate has a driver's license or owns a vehicle can perpetuate broader systemic biases and assumptions about who is considered a "desirable" or "reliable" employee. This can contribute to discrimination against marginalized communities and reinforce socioeconomic disparities while also perpetuating

car dependency, as people are made to feel that they must own a vehicle in order to gain employment."

"Discriminating against individuals without driver's licenses or vehicles disproportionately affects certain groups including: people with disabilities, low-income individuals, and those living in urban areas with access to public transportation who choose not to drive or own a vehicle. Such discrimination perpetuates existing inequalities and further disadvantages these groups in the job market."

"Prohibiting discrimination based on possession of a driver's license and/or vehicle ownership will encourage employers to focus on relevant job qualifications and skills when making hiring decisions. It promotes inclusive hiring practices that consider a larger, more diverse pool of candidates and values individuals for their abilities rather than arbitrary criteria unrelated to job performance."

3. Opponent Arguments:

None received.

4. Dual Referral:

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

5. Prior Legislation:

SB 731 (Ashby, 2023) would have made it an unlawful employment practice for an employer to fail to provide an employee working from home at least 30 days' notice before requiring they return to work in person, and to provide specified information in such notice, including an employee's right to request continuing remote work as a reasonable accommodation for disability. Governor Newsom vetoed SB 731 stating the 30-day notice requirement would be impractical.

AB 1660 (Alejo, Chapter 452, Statutes of 2014) specified that discrimination on the basis of national origin includes discrimination on the basis of a specified California driver's license that may indicate the individual's immigration status.

SUPPORT

Streets for All (Sponsor)
Active San Gabriel Valley
Bike LA
Car-lite Long Beach
Center for Community Action and Environmental Justice
East Bay for Everyone
Everybody's Long Beach
Long Beach Bike Co-op
Los Angeles Walks
Marin County Bicycle Coalition
Pedal Movement

People for Housing - Orange County
Safe Routes Partnership
San Francisco Bay Physicians for Social Responsibility
Transbay Coalition
Yimby Action
Youth Climate Strike Los Angeles

OPPOSITION

None received.

-- END --

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

Bill No:	SB 1116	**Hearing Date:**	April 24, 2024
Author:	Portantino		
Version:	February 13, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Unemployment insurance: trade disputes: eligibility for benefits

KEY ISSUE

This bill authorizes workers involved in a trade dispute to collect unemployment insurance (UI) benefits, after a two-week wait period, while they are on strike.

ANALYSIS

Existing law:

1) Creates a comprehensive Unemployment Insurance (UI) system, administered by the Employment Development Department (EDD), where employers pay an experienced-based tax on total payroll that are used to fund UI benefits to unemployed workers. (UI Code §§ 301, 602, 675, 926, 970, 977 & 1251)

2) Defines a worker as "unemployed" in any week in which they meet any of the following:

   a) Any week during which they perform no services and with respect to which no wages are payable to them;

   b) Any week of less than full-time work, if the wages payable to them with respect to the week, when reduced by $25 or 25 percent of the wages payable, whichever is greater, do not equal or exceed the worker's weekly benefit amount;

   c) Any week for which a worker is unable to work due to mental or physical health illness or injury, as specified; or,

   d) Any week during which they perform full-time work for five days as a juror, or as a witness under subpoena. (UI Code §1252)

3) Provides that an individual is disqualified for UI benefits if the individual left their most recent work voluntarily without good cause or that they have been discharged for misconduct connected with their most recent work. (UI Code §1256)

4) Provides that an individual is not eligible for UI benefits if the individual left their work because of a trade dispute. The individuals shall remain ineligible for the period during which they continue out of work because of the fact that the trade dispute is still in active progress. (UI Code §1262)

5) Provides that, when EDD learns that a trade dispute is in progress, EDD must promptly conduct an investigation and make investigative findings as to the nature, location, labor organizations and employers involved, and other relevant facts it deems necessary. EDD shall provide its findings to its field offices in locations affected by the trade dispute, and must, upon request, make its findings available to any employer, employers' association or labor organization involved in the trade dispute. (UI Code §1262.5)

This bill:

1) Makes individuals involved in a trade dispute eligible to collect UI benefits after a two-week waiting period.

2) Specifies that individuals who left work because of a lockout in the establishment where they are employed are eligible for UI benefits.

3) Defines "lockout" to mean any refusal by an employer to permit any group of five or more employees to work as a result of a dispute with such employees affecting wages, hours or other terms or conditions of employment of such employees.

4) Codifies a California Supreme Court Decision (*Coast Packing Co. v. California Unemployment Insurance Appeals Board (1966) 64 Cal. 2d 76*) that found employees who were deprived of work as a result of an employer lockout or similar action eligible for UI benefits.

COMMENTS

1. Background on the Unemployment Insurance Program:

Created in 1935 as part of the Social Security Act of 1935, the UI program is a unique federal-state program, created by federal law and administered under state and federal laws by EDD. UI provides weekly benefits, for up to a maximum of 26 weeks, unless extended by law, to workers who are unemployed (or underemployed) through no fault of their own and who are able to, available for, and actively seeking work.

Claimant Benefit Calculations
A claimant's eligibility for benefits depends on their attachment to the labor force determined by computing a minimum earnings test. This requirement denies benefits to claimants whose earnings in a 12-month "base period" are below a specified minimum. The quarter in which the highest wages were received determines the weekly benefit amount. UI benefits range from $40 to a maximum of $450 per week. In 2023, the California average UI benefit amount was $368 per week. The United States total for the 12-month average of weekly benefit amount ending on February 29, 2024 was $443.85.[1]

Financing Structure
The UI program is financed by employers who pay unemployment taxes on the first $7,000 in wages paid to each worker. The tax rates are set based on schedules laid out in state law, which require higher rates, up to a maximum of 6.2 percent, when the condition of the UI

[1] https://oui.doleta.gov/unemploy/DataDashboard.asp

trust fund is poor.[2] Working much like other insurance programs, the actual tax rate varies for each employer, depending in part on the amount of UI benefits paid to former employees. Referred to as being "experience rated," this method of taxing ensures that employers who lay off or otherwise discharge more workers bear more of the costs of paying for the UI system. An employer may earn a lower tax rate when fewer claims are made on the employer's account by former employees.

It is important to remember that UI benefits only provide up to a maximum of $450 a week. Considering the median weekly income of a Californian is roughly triple that amount, a worker is not likely to be incentivized to go on strike simply because they can get UI benefits.

Because UI is "experience rated," striking workers who claim UI benefits impact their employer's UI tax rate for that year and not the rates of other employers. The UI system as a whole, however, faces insolvency which impacts all employers and a remedy for this long-standing problem has yet to be addressed. (Please see section 3 and 4 below)

2. COVID-19 Pandemic and EDD:

The COVID-19 pandemic and the shutdown orders to mitigate the spread of the virus led to a dramatic increase in unemployment beginning in March 2020. Millions of Californians were left unemployed and in critical need of assistance to replace some of the income in which they relied to pay for essentials. Supplemental benefits authorized by the federal CARES Act, including Pandemic Unemployment Assistance and Pandemic Emergency Unemployment Compensation, further increased the volume and dollar amount of payments. By April 2020, the unemployment rate had surpassed previous peaks observed during the Great Recession. At its peak, the unemployment rate in California reached 16 percent in April 2020. According to EDD, since March 2020, 31.5 million UI claims have been filed and EDD has paid more than $194 billion in UI benefits.[3]

EDD struggled to service this unprecedented volume of claims and because of the new populations of unemployed individuals eligible for UI under the Pandemic Unemployment Assistance program (the self-employed), EDD was exposed to a range of fraudulent activity. Under scrutiny for its handling of claims and ensuing fraudulent activity, EDD has been the subject of several State Auditor reports, Legislative Analyst's Office reports and a Governor-directed EDD Strike Team to set a path for needed reforms at EDD. In addition, the Legislature held several oversight hearings on the department and passed into law numerous bills that addressed the various issues facing EDD. EDD has begun implementing many of the recommendations put forth by the various reports and teams.

3. UI Trust Fund Status:

California's unemployment rate increased to 5.3 percent in February 2024, up from 5.2 percent in January, and compared to January 2023 where it stood at 4.5 percent.
Due to the sudden and immense impact of COVID-19, the UI Fund became temporarily insolvent on April 29, 2020, and fluctuated in and out of solvency until maintaining a deficit

[2] Alamo, Chas. "Repaying the State's Federal Unemployment Insurance Loan," Legislative Analyst's Office, May 26, 2021. https://lao.ca.gov/Publications/Report/4442
[3] https://edd.ca.gov/en/newsroom/facts-and-stats/dashboard/

starting June 3, 2020. As a result, in 2020, California began borrowing from the federal government to pay regular UI benefits, and ended the year with a federal loan balance of $17.8 billion. The loan balance is estimated to be $21 billion by the end of 2025.[4]

In order to repay the principal on the federal loan, federal law imposes a tax increase on employers, referred to as the Federal Unemployment Tax Act (FUTA) credit reduction. This happens when a state UI Fund is in deficit for two consecutive years. Once this occurs, the state loses 0.3 percent of the FUTA tax credit each year, which is the equivalent of an increase in federal taxes of $21 per worker per year. Despite a loan balance at the end of 2020, the FUTA tax credit reduction was not assessed in that year, as California had not been in deficit for two consecutive years. The FUTA credit reductions started occurring for tax year 2022, with the higher federal taxes due in January 2023. In 2023, the federal tax increase generated $397 million and $858 million is projected to be collected in 2024.[5]

According to the LAO, "As the administration expects the underlying gap to worsen faster than the federal surcharge revenues increase, the annual fund imbalance is expected to continue despite federal payroll tax surcharges. Consequently, the administration expects the outstanding federal UI loan balance to increase by more than $1 billion over the two-year period, from $19 billion in 2022 to $20.3 billion in 2024. The state pays the interest on these loans from the General Fund.[6] The federal loan is not expected to be paid off until between 2030 and 2032, depending on low and high-cost scenarios.

In 2022, the Legislature passed and signed AB 178 (Chapter 45, Statutes of 2022) which, among other things, included a $342.4 million one-time General Fund UI loan interest payment. The 2023-24 state budget included a $306 million General Fund allocation to pay the annual interest on the loan. The 2024-25 budget proposed by the Governor contains a $331 million dollar UI loan interest payment.[7]

4. How does California's taxable wage base compare to other states?

According to the United States Department of Labor (US DOL), almost all states have adopted a higher taxable wage base than applicable under FUTA ($7,000) for purposes of assessing state UI taxes. Some states have established flexible taxable wage bases that are automatically adjusted, generally on an annual basis. According to the US DOL, most of these states index the taxable wage base to the state's average annual wage. Other states tie the taxable wage base to the health of the state's trust fund balance.

California, however, has neither a taxable wage base above $7,000 nor a provision in law that automatically adjusts the taxable wage base if FUTA is amended to apply to a higher amount.[8] In reviewing the US DOL data comparisons, it appears that Washington is the state with the highest taxable wage base at $62,500. At the lower end, California shares the lowest $7,000 taxable wage base with Tennessee, Arizona, Florida, Puerto Rico and Louisiana at

[4] EDD January 2024 UI Fund Forecast. https://edd.ca.gov/siteassets/files/unemployment/pdf/edduiforecastjan24.pdf
[5] Employment Development Department: May 2023 Unemployment Insurance (UI) Fund Forecast. https://edd.ca.gov/siteassets/files/pdf/edduiforecastmay23.pdf
[6] Alamo, Chas. "New Unemployment Insurance Fund Forecast Shows Imbalance," Legislative Analyst's Office, July 7, 2023. https://lao.ca.gov/LAOEconTax/article/Detail/779
[7] https://ebudget.ca.gov/2023-24/pdf/Enacted/BudgetSummary/LaborandWorkforceDevelopment.pdf
[8] U.S. Department of Labor, Comparison of State Unemployment Laws 2022. Chapter 2 – Financing, 2-4 and 2-5. https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/complete.pdf

$7,700.[9] According to the US DOL, besides the U.S. Virgin Islands, California's trust fund was the least adequately funded of all 53 UI programs heading into the pandemic.[10]

5. Similar Laws in New York & New Jersey:

Currently, New York and New Jersey are the only two states that allow individuals on strike to collect UI benefits. New York changed their UI laws in 2020 to allow a worker to collect UI benefits after a 14-day suspension period. However, eligibility could be sooner if the worker is subject to a lockout, the employer hires permanent replacement workers, or the labor dispute ends and the worker is still unemployed. In 2018, New Jersey enacted a law making workers eligible for UI if on strike for more than 30 days. Then in 2023, New Jersey reduced that waiting period from 30 days to 14 days. Over the last couple of years, a growing number of states have proposed legislation authorizing striking workers access to UI.

Last year, SB 799 (Portantino) was California's effort to extend UI benefits to striking workers. This bill (SB 1116) is an identical re-introduction of SB 799 from last year. Governor Newsom vetoed SB 799 and stated, in part, the following:

> "California employers fund UI benefits through contributions to the state's UI Trust Fund on behalf of each employee. The UI financing structure has not been updated since 1984, which has made the UI Trust Fund vulnerable to insolvency. Any expansion of eligibility for UI benefits could increase California's outstanding federal UI debt projected to be nearly $20 billion by the end of the year and could jeopardize California's Benefit Cost Ratio add-on waiver application, significantly increasing taxes on employers. Furthermore, the state is responsible for the interest payments on the federal UI loan and to date has paid $362.7 million in interest with another $302 million due this month. Now is not the time to increase costs or incur this sizable debt.
>
> I have deep appreciation and respect for workers who fight for their rights and come together in collective action. I look forward to building on the progress we have made over the past five years to improve conditions for all workers in California. For these reasons, I cannot sign this bill."

6. Data on Striking Workers:

The year 2023, including California's "hot labor summer" months, was challenging for many workers. Frustrated by high costs of living that have outpaced wage increases, many workers took action and went on strike against their employers, demanding higher wages and better working conditions. With dozens of strikes happening over a wide range of industries, from Hollywood writers and actors, university employees, to city and hospital workers, the impact of these strikes was and continues to be felt across the state.
According to data from the Bureau of Labor Statistics (BLS), in 2023, there were at least 15 strikes in California with work stoppages involving *1,000 or more* workers. Below are the strikes lasting longer than two weeks[11]:

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[9] U.S. Department of Labor, Comparison of State Unemployment Laws 2022. Chapter 2 – Financing, 2-5. https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/complete.pdf
[10] U.S. Department of Labor, "State Unemployment Insurance Trust Fund Solvency Report 2020," https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf
[11] https://www.bls.gov/web/wkstp/monthly-listing.htm

- Alliance of Motion Picture and Television Producers (Writers Guild of America West) - 5/2/23 to 9/24/23
- Alliance of Motion Picture and Television Producers (Screen Actors Guild, American Federation of Television and Radio Artists) - 7/14/23 to 11/8/23
- Ford Motor Co., General Motors Co., and Stellantis (United Auto Workers) - 9/15/23 to 10/30/23

The above referenced data tracks strikes with work stoppages involving 1,000 or more workers. This bill, however, would extend access to UI benefits to employees participating in a labor dispute with an employer of any size.

7. Need for this bill?

According to the author, "Although a labor dispute is not the fault of any worker, California has historically denied striking workers these earned benefits. Section 1262 of the Unemployment Insurance Code disqualifies workers involved in a trade dispute from being eligible for UI benefits. This is not the case for other states, like New York and New Jersey. This bill would reinstate eligibility for striking workers for UI after the first two weeks they were out of work because of a trade dispute.

UI benefits play an important role in supporting workers, stimulating the economy, and benefiting local economies. Multiple studies have found that UI benefits help stabilize the economy during downturns and allow for a quicker recovery for individual businesses and the economy as a whole. The benefits, however minimal, allow workers to pay rent to stay housed, avoid going into crippling debt, and pay for necessities. UI benefits are paid to workers, but generally end up in the hands of businesses—UI provides regional economic stabilization as well as support for individual workers. UI benefits also have a multiplier effect on the economy. The International Monetary Fund found that every $1 in pandemic UI benefits resulted in $1.92 of economic activity, a huge return on investment."

8. Proponent Arguments:

According to the sponsors of the measure, the California Labor Federation, "the decision to go on strike is not one that union members take lightly. Striking workers lose all income for the duration of their job action. Workers deplete their savings as bills pile up, rent and mortgages go unpaid, and debt accumulates. Corporations rely on the expectation that striking workers will have few resources, and their strategy is often to starve workers until they give up their demands for better wages, fair compensation, and job security."

Furthermore, they note, "it is difficult to estimate the number of striking workers potentially eligible for UI in any given year. Though the number of strikes increased nationally in 2023, two-thirds of all strikes last year ended within seven days, reflecting a trend over the past few years towards short duration strikes. Even with the increased strike activity, the impact on the UI fund would be minimal, especially given the trend toward shorter strikes. The number of potentially eligible striking workers at the high end simply pales in comparison to the overall pool of UI claimants.

For one, it is highly unlikely that all eligible striking workers would receive UI since in 2022 only 43% of California's unemployed workers received UI, even if the strike exceeded two

weeks, which is also unlikely. For context, in 2022, California paid out nearly $5 billion in regular state UI benefits and EDD projected that UI benefit payments would be $6.7 billion in 2024, and $6.8 billion in 2025. The number of striking workers that could be eligible for UI given the time requirements and take-up rate is minimal compared to the benefits paid currently."

Regarding concerns raised about the UI Fund's financial condition, proponents note, "that money is already owed and benefits for striking workers will not increase that debt. There are numerous models for how California could reform the UI funding system—almost all other states have both higher taxable wage bases and higher tax rates than California. Of course, this would mean employers of high-wage workers would pay more into the system to offset the higher benefits their workers are paid if they get laid off. Yet, business groups have battled against reform and have failed to make this happen even though the UI fund has been structurally insolvent for decades. We agree that this issue requires attention, but the structural insolvency of the UI Fund is no excuse to deny striking workers and their communities the benefits they have earned."

9. Opponent Arguments:

A coalition of employers, including the California Chamber of Commerce, are opposed arguing that it would effectively require employers to subsidize striking workers, even if those workers or labor strikes had nothing to do with the employer, even if that employer is not presently (or has never) experienced any strikes. This, they argue, "creates a fundamental unfairness by forcing employers with absolutely no involvement in any strikes to pay for labor disputes that they have no involvement in." They argue that, "if the Fund becomes insolvent, all employers face steadily increasing UI taxes. These taxes increase by $21 per employee per year, until they reach a maximum of $434 dollars per employee. Presently, California is in historic debt (approx. $20 billion) in large part due to the COVID-19 pandemic and the resulting statewide shutdown. As a result, California employers are already paying increased UI taxes pursuant to federal law, and are likely to face ongoing tax increases until approximately 2034.[12]"

Additionally, they argue that, "SB 1116 would change incentives around striking. Though striking workers presently may access union strike funds and other resources, SB 1116 would add a new pool of income—unemployment insurance—and thereby change the financial calculus around a strike. In other words, we believe SB 1116 is likely to encourage labor disputes, which in turn would add costs to the Fund and to California employers. In addition to adding to employers' tax burdens, SB 1116 will also add to the state's General Fund obligation regarding the UI Fund."

Opponents are additionally concerned that SB 1116 may violate federal law. They argue that the "basic tenet of federal UI eligibility appears in conflict with the situation of a strike - where workers have a job, but are choosing not to work to create economic leverage." They continue, "Proponents argue that two Democratic states (New York and New Jersey) have recently made similar changes, and emphasize that the Supreme Court reviewed New York's program in a 1979 case. Because those two programs have not been decertified, they assert

[12] The LAO's February 15, 2022 budget analysis estimated 2033, presuming a "high cost" scenario, but no recession occurring in the interceding years. Text available here: https://lao.ca.gov/Publications/Report/4543. However, that estimate did not take into account the rising UI Debt heading into 2024, so we have revised this projection upward by one year.

that SB 1116 must be acceptable under federal law. This argument is incorrect. Though New York's program was reviewed in 1979 by the Supreme Court, *that case did not consider today's federal law*. To the contrary, that case considered whether allowing striking workers to collect unemployment violated the National Labor Relations Act because government was weighing in on a labor dispute—and held narrowly that NY's program did not violate the NLRA.[13]

Since the applicable law was changed in 2012 to require claimants be 'able to work, available to work, and actively seeking work,' there does not appear to be any judicial review or Department of Labor guidance approving New York or New Jersey's program—meaning the matter remains unresolved and would be in the discretion of future Secretaries of Labor. Should an unfriendly federal administration take office, the Department of Labor could move to decertify California's UI program, which would be cataclysmic for California's budget and California's truly unemployed claimants."

Additional opposition, including from the League of Cities and California State Association of Counties, argue that, "in addition to its considerable costs to employers, SB 1116 will likely further harm the already insolvent UI fund and threaten benefits to unemployed Californians in future recessions." Lastly, they argue, "this measure will further erode good faith negotiations at the bargaining table for local government and schools employers. Local governments and schools work hard to engage in good faith bargaining. If SB 1116 were to become law, we anticipate longer lengths of impasse, higher costs associated with protracted Public Employee Relations Board (PERB) proceedings and a decline in quality of public services. These impacts could be amplified by a pending measure concerning sympathy strikes (Assembly Bill 2404 (Lee)) and a recently-enacted measure allowing for collective bargaining for temporary employees (Assembly Bill 1484 (Zbur, 2023))."

10. Prior Legislation:

SB 799 (Portantino, 2023, Vetoed), identical to this measure, would have authorized workers involved in a trade dispute to collect UI benefits, after a two-week wait period, while they are on strike. Governor Newsom vetoed the measure.

AB 1066 (Gonzalez, 2019) would have permitted individuals in a trade dispute to collect UI compensation after a three-week waiting period. AB 1066 failed on the Senate Floor and was later amended to address another issue in the UI Code (authorizing the director of EDD to delegate its authority to collect and recover funds from a business or employer to the Attorney General when the business or employer has 500 or more employees, including misclassified independent contractors). That subsequent version of AB 1066 was then vetoed by the Governor.

SB 227 (Durazo, 2023) would, upon an appropriation by the Legislature, establish the Excluded Workers Program within the Employment Development Department (EDD) to provide income assistance to unemployed excluded workers who are not eligible for regular state or federal unemployment insurance benefits due to their immigration status. *Pending in Assembly Appropriations Committee.*

[13] Department of Labor's memorandum summarizing the decision available at https://oui.doleta.gov/dmstree/uipl/uipl79/uipl_2479.htm.

AB 2847 (E. Garcia, 2022, Vetoed), was substantially similar to SB 227 from 2023 which would have established a pilot program to provide UI type benefits, at slightly lower rates, to workers who are not eligible for regular state or federal unemployment insurance benefits due to their immigration status.

SUPPORT

California Labor Federation – Sponsor
AFSCME CA
California Association of Psychiatric Technicians
California Federation of Teachers Afl-cio
California Nurses Association
California Professional Firefighters
California School Employees Association
California State Treasurer
California State University Employees Union (CSUEU)
California Teachers Association
Culver City Democratic Club
National Union of Healthcare Workers (NUHW)
Orange County Employees Association
Smart - Transportation Division (SMART-TD)
The San Fernando Valley Young Democrats
Writers Guild of America West

OPPOSITION

Acclamation Insurance Management Services
Agricultural Council of California
Air Conditioning Sheet Metal Association
Airlines for America (A4A)
Allied Managed Care
American Council of Engineering Companies
Association of California School Administrators
Associated General Contractors
Associated General Contractors San Diego
Association of California Healthcare Districts (ACHD)
Association of Western Employers
Bay Area Council
Bizfed - Los Angeles County
Brea Chamber of Commerce
Building Owners and Managers Association of California
Calforests
California Alliance of Family Owned Businesses
California Apple Commission
California Asian Pacific Chamber of Commerce
California Association of Joint Powers Authorities (CAJPA)
California Association of Licensed Security Agencies, Guards & Associates
California Association of Recreation & Park Districts
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Association of Winegrape Growers

California Attractions and Parks Association
California Bankers Association
California Blueberry Association
California Blueberry Commission
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners and Growers Association
California Employment Law Council
California Farm Bureau
California Framing Contractors Association
California Fresh Fruit Association
California Fuels and Convenience Alliance
California Grocers Association
California Hospital Association
California Hotel & Lodging Association
California Landscape Contractor's Association
California Landscape Contractors Association
California League of Food Producers
California Legislative Conference of Plumbing, Heating & Piping Industry
California Manufacturers & Technology Association
California Restaurant Association
California Retailers Association
California Self Storage Association
California Special Districts Association
California State Association of Counties (CSAC)
California Taxpayers Association
California Tomato Growers Association
California Travel Association
California Trucking Association
Can Manufacturers Institute
City of Rancho Cucamonga
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
Dairy Institute of California
El Dorado County Chamber of Commerce
El Dorado Hills Chamber of Commerce
Elk Grove Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Finishing Contractors Association of Southern California
Flasher Barricade Association
Folsom Chamber of Commerce
Fremont Chamber of Commerce
Garden Grove Chamber of Commerce
Gateway Chambers Alliance
Greater Coachella Valley Chamber of Commerce

Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
Institute of Real Estate Management (IREM)
Laguna Niguel Chamber of Commerce
League of California Cities
Lincoln Area Chamber of Commerce
Livermore Valley Chamber of Commerce
Lodi District Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
Naiop California
National Association of Theatre Owners of California
National Electrical Contractors Association (NECA)
National Federation of Independent Business
Nisei Farmers League
Northern California Allied Trades
Northern California Floor Covering Association
Norwalk Chamber of Commerce
Olive Growers Council of California
Orange County Business Council
Orange County Taxpayers Association
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Templeton Chamber of Commerce
Plant California Alliance
Public Risk Innovation, Solutions, and Management (PRISM)
Rancho Cordova Area Chamber of Commerce
Redondo Beach Chamber of Commerce
Ridgecrest Chamber of Commerce
Rocklin Area Chamber of Commerce
Roseville Area Chamber of Commerce
Rural County Representatives of California (RCRC)
Sacramento Metropolitan Chamber of Commerce
San Gabriel Valley Economic Partnership
San Pedro Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Shingle Springs/Cameron Park Chamber of Commerce
Silicon Valley Leadership Group
Simi Valley Chamber of Commerce
Solvang Chamber of Commerce
South Bay Association of Chambers of Commerce
Southern California Contractors Association
Southern California Glass Management Association (SCGMA)
Southern California Leadership Council

Southwest California Legislative Council
Technet
Torrance Area Chamber of Commerce
Tri County Chamber Alliance
Tulare Chamber of Commerce
Twenty First Century Alliance
United Ag
United Chamber Advocacy Network
United Contractors (UCON)
University of California
Urban Counties of California (UCC)
Vacaville Chamber of Commerce
Valley Industry and Commerce Association (VICA)
Vista Chamber of Commerce
Wall and Ceiling Alliance
Walnut Creek Chamber of Commerce
West Ventura County Business Alliance
Western Agricultural Processors Association
Western Car Wash Association
Western Electrical Contractors Association
Western Growers Association
Western Line Constructors Chapter, Inc., Neca, INC.
Western Painting and Coating Contractors Association
Western Plant Health Association
Western Wall and Ceiling Contractors Association (WWCCA)
Yorba Linda Chamber of Commerce
Yuba Sutter Chamber of Commerce

-- END --

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

Bill No:	SB 1264	**Hearing Date:**	April 24, 2024
Author:	Grove		
Version:	April 18, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Employment discrimination: cannabis use

KEY ISSUE

This bill provides that, in addition to not applying to an employee in the building and construction trades, the Fair Employment and Housing Act (FEHA) provision prohibiting employment discrimination for specified cannabis use also does not apply to applicants to, or employees in, sworn or unsworn positions within law enforcement who have or would have specified functions or activities.

ANALYSIS

Existing law:

1) Authorizes, pursuant to Proposition 64 and subsequent Legislative measures, persons age 21 and older to possess specified quantities of cannabis, products containing cannabis, and cannabis plants for personal use. (Health and Safety Code (HSC) §11362.1 et seq.)

2) Provides that HSC §11362.1 does not override laws prohibiting the operation of a vehicle while impaired by a controlled substance, laws prohibiting the use of cannabis while incarcerated, laws establishing that it would constitute professional malpractice or negligence to undertake any task while impaired, or laws allowing any state or local entity or private individual to prohibit or restrict the use of cannabis on their property. (HSC §11362.45)

3) Makes it an unlawful employment practice, under the Fair Employment and Housing Act (FEHA), for an employer to refuse to hire, discharge from employment, or otherwise discriminate against a person in compensation or in the terms, conditions, or privileges of employment on account of that person's race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status. (Government Code (GC) §12940(a))

4) Defines employer under FEHA to mean any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities except a religious organization or a corporation not organized for private profit. (GC §12926)

5) Makes it an unlawful employment practice under FEHA for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the discrimination is based upon any of the following:

a) The person's use of cannabis off the job and away from the workplace; this provision does not prevent an employer from engaging in an employment action based on a scientifically valid pre-employment drug screening conducted through methods that do not screen for non-psychoactive cannabis metabolites.
b) An employer-required drug screening test that has found the person to have non-psychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids. (GC §12954)

6) Provides that FEHA's cannabis use discrimination prohibition does not do any of the following:

a) Apply to an employee in the building and construction trades.
b) Permit an employee to possess, to be impaired by, or to use, cannabis on the job, or affect the rights or obligations of an employer to maintain a drug- and alcohol-free workplace as specified under existing law.
c) Apply to applicants or employees hired for positions that require a federal government background investigation or security clearance in accordance with federal regulations.
d) Preempt state or federal laws requiring applicants or employees to be tested for controlled substances, including laws and regulations requiring applicants or employees to be tested, or the manner in which they are tested, as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract. (GC §12954(b)-(e))

This bill:

Provides that, in addition to not applying to an employee in the building and construction trades, the FEHA provision prohibiting employment discrimination for specified cannabis use also does not apply to applicants to, or employees in, sworn or unsworn positions within law enforcement who have or would have functions or activities related to any of the following:

1) The apprehension, incarceration, or correction of criminal offenders.
2) Civil enforcement matters.
3) Dispatch and other public safety communications.
4) Evidence gathering and processing.
5) Law enforcement records.
6) Animal control.
7) Community service duties.
8) Public administrator or public guardian duties.
9) Coroner functions.

COMMENTS

1. Need for this bill?

According to the author:

"Pre-employment testing is a necessary component of maintaining a drug-free workplace, ensuring both the safety of employees and the public. Without pre-employment drug testing, there is no way the employer can protect against a new employee bringing impairment and

danger into their workplace. This testing protects other employees, the workplace's equipment, and members of the public."

"This is particularly important with members of law enforcement where a mistake can result in tragic consequences. Law enforcement officers generally maintain their authority even while not in uniform, including the ability to carry their firearm. It makes sense that we should hold law enforcement employees to the same standards as, for example, those who operate heavy machinery."

2. Committee Concerns

This bill invokes several competing policy interests amidst a dynamic, evolving state and federal legal background that leaves any genuine resolution hazy and more than a little disorienting. From this committee's remit, our lens focuses on the rights of employees in general, but in certain cases, particularly on the rights and responsibilities of public employees and the fiscal and organizational health of public employers to ensure continuity of promised deferred benefits.

This bill seeks to exempt some public employees from recently-won FEHA employment protections regarding off-the-job cannabis use. The bill's supporters argue that public employers, for public safety reasons, must be able to ascertain that certain law enforcement personnel, both sworn and non-sworn, who perform specified job functions are free from impairment that can result from ongoing cannabis use and that the testing that FEHA does allow is insufficient for that purpose.

Opponents argue persuasively that law enforcement personnel have every right in California to enjoy their time off the job just like every other fellow Californian and that FEHA, as recently amended, still allows public safety employers to test employees in ways that ensure they are not impaired on the job.

The committee must not only weigh the competing interests of public safety management and rank and file employees. It must also decide whether this bill or recently enacted state law improves or worsens public safety employment conditions or subjects both public employers and public employees to unforeseen liability.

State law enforcement personnel must interact with federal jurisdictions in numerous ways while at the same time federal law still prohibits cannabis use. One might argue it would be better to conform to federal law and not put our public safety employees in legal jeopardy. If that is not our choice, than messaging to our public safety employees must be clear. FEHA will not protect you from federal violations and potential consequences to your employment and liberty that could arise from those violations.

Additionally, we are confronted with the fact that FEHA is no defense against civil lawsuits where a plaintiff alleges a public safety employee's actions caused great harm to a civilian; that ongoing off-the-job cannabis use proximately caused that harm; and that a public employer should have known and prevented that use or prevented the employee from engaging in the activity that caused the plaintiff's harm. Thus, despite qualified immunity protections, both our public safety and local agencies are vulnerable to substantial monetary judgements that harm their ability to maintain staffing levels, recruit new employees, and secure fiscal health.

Counterbalancing that concern is the possibility that off-the-job cannabis use can alleviate, for some employees, the inherent stress that seems to be part of law enforcement work, potentially resulting in fewer explosive interactions with civilians and fewer civil suits.

Finally, we note the supporters' point that law enforcement, especially sworn personnel, are never really off the job and have to be ready at any moment to respond to emergencies. However, we also note opponents' retort that the same concern has not led us to prohibit public safety employees' off-the-job alcohol use.

What is certain is that, these and other related issues will continue to provoke complicated reviews of and conflicts over our public employment policies.

3. Recommended Committee Amendments

The committee recommends the following amendments to limit the scope of the exemption to sworn employees with direct law enforcement functions:

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12954 of the Government Code is amended to read:

12954. (a) (1) Except as specified in subdivision (c), it is unlawful for an employer to discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalizing a person, if the discrimination is based upon any of the following:

(A) The person's use of cannabis off the job and away from the workplace. This paragraph does not prohibit an employer from discriminating in hiring, or any term or condition of employment, or otherwise penalize a person based on scientifically valid preemployment drug screening conducted through methods that do not screen for nonpsychoactive cannabis metabolites.

(B) An employer-required drug screening test that has found the person to have nonpsychoactive cannabis metabolites in their hair, blood, urine, or other bodily fluids.

(2) This subdivision does not apply to~~:~~

~~**(A)**~~ An employee in the building and construction trades.

~~**(B) Applicants**~~ ***(3) Paragraph (A) of this subdivision does not apply to applicants*** to, or employees in, sworn ~~**or unsworn**~~ positions within law enforcement who have or would have functions or activities related to any of the following:

(i) The apprehension, incarceration, or correction of criminal offenders.

(ii) Civil enforcement matters.

~~**(iii) Dispatch and other public safety communications.**~~

~~**(iv)**~~ ***(iii)*** Evidence gathering and processing.

~~**(v)**~~ ***(iv)*** Law enforcement records.

~~**(vi) Animal control.**~~

~~**(vii) Community service duties.**~~

~~**(viii) Public administrator or public guardian duties.**~~

~~**(ix)**~~ ***(iv)*** Coroner functions.

(b) Except as specified in subdivision (c), it is unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis.

(c) Information about a person's prior cannabis use obtained from the person's criminal history is subject to subdivisions (a) and (b), unless the employer is permitted to consider or inquire about that information under Section 12952 or other state or federal law.

(d) This section does not permit an employee to possess, to be impaired by, or to use, cannabis on the job, or affect the rights or obligations of an employer to maintain a drug- and alcohol-free workplace, as specified in Section 11362.45 of the Health and Safety Code, or any other rights or obligations of an employer specified by state or federal law or regulation.

(e) This section does not preempt state or federal laws requiring applicants or employees to be tested for controlled substances, including laws and regulations requiring applicants or employees to be tested, or the manner in which they are tested, as a condition of employment, receiving federal funding or federal licensing-related benefits, or entering into a federal contract.

(f) This section does not apply to applicants or employees hired for positions that require a federal government background investigation or security clearance in accordance with regulations issued by the United States Department of Defense pursuant to Part 117 of Title 32 of the Code of Federal Regulations, or equivalent regulations applicable to other agencies.

4. Proponent Arguments

According to the San Diego County Sheriff's Department:

"The recent enactment of AB 2188 and SB 700 expanded the list of protected classes under the FEHA by granting employees the right to use marijuana off duty. However, the legislation carved out and exempted the building and construction trades from such protections. I believe that law enforcement personnel, both sworn and non-sworn, should be exempted as well."

"Employees who use cannabis face the inherent risk of tetrahydrocannabinol (THC) remaining active in their system even when they no longer experience its effects. Under the new laws in place, both sworn and non-sworn personnel must exercise extreme caution if using marijuana as they may become subjects to legal proceedings, both civil and criminal, which could raise questions about cognitive impairment."

According to the California Police Chiefs Association:

"The adverse health impacts of habitual cannabis use are well documented. According to the California Department of Public Health, 'smoking cannabis on a regular basis has been linked to chronic bronchitis, wheezing, exercise-induced shortness of breath, chest tightness, cough, and mucus production.' Our peace officers are required to overcome intense physical resistance and make split-second decisions in life and death situations, and those responsibilities are incompatible with the effects of consistent use of cannabis."

5. Opponent Arguments:

According to the Service Employees International Union, California:

"AB 2188 did not end workplace drug policies or the right of employers to test. Employers, including law enforcement agencies, are free to test for recent use of cannabis by means of oral swab, blood or breath tests, which detect recent exposure to THC, the psychoactive ingredient in cannabis, or by performance tests that detect actual impairment. The only thing they may not do is use urine or hair tests that report non-psychoactive metabolites of THC, which remain detectable for days and weeks after any impairment is passed."

"SB 1264 is excessively broad, embracing a host of nonsworn, civilian positions with no enforcement duties. With these exemptions, staff will again work in an environment of fear worried that off-the-job cannabis consumption will lead to harmful disciplinary actions including loss of pay or benefits, demotion, denied opportunities for promotions or transfer, and even termination."

According to the California Cannabis Industry Association:

"SB 1264 would grant employers in law enforcement the authority to discriminate against employees or job applicants based on legal, off-duty, or prior cannabis use. This provision undermines public trust in law enforcement by suggesting that individuals in these positions cannot be relied upon to use cannabis responsibly outside of work."

"Furthermore, SB 1264 reinstates a barrier between law enforcement and the cannabis community that California voters dismantled when they approved Proposition 64 in 2016. It is crucial to recognize that existing law allows law enforcement agencies to maintain strict drug-free workplace policies. Under existing law, employers retain the ability to conduct tests for recent cannabis use using methods such as oral swabs, blood tests, breath tests, or performance evaluations that detect impairment. The restriction on urine or hair tests, which detect non-psychoactive metabolites of THC that can remain in the body for extended periods, is a sensible protection against unjust discrimination."

6. Dual Referral:

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

7. Prior Legislation:

SB 700 (Bradford, Chapter 408, Statutes of 2023) added, to the FEHA prohibition on employment discrimination on the basis of an employee's or potential employee's cannabis use, the prohibition on an employer requesting information about an applicant's past cannabis use, subject to specified exceptions.

AB 2188 (Quirk, Chapter 392, Statutes of 2022) made it unlawful, with certain exceptions, for an employer to discriminate against a person in hiring, termination, or terms and conditions of employment based on a drug screening test finding the presence of non-psychoactive cannabis metabolites in their system or for the person's off-the-job use of cannabis.

AB 1256 (Quirk, 2021) would have prohibited employers from discriminating against an applicant or employee based on the result of a drug screening test that has found the person to have non-psychoactive cannabis metabolites in their urine, hair, or bodily fluids. *AB 1256 died in the Assembly Labor and Employment Committee*.

AB 2355 (Bonta, 2020) would have prohibited employers from discriminating against applicants or employees for medicinal cannabis use that can be reasonably accommodated. *AB 2355 died in the Assembly Labor and Employment Committee*.

AB 2069 (Bonta, 2018) was substantially similar to AB 2355. *AB 2069 died in the Assembly Appropriations Committee.*

SUPPORT

California State Sheriffs' Association (Sponsor)
California Police Chiefs Association
Los Angeles Police Protective League
San Diego County Sheriff's Department

OPPOSITION

California Cannabis Industry Association
California Norml
California School Employees Association
California State Council of Service Employees International Union (SEIU California)
Californians United for A Responsible Budget
Supernova Women
UFCW - Western States Council
Individual (1)

-- END --

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

Bill No:	SB 1379	**Hearing Date:**	April 24, 2024
Author:	Dodd		
Version:	February 16, 2024		
Urgency:	Yes	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public Employees' Retirement Law: reinstatement: County of Solano

KEY ISSUE

This bill exempts certain California Public Employees' Retirement System (CalPERS) retirees hired by Vallejo and Solano County in specified positions from the Public Employees' Pension Reform Act (PEPRA)'s post-retirement earnings limits.

ANALYSIS

Existing law:

1) Establishes PEPRA, a comprehensive reform of public pension law designed to stabilize California public pension systems that suffered existential and long-term damage during the 2008 financial crisis and to preserve the objective of ensuring that public employees who dedicate a lifetime of service to California receive retirement security in their old age. (Government Code (GC) § 7522 et seq.)

2) Prohibits a person retired from a public retirement system from working for a public employer in the same public retirement system from which the retiree receives the retirement benefit without reinstatement.[1] (GC § 7522.56 (b))

3) Authorizes a retiree to serve without reinstatement from retirement or loss or interruption of pension benefits during an emergency to prevent stoppage of public business or because the retired person has skills needed to perform work of limited duration, as specified. (GC § 7522.56 (c))

4) Limits the time a retiree can work under the emergency or limited duration exception to not more than 960 hours per year. (GC §7522.56 (d))

5) Limits the pay rate that a retiree can receive for work under the emergency or limited duration exception to not more than the maximum, paid by the employer to other employees

[1] Reinstatement means reinstating the retiree into active membership status in the retirement system. Active members, as opposed to retired annuitants, are by definition not retired. Thus, the pension system essentially, "un-retires" the retiree. This action stops the retiree's pension allowance; requires the retiree to reimburse the system for any pension benefits received; requires the retiree's employer to reemploy the retiree; and requires both the retiree and the employer to pay to the system pension contributions that would have been due during the period that the retiree would have been in active employment, with specified limitations. Reinstatement can have harsh financial consequences for both the retiree and the employer, especially if the retiree has been retired for a long period prior to CalPERS' discovery of violations of the post-retirement work rules. Recent legislation has given CalPERS greater discretion to opt not to impose reinstatement to mitigate some of the harsher consequences on retirees.

performing comparable duties, divided by 173.333 to equal an hourly rate. (GC §7522.56 (d))

6) Prohibits a retiree working under the emergency or limited duration exception from acquiring any service credit or retirement rights with respect to the employment unless the retiree reinstates from retirement. (GC §7522.56 (d))

7) Prohibits a person retired under CalPERS from working in any capacity, except as specified, for the state, university, a school employer, or a contracting agency unless the person first reinstates from retirement. (GC § 21220)

8) Requires that a CalPERS retiree in violation of the post-retirement employment (or working after retirement) rules to do the following if CalPERS reinstates them:

   a) Reimburse CalPERS for any retirement allowance received during the period or periods of employment that are in violation of the law.

   b) Pay to CalPERS the employee contributions they would have otherwise paid during the period, plus interest.

   c) Reimburse CalPERS for related administrative expenses, as specified. (GC § 21220(b))

9) Requires that a CalPERS employer in violation of the post-retirement employment rules pay to CalPERS the employer contributions they would have otherwise paid during the period, plus interest, and reimburse CalPERS for related administrative expenses, if CalPERS elects to reinstate the retired annuitant. (GC § 21220(c))

10) Authorizes CalPERS to charge the employer a fee of $200 per retired member per month that the employer fails to enroll a retired annuitant employed in any capacity for CalPERS' administrative recordkeeping purposes, as specified, or fails to report the retired annuitant's pay rate and hours worked, as specified. The employer may not pass these fees onto the employee. (GC § 21220(d)-(f))

11) Allows CalPERS discretion in determining whether to reinstate into membership a person employed in violation of the post-retirement employment rules, as specified. (GC § 21202)

This bill:

1) Creates an exception to the PEPRA working after retirement rules to completely exempt a retiree hired by the City of Vallejo or the County of Solano "to perform a function or functions regularly performed by a peace officer, any evidence or dispatch personnel, or any administrative or records personnel" from the following:

   a) The 960-hour limitation;
   b) The pay rate limitation; and
   c) The service credit accrual limitation.

2) Includes a sunset date for the exception of January 1, 2029.

3) Makes technical changes to revise and update gendered terms.

COMMENTS

1. Need for this bill?

According to the author:

"The Vallejo City Council recently declared a state of emergency last year due to a major police officer staffing shortage. On average, it can take anywhere from 18-24 months to fully train a new recruit. Given the staffing shortage in the city of Vallejo, and the public safety problems it presents, the city can ill afford to wait for more officers to be trained. Without this immediate assistance, Vallejo will be unable to reach appropriate staffing levels as compared to surrounding cities. Despite being authorized to have 132 officers, Vallejo PD currently only has 31 patrol officers, 4 detectives, and no traffic officers. In light of dire staffing levels, the Vallejo Police Department is in a unique situation which requires immediate attention."

Background

Vallejo filed for bankruptcy during the 2008 Financial Crisis when the city lost around one-quarter of its revenues as local sales taxes and real estate development fees collapsed.[2] Even before the Financial Crisis, Vallejo suffered from the 1996 military base realignment closures that shut the Mare Island Naval Shipyard.[3]

The city recovered from both events due in part to its proximity to the rest of the Bay Area's highly charged economies, its relative value compared to neighboring jurisdictions that attracted new development and residents, and its ongoing redevelopment of Mare Island. [4] The city apparently demonstrated to the bond market that its economic house was quickly getting back in order. [5]

However, the pandemic brought the city more recent economic challenges (even though unprecedented federal government programs provided temporary funding that mitigated some of those challenges).[6] On top of that, the city has one of the highest crime rates in the country and some cite it as one of the 100 most dangerous cities in the United States.[7]

Vallejo also faces substantial state oversight and public criticism over its law enforcement policies that have resulted in several confrontations, deaths, and lawsuits.[8] The California Attorney General sued the city for its policing practices and recently entered into a stipulated judgement and executed a consent decree with the city to reform its police department and city

[2] https://www.pbs.org/newshour/economy/analysis-cities-hit-hard-by-the-covid-19-pandemic-face-bankruptcy
[3] https://www.bondbuyer.com/news/ten-years-after-bankruptcy-filing-vallejo-looks-ahead
[4] Ibid.
[5] Ibid.
[6] https://openvallejo.org/2023/11/24/vallejo-to-use-1-5-million-in-covid-relief-for-staff-bonuses/
[7] https://www.neighborhoodscout.com/ca/vallejo/crime#description
[8] https://www.sfchronicle.com/bayarea/otisrtaylorjr/article/Litany-of-complaints-describes-how-police-15559987.php

administration, after a three-year collaborative review and reform period failed to achieve the changes sought by the California Department of Justice (DOJ).[9]

Vallejo's whipsawing economic conditions, budgetary limitations, challenging crime statistics, and the state and public criticism of its policing function which have all created substantial challenges to its ability to recruit and retain police officers and related support staff.

Because of its inability to fill police staffing levels, Vallejo city leaders have appealed to county and state officials for assistance in providing police services to its community while simultaneously endeavoring to implement reforms to its police department. It is in this context that the present bill seeks to create an exemption in PEPRA for both Vallejo police officers and related support staff as well as Solano County Sheriff's deputies and related support staff.

Committee Concerns

Although well intentioned, this bill erodes the critical pension reform policies that California put in place precisely to stabilize and strengthen the states' public retirement systems after the Financial Crisis. Specifically, the bill seeks to allow certain Vallejo and Solano County employees to double dip.

Double Dipping

Double dipping, in the public pension context, refers to the practice of allowing a public employee to receive concurrently both a publicly funded salary and a public retirement benefit while retaining their position. The practice significantly erodes public support for public pension funds. Non-public employees who may have no pension plan and little if any retirement savings in a 401k-type defined contribution plan seethe when faced with rising costs, increased taxes and governmental fees, and the probability that the federal government will soon extend the age to claim Social Security. That resentment grows when encountering fellow residents who have a secure and meaningful public pension. It absolutely erupts when they discover a public employee who receives a pension and salary for the same position from which the employee is supposedly retired. This "pension envy" makes average residents highly susceptible to policy proposals to eliminate public pension benefits and impose defined contribution plans. While 401K-style investment accounts can certainly help supplement a higher level of retirement security, they historically have failed to do so for lower- and middle-income employees many of whom find it necessary to empty those same accounts prematurely during recessionary times. In contrast, defined benefit pension plans have historically provided substantive retirement security to those who are fortunate to have them. Ignoring or belittling the public's pension envy sentiment and authorizing double dipping, especially in challenging economic times, likely will undermine support for the state's several retirement systems in the future and is ultimately detrimental to the long-term sustainability of our public pension plans.

[9] *State of California v. City of Vallejo and the Vallejo Police Department*, Solano County Superior Court (2023), Case No: CU23-04676; see also https://www.kqed.org/news/11964674/trust-has-been-broken-california-demands-vallejo-police-reforms-citing-major-rights-violations

Negative Incentives Adverse to Healthy Pension Funds

Both public employers and their employees' representatives have strong economic incentives adverse to healthy pension funds to obtain double dipping exemptions. Once an employee retires, neither they nor their employer have to pay pension contributions, health benefits contributions, nor (for miscellaneous employees) social security contributions. This can result in significant savings to the employer, which employee representatives can then target at the bargaining table. The negative aspect is that as the rate of retirement accelerates artificially because of the double dipping, pension fund outflows occur sooner than otherwise anticipated. The resulting earlier outflows lead to less time and opportunity for the fund to generate investment return, which can create pressure to raise contribution rates to compensate for the lost investment potential depending on the fund's condition.

Cement Ceilings

Double dipping also can result in limited opportunities for newer, younger public employees because older employees have no incentive to leave their positions. Indeed, they have a significant incentive to stay longer than they otherwise would. Doing so blocks or reduces younger staff from receiving promotional opportunities to gain experience that allows them to rise in the civil service ranks. Such career sclerosis dramatically affects staff morale and creates its own recruitment and retention problems. Moreover, it can reduce how quickly a workforce adapts to societal and generational change, thereby creating a less representative workforce than the community writ large.

Not Just a District Bill

Providing Vallejo and Solano County the ability to offer double dipping to their employees gives them significant employee benefit advantages that other jurisdictions do not have and allows them to poach, even if unintentionally, from those jurisdictions. Other jurisdictions will seek similar exemptions and raise similarly compelling reasons why the Legislature should grant them those exemptions, until no meaningful rule against double dipping will apply to any jurisdiction. Each new exemption will increase pressure on jurisdictions without the exemption to request it or lose personnel to competing employers.

Increased Pressure to Eliminate Other PEPRA Reforms

As the state and federal governments reduce pandemic era support to local governments and also simultaneously begin addressing systemic budget deficits, public employer and employee representatives will apply ever greater pressure on the Legislature to weaken PEPRA reforms and allow practices that lower their short-term costs, satisfy active employee compensation demands, but drive up long-term unfunded pension liabilities. Already during the pandemic era, the governor's executive orders and legislative initiatives have neutralized many PEPRA reform statutes. Creating exemptions for double dipping will only inspire other initiatives to return to irresponsible pension policies.

<u>Alternative Approaches</u>

Budget Action

Given the inherent problem that this bill poses to the state's long-term commitment to healthy public pension policy, and the state's substantial interest in reforming Vallejo police practices, the committee suggests that a better approach to addressing Vallejo's problem come from direct state funding through the budget process and/or a special Solano County assessment to support law enforcement, perhaps on the proposed new California Forever city development near Fairfield that has attracted substantial investor interest.

Bill Amendments

If the bill does move forward, the committee recommends amendments that would do the following:

- Reformat the exemption language into a separate subdivision.
- Limit the provision to the Solano County Sheriff's Office.
- Change the sunset from 5 years to 3 years.
- Require retired persons employed by the Solano County Sheriff's Office to undergo and pass pre-employment background investigations.
- Require Solano County to post the position to recruit an active member for six continuous months and have no available applicant to hire prior to hiring a retired person.
- Limit the rate of pay the retired person receives to the average rate of pay of active members in the same class.
- Limit the retired person's entry rate of pay to no more than their last rate of pay as an active member. However, they would be eligible for reasonable regular class-wide pay adjustments

The substantive amendments would be generally drafted as follows:

(j) The 960-hour limit set forth in subdivision (d) shall not apply to hours worked in an appointment by the County of Solano sheriff's department to perform a function or functions regularly performed by a deputy sheriff, evidence technician, or communications operator provided the Board of Supervisors of the County of Solano certifies, by resolution at a public meeting, the appointment satisfies the following conditions:

(1) The retired person has undergone and passed a pre-employment background investigation.
(2) The retired person is not subject to decertification or under investigation for decertification by the Commission on Peace Officers Standards and Training.
(3) The County of Solano has posted the position for recruitment of an active member for not less than six continuous months prior to appointing a retired person to the position and no reasonable applicant applied to the position and was available for hire.
(4) The rate of pay for the retired person shall not exceed the average rate of pay of all positions in the same class of the position as filled by active members.
(5) The rate of pay upon appointment of a retired person shall not exceed the higher of either the retired person's last rate of pay as an active member or the rate of pay of the entry step on the salary schedule for the class. However, the retired person shall be eligible for reasonable and regular adjustments to the rate of pay that apply generally to positions in the same class.

(k) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

2. Proponent Arguments

According to the City of Vallejo:

"SB 1379, a crucial district bill aimed at addressing the acute staffing shortage within the Vallejo Police Department, would allow retired annuitants working for the Vallejo Police Department, and sheriff deputies from Solano County to exceed the 960-hour work limit. The city is currently facing a state of emergency due to a severe lack of police officers, leading to public safety concerns that demand immediate attention."

According to the Solano County Sheriff's Office:

"Despite an authorized force of 132 officers, the Vallejo Police Department is currently operating with only 31 patrol officers, 4 detectives, and no traffic officers. This dire situation necessitates urgent action to ensure the safety of the community. Because of this staffing shortage, the Solano County Sheriff's Office is pressured with responding to calls for service in Vallejo. Therefore, the 960 hour limit should also be waived for the Solano County Sheriff's Office, as it will almost certainly be tasked with responding to calls in Vallejo."

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 411 (Cortese, Chapter 411, Statutes of 2021), amended PEPRA to grant CalPERS discretionary authority, rather than to require CalPERS, to reinstate a retiree if they work more than the 960-hour-per-fiscal-year limit, thereby allowing CalPERS discretion in addressing violations of the rule in a manner that does not impose unnecessarily harsh financial penalties on retirees.

SUPPORT

California State Sheriffs' Association
Solano County Deputy Sheriff's Association
Solano County Sheriff's Office
Vallejo Chamber of Commerce
Vallejo Mayor Robert Mcconnell

OPPOSITION

None received.

-- END --

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

Bill No:	SB 1090	**Hearing Date:**	April 24, 2024
Author:	Durazo		
Version:	April 16, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Unemployment insurance: disability and paid family leave: claim administration

KEY ISSUE

This bill authorizes workers to file a claim for State Disability Insurance (SDI) or Paid Family Leave (PFL) benefits up to 30 days in advance of the first compensable day of disability and requires the Employment Development Department (EDD) to issue payment on those claims within 14 days of receipt (as per existing law) or as soon as eligibility begins for the claimant, whichever is later.

ANALYSIS

Existing law:

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

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

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

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

    a. To care for a seriously ill child, spouse, parent, grandparent, grandchild, sibling, or domestic partner;
    b. To bond with a minor child within one year of the birth or placement of the child in connection with foster care or adoption;

c. To participate in a qualifying event because of a family member's military deployment. (Unemployment Insurance Code §3301)

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

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

This bill:

1) Authorizes workers to file a claim for SDI or PFL benefits up to 30 days in advance of the first compensable day of disability with respect to that claim.

2) Requires EDD to issue payments for SDI or PFL benefits to eligible claimants within 14 days of receipt of the properly completed claim (existing law) or as soon as eligibility begins for the claimant, whichever is later.

3) Makes these changes operative when the next scheduled improvement of EDD's integrated claims management system is implemented, or on January 1, 2028, whichever is earlier.

COMMENTS

1. Background:

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

In 2004, California was the first state in the nation to implement a Paid Family Leave program (administered as part of SDI) that provides benefits to workers who need to take time off to care for a seriously ill family member, or to bond with a new child either from birth, adoption, or foster care placement. Effective January 1, 2021, the PFL scope was expanded to include employees taking time off work to assist a military family member under covered active duty or call to covered active duty. PFL provides up to eight weeks of the 60-70 percent wage replacement.

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

2. Need for this bill?

For both SDI and PFL programs, existing law requires that a claimant wait to apply for benefits until the first day they suffer a wage loss. EDD will then process the application and, barring any issues, is required to issue initial payment of benefits within 14 days of receipt of the properly completed claim. Delays in receipt of benefits can occur if an application contains errors or there is an issue with receipt of the doctor's certification. This bill will allow claimants, when the use of SDI and PFL is foreseeable, to apply up to 30 days prior to the first compensable day of disability and clarifies that benefits must be provided within 14 days or as soon as eligibility begins, whichever is later.

According to the author, "even if nothing goes wrong with the claims process, asking a worker to wait to apply for the benefit until their hands are full with a new baby or they are recovering from major surgery is unnecessarily burdensome. This can result in an overwhelmed or incapacitated worker delaying their application for benefits for several days or weeks, which in turn pushes receipt of their benefits further out."

The author additionally states that, "this small change would enable workers to apply before they are in the midst of a significant health or caregiving need. It would also provide workers with more economic certainty by allowing them to know whether they qualify for benefits and how much money they will receive before beginning an unpaid leave from work. Finally, it would make PFL and SDI more accessible to lower-to-middle income families by decreasing the wait to receive their benefits."

3. Proponent Arguments:

According to the sponsors of the measure, Legal Aid at Work and the California Work & Family Coalition, "paid leave is proven to benefit families and communities by improving long-term health outcomes for mothers and children, decreasing stress for caregivers and new parents, encouraging equitable co-parenting, and reducing income volatility." They argue that, "for workers with lower incomes – who disproportionately identify as women, are born outside of the United States, and are Black or Latinx – missing several weeks of wages prior to confirmation of benefits is not an option. Indeed, for Black households in the Los Angeles area, the median value of liquid assets is $200. For Mexican and Latinxe-non-Mexican households it is $0 and $7 respectively. Workers who do not have the savings to cover several weeks of expenses without their regular income while waiting for SDI or PFL benefits are less likely to take leave from work when their healthcare provider recommends it, to bond with a new baby, or to care for a sick family member."

Furthermore, they argue, "for pregnant workers, especially Black and Latina women, the inability to take leave may contribute to serious health consequences, including postpartum depressive symptoms. Earlier access to benefits and confirmation of benefits and benefit rates would empower workers to follow their healthcare provider's recommendations to take the leave that they need and to plan for their families' wellbeing. Allowing for early application would also help alleviate stress caused by the current requirement that workers wait until they are in the midst of a significant family or health event to apply for SDI or PFL benefits. It may be unrealistic and unnecessarily difficult for a new parent, for example, to complete paperwork in the first few days home with a newborn, or likewise, for a worker who is recovering from a significant surgery."

4. Opponent Arguments:

None received.

5. Prior/Related Legislation:

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

AB 2167 (Cervantes, 2024) would make several changes to the PFL program to, among other things, extend the timeline for an individual to file a claim for PFL benefits to no later than the 60th consecutive day following the first compensable day as well as authorizing the individual to file that claim up to 60 days before the first compensable day, as provided. *AB 2167 is pending in Assembly Appropriations Committee.*

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

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

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

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

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

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

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

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

SUPPORT

California Work & Family Coalition (Co-Sponsor)
AAAJ - Asian Law Caucus
AARP
AFSCME CA
Alzheimer's Greater Los Angeles
Alzheimer's Orange County
Alzheimer's San Diego
Asian Law Alliance
Breastfeedla
California Breastfeeding Coalition
California Catholic Conference
California Child Care Resource and Referral Network
California Coalition on Family Caregiving
California Domestic Workers Coalition
California Employment Lawyers Association
California Federation Business and Professional Women
California Labor Federation, Afl-cio
California Partnership to End Domestic Violence
California Teachers Association
California Wic Association
Californians for Safety and Justice
Caring Across Generations
Center for Workers' Rights
Child Care Law Center
Citizens for Choice
Courage California
Courage Campaign
Electric Universe
Equal Rights Advocates
Equality California
Evolve California
Family Caregiver Alliance (FCA)
First 5 Association of California
Friends Committee on Legislation of California
Grace - End Child Poverty in California
Human Impact Partners
Jewish Center for Justice
LA Alliance for A New Economy
LA Best Babies Network
Legal Aid At Work
Lutheran Office of Public Policy - California
Mujeres Unidas Y Activas
National Council of Jewish Women CA
National Council of Jewish Women Los Angeles
National Council of Jewish Women - California
National Partnership for Women & Families
Nursing Mothers Counsel
Orange County Equality Coalition

Our Family Coalition
Parent Voices California
Poder Latinx
Public Counsel
Reproductive Freedom for All CA
Rising Communities
San Diego County Breastfeeding Coalition
Small Business Majority
Tech Equity
The Women's Employment Rights Clinic (WERC) at GGU
UAW 230
UFCW - Western States Council
Unite-LA
United Steelworkers District 12
Working Partnerships USA
Worksafe

OPPOSITION

None received

-- END --

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

Bill No:	SB 1375	**Hearing Date:**	April 24, 2024
Author:	Durazo		
Version:	April 15, 2024 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Workforce development: records: poverty-reducing standards: funds, programs, reporting, and analyses

KEY ISSUE

This bill creates the Equity, Climate Resilience, and Quality Jobs Fund and requires two percent of the qualified funds to be made available to the California Workforce Development Board (CWDB). This bill also requires entities administering federal jobs act funding to develop a memorandum of understanding (MOU) with CWDB and report on the effectiveness of the funding. Additionally, this bill requires CWDB to contract with a research institution to analyze equity, climate resilience, and quality jobs outcomes resulting from federal jobs act funding.

Finally, this bill requires employee personnel records to include education and training records and require the employer to include the employee's name, trainer, duration and date of the training, core competencies of the training, and the resulting certification or qualification.

ANALYSIS

Existing federal law:

1) Requires, for qualifying public works projects beginning December 31, 2023, at least 15 percent of total work hours to be performed by a registered apprentice. Employers that do not meet the apprenticeship requirements can still be eligible for the increased credit if they pay a fine or if they make a good faith effort to employ apprentices but fail due to denial by a Registered Apprenticeship program, or due to the Registered Apprenticeship program failing to respond to the employer's request within five business days. (26 USC §45(b)(8))

Existing state law:

1) Establishes the California Workforce Development Board (CWDB) and charges it with oversight and improvement of California's workforce system. The CWDB advances pathways to quality, high road jobs, and equity through workforce development strategies, including: the creation of a statewide strategic workforce plan; collaboration with local workforce development boards, employers, workers, and stakeholders; implementation of initiatives; and evaluation of program quality. The CWDB recognizes that a prosperous economy is one where disadvantaged Californians, who face barriers to employment, have pathways to quality jobs in key industries. (Unemployment Insurance Code §14010)

2) Defines "high road" as a set of economic and workforce development strategies to achieve economic growth, economic equity, shared prosperity, and a clean environment. Strategies may include interventions that:
   a) Improve job quality and job access, including for women and people from underserved and underrepresented populations.
   b) Meet the skill and profitability needs of employers.
   c) Meet the economic, social, and environmental needs of the community. (Unemployment Insurance Code §14005(r))

3) Provides that an apprenticeship program may be administered by a joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer. Programs may be approved by the chief in any trade in the state or in a city or trade area, whenever the apprentice training needs justify the establishment. Where a collective bargaining agreement exists, a program shall be jointly sponsored unless either party to the agreement waives its right to representation in writing. Joint apprenticeship committees shall be composed of an equal number of employer and employee representatives. The apprentice training needs in the building and construction trades and firefighter programs shall be deemed to justify the approval of a new apprenticeship program only if any of the following conditions are met:
   a) There is no existing apprenticeship program approved under this chapter serving the same craft or trade and geographic area.
   b) Existing apprenticeship programs approved under this chapter that serve the same craft or trade and geographic area do not have the capacity, or neglect or refuse, to dispatch sufficient apprentices to qualified employers at a public works site who have requested apprentices and are willing to abide by the applicable apprenticeship standards, as shown by a sustained pattern of unfilled requests.
   c) Existing apprenticeship programs approved under this chapter that serve the same trade and geographic area have been identified by the California Apprenticeship Council as deficient in meeting their obligations under this chapter. (Labor Code §3075 (a), (b)(1-3)

4) Requires an employer maintain employee personnel records relative to the employee's performance and requires the records to be made available to the employee for inspection. (Labor Code §1198.5)

This bill:

1) Defines "federal jobs act" as the CHIPS and Science Act of 2022, the Inflation Reduction Act of 2022, and the Infrastructure Investment and Jobs Act.

2) Defines local agency to mean a county, city, city and county, school district, special district, authority, agency, or any other municipal public corporation or district, or other political subdivision of the state.

3) Creates the Equity, Climate Resilience, and Quality Jobs Fund (Fund) and requires two percent of federal jobs act funding be deposited into the Fund.

4) Requires state agencies administering funding received from a federal jobs act to develop, by January 1, 2026, an MOU with CWDB to provide technical assistance from CWDB and develop poverty-reducing labor standards for investments made using the federal jobs act

funds.

5) Requires the agencies to report labor standards outcomes to CWDB and requires CWDB to develop rules and regulations on the content and manner of reporting.

6) Makes funds available upon appropriation to the CWDB for the development of poverty-reducing programs, supporting the development of poverty-reducing labor standards, and funding apprenticeship programs in the building and construction trades. Specifically:

   a) Developing poverty-reducing programs, including, but not limited to, high road training partnerships and high road construction careers, and other workforce programs that drive poverty-reducing standards and reach communities with the highest barriers to employment and economic equity, poverty-reducing labor standards development and reporting, program evaluation, administrative capacity, and state operations.

   b) Supporting the development of poverty-reducing labor standards through investments made using funding received pursuant to federal jobs acts, reporting, and analyses made by a research institution.

   c) Funding state-approved apprenticeship programs in the building and construction trades, if the person or entity requesting the funding demonstrates that there is a need for the program through the satisfaction of at least one of the conditions described in paragraphs (1) to (3), inclusive, of subdivision (b) of Section 3075 of the Labor Code.

7) Requires CWDB to contract with a research institution to receive the agency reports required in this bill and analyze the equity, climate resilience, and quality jobs outcomes resulting from the investments.

8) Requires employee personnel files to include education and training records and requires the employer to include the employee's name, trainer, duration and date of the training, core competencies of the training, and the resulting certification or qualification.

9) Makes uncodified Legislative findings that ensuring transparency and adequate oversight of state and federal funding is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Section 1 of this act adding Chapter 5.2 (commencing with Section 14535) to Division 7 of the Unemployment Insurance Code applies to all cities, including charter cities.

COMMENTS

1. Background

Federal Infrastructure Investment and Jobs Act (IIJA) Funding

The IIJA, also referred to as the Bipartisan Infrastructure Law (BIL), was enacted in 2021. California can expect to receive a guaranteed $41.9 billion from the (IIJA) formula funding, with $7.53 billion already distributed[1]. The IIJA funding intends to rebuild roads, bridges, and rail, expand access to clean drinking water, ensure access to high-speed internet, confront

[1] "IIJA By The Numbers: federal funds improving transportation in California," Rebuilding California, February 2, 2024, https://rebuildingca.ca.gov/iija-by-the-numbers/#:~:text=IIJA%20includes%20funding%20for%20multiple

climate change, advance environmental justice, and invest in communities that have too often been left behind. Similar to the Inflation Reduction Act, most IIJA projects must utilize prevailing wages and benefits for workers.

The following projects are subject to the above-mentioned labor standards: roads, bridges, and public transit; airports, ports, and waterways; water infrastructure, power, and grid; enhanced disaster resiliency; low-carbon and zero-emission buses and ferries; electric vehicle charging; addressing legacy pollution, and; passenger and freight rail. Federal agencies and funding recipients must certify applicable labor standards are included in these contracts[2]. Additionally, all contractors must maintain accurate records of hours, workers, and wages, and submit certified payroll records every week to the funding agency or funding recipient.

CHIPS and Sciences Act of 2022 (The CHIPS Act)
The CHIPS and Sciences Act consists of $52.7 billion broken down to $39 billion for manufacturing incentives, $13.2 billion for research and development and workforce development, and $500 million to provide for international information communications technology security and semiconductor supply chain activities. Awards under this program take the form of direct funding, federal loans, and/or federal guarantees of third party loans.

The program includes six priorities, one of which is requiring applicants to have a workforce development plan. This key component requires applicants to commit to developing and maintaining a highly skilled, diverse workforce. The CHIPS and Science Act also requires the payment of prevailing wages in program-funded construction projects.

In addition to prevailing wage, there are other opportunities in the CHIPS Act to create labor standards. Specifically, the program prioritizes workforce solutions that enable employers, training providers, workforce development organizations, labor unions, and other key stakeholders to work together. The goal is to increase paid training and experiential apprenticeship programs, provide wraparound services, prioritize creative recruitment strategies, and hire workers based on their acquired skills.

Inflation Reduction Act of 2022 (IRA)
The IRA, signed into law on August 22, 2022, intends to revitalize manufacturing in the United States, expand clean energy, and create and support high quality jobs. The IRA's $370 billion investment seeks to lower energy costs, accelerate private investments in clean energy in every sector of the economy, strengthen supply chains, and create new economic opportunities for workers. The IRA also advances President Biden's commitment to deliver 40 percent of the overall benefits of climate, clean energy, and related federal investments to marginalized communities overburdened by pollution, and underserved by infrastructure and other basic services.

Last fall, the Treasury and Internal Revenue Service released proposed regulations on the IRA's prevailing wage and apprenticeship requirements. In exchange for offering enhanced tax benefits for clean energy projects, states must use registered apprentices and pay Davis-Bacon Act prevailing wages to all workers. Requiring registered apprentices will secure necessary hands-on experience for the next generation of workers eager to enter these career fields. Davis-Bacon prevailing wages are a combination of the basic hourly rate and any

[2] "Protections for Workers in Construction under the Bipartisan Infrastructure Law" https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction

fringe benefits paid to workers in a specific classification of laborer or mechanic in the area where construction, alteration, or repair is performed, as determined by the Secretary of Labor. Prevailing wages ensure that all bidders on these projects are competing on a level playing field, while providing workers with higher wages and better workplace conditions.

High Road Training Partnerships

High road training partnerships focus, in part, on building economic opportunity and mobility for those who have been marginalized, disadvantaged, and/or denied opportunity. The CWDB supports and invests in partnerships that assist these workers in attaining skills to acquire jobs with family-sustaining wages. The goal is to build climate and economic resilience through systems and partnerships that:

a) Address the critical skill issues emerging as every industry faces challenges of climate change and environmental sustainability;

b) Increase the capacity of firms and workers to adapt and compete in a carbon-constrained economy; and

c) Help California communities prosper by creating accessible local pathways into safer, healthier, and more highly skilled jobs. The CWDB also works to ensure the state is prioritizing quality job creation and promoting equity in access and training.[3]

Community Economic Resilience Fund

The Community Economic Resilience Fund (CERF) was created to promote recovery from the downward economic pressure caused by COVID-19. The CERF supports strategies to diversify local economies and develop industries that create jobs in industries considered to be sustainable. Initially, CERF's funding of $600,000,000 was appropriated from the American Rescue Plan Act Coronavirus Fiscal Recovery Fund of 2021 until the 2022 budget revised the source of funds to the state general fund in SB 115 (Skinner, Chapter 2, Statutes of 2022). The CERF is administered by the Labor and Workforce Development Agency, the Governor's Office of Planning and Research, and the Governor's Office of Business and Economic Development, which are tasked with creating program guidelines, evaluation metrics, oversight, and program management.[4]

Pennsylvania Model

On September 30, 2023, Pennsylvania Governor Josh Shapiro created a first-in-the-nation workforce training program by reserving at least three percent of all funding received from the IIJA and IRA. The program allows organizations doing infrastructure work funded by IIJA and IRA to receive up to $40,000 for each new worker they train and up to a maximum of $400,000 per contract or award to help accelerate infrastructure development – from repairing roads and bridges, to modernizing our energy, water, and sewer infrastructure.[5] It is estimated this will create 10,000 new jobs and invest up to $400 million over the next five years.

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[3] High Road, California Workforce Development Board, April 16, 2024, https://cwdb.ca.gov/initiatives/high-road-training-partnerships/

[4] Community Economic Resilience Fund, Governor's Office of Planning and Research, April 16, 2024, https://opr.ca.gov/economic-development/cerf/

[5] ICYMI: Governor Shapiro Creates first-in-the-nation Workforce training Program… Governor Josh Shapiro, August 1, 2023, https://www.governor.pa.gov/newsroom/icymi-governor-shapiro-creates-first-in-the-nation-workforce-training-program-to-invest-400-million-in-on-the-job-training-and-create-10000-new-jobs/

2. Need for this bill?

The author states "California expects to make historic investments in infrastructure as a result of the funding available in the IIJA, CHIPS Act, and IRA. A primary intention of these federal programs is to impact employment generally and economic equity specifically. These programs embed workforce standards to help ensure job quality, such as prevailing wage, and the Biden Administration has provided guidance to states and local governments on project labor agreements, local and targeted hire, community benefits agreements, and other mechanisms that combine job quality with equity in access to quality jobs.

California already has strong labor standards in public works projects, including prevailing wage and apprenticeship utilization. Federal and state standards, however, don't apply to non-construction projects including manufacturing, operations, or services. The state can apply workforce standards consistently across programs to maximize equity outcomes while also customizing approaches to fit specific programs and needs.

Additionally, to help achieve equity, the Biden Administration is encouraging states to dedicate a portion of the federal investments for workforce training. Workforce investments tied to federal programs that create quality jobs can build pathways to those jobs for economically marginalized populations.

SB 1375 is necessary to ensure compliance with IIJA, CHIPS Act, and IRA and will also make California agencies and employers more competitive for federal funds, and maximize the benefit of tax credits and incentives available under these new federal laws."

The author further asserts "California's High Road Training Partnerships [HRTP] are out of money. The last round of HRTP solicitations had $117 million worth of applications (33 applications) and only enough money to fund 7 of those partnerships. Other than $6 million which is restricted to oil well capping, there appears to be zero dollars left for HRTPs and no plans for ensuring quality training opportunities in collaboration with non-construction industries for in-demand jobs. The Community Economic Resilience Fund [CERF] has significant federal dollars (converted to General Fund as part of early action in 2022), however, there are no job quality or equity metrics and a lack of worker voice in CERF, [which does] not even have a definition of job quality. CERF is missing critical elements that address sector based strategies and does not appear to be aligned with the Biden Administration's goals for the infrastructure money. They reference federal guidelines governing states flexibility, but they are setting the bar so low that the guidelines don't even matter. How are projects they talked about awarding in alignment with sector strategies, job quality, and equity? Did people representing workers propose them?

Senate Bill 150 (Durazo et al., Chapter 61, Statutes of 2023) included funding for high road construction but not for other industries. SB 1375 is needed to address this gap."

3. Proponent Arguments

According to California Environmental Voters, "California has the highest supplemental poverty rate of all fifty states. About a third of California's 40 million people live in poverty or near-poverty, child poverty is rising, a million California workers are living in poverty, and 2.3 million are near poverty. Fewer than half of California workers consider themselves in a 'good job.' The problem is not that people do not have jobs, or that our historic

investments will not create jobs. Rather, more people need access to good jobs.

A commitment to climate means a commitment to workers and working class communities. Our state is aggressive about combating climate change – using all the levers of government to shape markets to reduce carbon. We need to bring this same intentionality to fighting poverty. In the coming years, California will have the opportunity to determine how billions of dollars are spent in our state. Yet, unlike prevailing wages and public works, public investments in non-construction industries lack the administrative enforcement and statutes to make an impact on improving job quality and access.

To help achieve equity and quality jobs, the Biden Administration is encouraging states to dedicate a portion of federal investments for workforce training. Workforce investments tied to federal programs that create quality jobs can build pathways to those jobs for economically marginalized populations. The Biden Administration has been clear that these investments are meant to impact jobs, the economy, and poverty and that they expect states to include strong labor standards and equity when using these funds. They have issued guidance on Community Benefits Agreements and Project Labor Agreements and hosted webinars on engaging communities and labor, advancing diversity, equity, inclusion, and accessibility.

California has made progress in these areas and is well positioned to be a national leader. Guidance from the federal agencies administering these funds makes it clear that California and companies in California will be strongly competitive where we can demonstrate a portion of funding will go to workforce development programs that include pre-apprenticeship and apprenticeship, clear pathways for workers from disadvantaged communities, and strong metrics and enforcement…

The Equity, Climate Resilience, and Quality Jobs Fund would support sector based workforce development programs through High Road Training Partnerships, High Road Construction Careers, and other workforce programs that drive high road standards and reach communities with the highest barriers to employment and economic equity. By establishing agreements between state agencies, SB 1375 will assist state agencies with applying workforce standards consistently across programs to maximize equity outcomes while also customizing approaches to fit specific programs and needs, especially in clean tech industries where existing standards do not apply."

4. Opponent Arguments

None received

5. Prior Legislation

SB 1325 (Durazo, 2024) would authorize Best Value Procurement to empower cities, states, and public agencies to use public dollars to create quality products and good jobs while advancing racial, gender, and climate equity.

SB 150 (Durazo et al., Chapter 61, Statutes of 2023) required the Labor and Workforce Development Agency, the Government Operations Agency, and the Transportation Agency to convene stakeholders and develop recommendations for procurement models to ensure that federal IIJA, IRA, and CHIPS Act investments include enforceable commitments to job

quality and consult with the Civil Rights Department, other relevant state agencies, and a UC research institution to develop and finalize recommendations by March 30, 2024.

SB 822 (Durazo, 2023) would have established agreements between state agencies to advance high road procurement, contracting, and incentive programs. *This bill was vetoed by Governor Newsom, who stated "… I have signed several bills that ensure public contracting dollars are also investing in human infrastructure, including SB 150... It is advisable to allow time for those policies to be implemented before adding more requirements that may duplicate efforts."*

SB 700 (Durazo, 2023) would have supported quality jobs and training by implementing a High Road Employment Program and required state funded contracts meet California's high road standard, among other things. *This bill was held in the Assembly Committee on Appropriations.*

SB 674 (Durazo, Chapter 875, Statutes of 2022) established the High Road Jobs in Transportation-Related Public Contracts and Grants Pilot Program to support the creation of equitable high-quality transportation and related manufacturing and infrastructure jobs.

AB 2095 (Kalra, 2022) would have required employers with 1,000 or more employees to report worker-related statistics on an annual basis to LWDA and required LWDA to publish the statistics on its website. *This bill was held in the Assembly Committee on Appropriations.*

AB 680 (Burke, Chapter 746, Statutes of 2021) established the California Jobs Plan Act of 2021 which requires the California Air Resources Board (CARB) to work with LWDA to update, by July 1, 2025, the funding guidelines for administering agencies to ensure that all applicants to grant programs funded by the Greenhouse Gas Reduction Fund meet fair and responsible employer standards and provide inclusive procurement policies.

AB 794 (Carrillo, Chapter 748, Statutes of 2021) attached labor standards to eligibility for various clean vehicle incentive programs administered by CARB for fleet purchasers of new drayage or short-haul trucks.

AB 398 (E. Garcia, Chapter 135, Statutes of 2017) directed CWDB to assess the need for increased education, job training, and workforce development resources to help workers and communities' transition to a low carbon economy. This bill also required CWDB to submit a report to the Legislature by January 1, 2019, on the need for increased education, career technical education, job training, and workforce development resources or capacity to help industry, workers, and communities' transition to economic and labor-market changes related to specified statewide greenhouse gas emissions reduction goals.

SUPPORT

Acterra: Action for A Healthy Planet
Asian Pacific Environmental Network
Ban Sup (Single Use Plastic)
California Environmental Voters
California Labor Federation, Afl-cio
Center for Employment Opportunities

Clean Earth 4 Kids
Clean Water Action
Climate Center; the
Climate Resolve
Families Advocating for Chemical and Toxics Safety
Fossil Free California
Indivisible Alta Pasadena
Indivisible California Green Team
Jobs to Move America
San Francisco Bay Physicians for Social Responsibility
Santa Cruz Climate Action Network
Transformative Wealth Management LLC
Voices for Progress
Vote Solar

OPPOSITION

None received

-- END --

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

Bill No:	SB 1460	**Hearing Date:**	April 24, 2024
Author:	Durazo		
Version:	March 20, 2024 Amended		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Broadband Labor Standards Act: broadband deployment projects: model contract terms: memorandum of understanding

KEY ISSUE

This bill, as proposed to be amended, enacts the Broadband Labor Standards Act and requires the California Workforce Development Board (CWDB) to convene relevant agencies and stakeholders to develop model contract provisions for the use of apprenticeships in the telecommunications sector. Additionally, this bill requires CWDB to publish the resulting terms on its website and submit a report to the legislature.

ANALYSIS

Existing law:

1) Establishes the California Advanced Services Fund (CASF) for the purposes of providing funding for broadband infrastructure to unserved households. Existing law specifies that an "unserved household" is a home lacking broadband internet at speeds of at least 25 megabits per second (Mbps) downstream and 3 Mbps upstream. Existing law also specifies that all CASF-funded infrastructure must provide broadband internet at speeds of at least 100/20 Mbps. (Public Utilities Code §281)

2) Establishes various accounts within the CASF to fund specific broadband adoption and deployment. These funds include the Federal Funding Account (FFA), which was established to deploy broadband infrastructure to unserved and underserved communities. Existing law specifies how monies in the FFA must be allocated to rural and urban communities for broadband deployment. (Public Utilities Code §281)

3) Establishes CWDB and charges it with oversight and improvement of California's workforce system. The CWDB advances pathways to quality, high road jobs, and equity through workforce development strategies, including: the creation of a statewide strategic workforce plan; collaboration with local workforce development boards, employers, workers, and stakeholders; implementation of initiatives; and evaluation of program quality. The CWDB recognizes that a prosperous economy is one where disadvantaged Californians, who face barriers to employment, have pathways to quality jobs in key industries. (Unemployment Insurance Code §14010)

4) Provides that an apprenticeship program may be administered by a joint apprenticeship committee, unilateral management, or labor apprenticeship committee, or an individual employer. Programs may be approved by the chief in any trade in the state or in a city or trade area, whenever the apprentice training needs justify the establishment. Where a collective bargaining agreement exists, a program shall be jointly sponsored unless either

party to the agreement waives its right to representation in writing. Joint apprenticeship committees shall be composed of an equal number of employer and employee representatives. (Labor Code §3075)

5) Authorizes public agencies to enter into, or require contractors to enter into, a project labor agreement for a construction project that does the following:
   a) Prohibits discrimination based on race, national origin, religion, sex, sexual orientation, political affiliation, or membership in a labor organization in hiring and dispatching workers for the project.
   b) Permits all qualified contractors and subcontractors to bid for and be awarded work on the project without regard to whether they are otherwise parties to collective bargaining agreements.
   c) Contains an agreed-upon protocol concerning drug testing for workers who will be employed on the project.
   d) Contains guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project.
   e) Provides that disputes arising from the agreement shall be resolved by a neutral arbitrator. (Public Contract Code §2500)

This bill, as proposed to be amended:

1) Requires, by January 1, 2026, CWDB to convene relevant stakeholders and agencies, including but not limited to recognized employee representatives, CPUC, and DIR to:

   a) Develop model contract terms that would increase the utilization of recognized employee representative apprenticeships in the telecommunications sector, for broadband deployment projects awarded grants administered by state agencies.
   b) Ensure the state has the workforce and industry-based training partnerships necessary to meet its broadband goals, while building pathways into the middle class and beyond for Californians who have been historically excluded from quality jobs and economic prosperity. In doing so, the CPUC and CWDB shall provide a recommendation on how an MOU between the CPUC and CWDB would enable the development of high road job creation on broadband deployment projects and expand access to those jobs for priority populations through high-quality education and training.

2) Requires, by July 1, 2026, CWDB to:

   a) Publish the contract terms developed by the stakeholders on its internet website.
   b) Submit a report to the Legislature summarizing the stakeholder discussions to develop model contract terms and the recommendations from the stakeholders on an MOU.

COMMENTS

1. Background

In June 2020, CWDB released "Putting California on the High Road: A Jobs and Climate Action Plan for 2030" as a vision for integrating economic and workforce development into major climate policies and programs to help achieve California's primary climate goals. The report suggests CWDB develop a technical assistance team to support agencies responsible for implementing climate policy as they strive to incorporate high road workforce interventions. The report discovered that agencies administering climate investments and policies have limited experience and training in assessing when, where, and how to

incorporate the tools and approaches necessary to create high quality jobs, prepare workers with appropriate skills, expand career opportunities for workers from disadvantaged communities, and assist those whose jobs may be at risk.

A state agency MOU between CWDB and relevant agencies could allow other agencies to draw upon the expertise of CWDB and ensure the state has the workforce and industry-based training partnerships necessary to also meet California's broadband connectivity goals while building pathways into the middle class and beyond for Californians who have been historically excluded from opportunities.

Amendments
This bill was heard in the Senate Committee on Energy, Utilities and Communications (EUC) on April 16, 2024, with a motion of do pass; however, EUC and the author have agreed to the proposed amendments contained in RN 24 13332 as a condition of passage. Due to the close proximity of hearings, this committee would need to adopt the EUC amendments.

2. Need for this bill?

The author states "Fewer than half of California workers consider themselves in a 'good job.' We continue to have the highest supplemental poverty rate of any state, child poverty is increasing, a million California workers are living in poverty, and 2.3 million are near poverty.

California has not yet adopted labor standards on the money we have already received from the federal government or our investment of state dollars. Studies from other states have shown that without clear labor standards workers often receive little or no safety training, are subcontracted from other states, and are not provided the proper preparation for the work. This can lead to workplace injuries and sub-quality work.

The construction sector has a clear set of standards that can be used to ensure job quality and community benefits for public investments. We need a clear policy and administrative framework to apply to non-construction sectors."

3. Proponent Arguments

According to the Communications Workers of America (CWA), "Across the country the federal government, states, local governments and community partners are increasing investment into broadband infrastructure buildout and maintenance. In the past few years the federal government has allocated billions of dollars across the United States to help with publicly funded buildout projects. Included in the federal funding guidelines are mandates for states to engage with labor unions and worker representatives. However, California lacks an established outline of high road labor standards designed to apply to broadband projects. As a result, these projects may go forward with minimal and non-specific labor standards; a missed opportunity to establish California as a leader to ensure safe and effective broadband buildout. Absent statutorily mandated labor standards, these publicly funded project will rely on minimal requirements for workers, and contracted workers.

For example, the California Public Utilities Commission is in the midst of a major funding process for 'last-mile' broadband network buildout. However, neither the CPUC, nor any

other state entity is required to include, or has voluntarily adopted high road labor standards. Instead, CWA District 9 and allies have had to become an official party to the CPUC rule making and submitted comments to hopefully ensure adoption of some high road labor standards. CWA D9 believes that high road labor standards should be included automatically and not be left up to the discretion of an already complicated funding process.

Furthermore, when the state rolled out its multi-billion dollar middle mile broadband funding and projects, mandatory high road labor standards were not included in the statutory language. None of the state agencies or departments involved in the middle mile put forth any rule making, recommendations, or other guidelines for high road labor standards, instead only referencing whatever basic labor laws generally applicable to these types of projects. This lack of comprehensive high road labor standard plan jeopardizes the health and safety of workers brought in to build out the middle mile network, it also brings into question the quality of work that will be attained. There are examples from other states of contractors using workers who were not provided a high level of training or health and safety courses to ensure best outcomes.

CWA, in its 2023 report 'Broadband Investments that go the distance' (https://www.house.mn.gov/comm/docs/OWhW5UTgb0WEGwrXnPRmkQ.pdf) gives an overview of the importance of state and local governments adopting high road labor standards SB 1460 is the vehicle in California to accomplish this goal and presents an opportunity to ensure that our broadband networks not only connect individuals and communities throughout California, but also to ensure workers involved in the projects are provided proper safety training and pay, and that we bring in workers from across demographics, and from local areas, to ensure that California's investment is not just in technology, but also in the people and communities that are doing the work."

4. Opponent Arguments

USTelecom – The Broadband Association and the California Broadband and Video Association state "SB 1460 imposes new requirements on broadband infrastructure and deployment projects that are federally funded on or after July 1, 2025. Given this deadline, the only broadband projects that would be subject to this requirement are projects within the Broadband, Equity, Access and Deployment (BEAD) Program and the California Department of Technology's state middle mile program.

On July 17th, 2023, the CPUC issued a ruling requesting comments on the draft Five-Year Action Plan. The CPUC submitted a final Five-Year Action Plan to the National Telecommunications and Information Administration (NTIA) on August 27, 2023. NTIA is also the final approver of all projects and plans submitted by all states in the nation for BEAD funding. On November 7, 2023, the CPUC released draft versions of Volume 1 and Volume 2 of its Initial Proposal. Formal opening comments were due November 27th and reply comments were due December 7th. Any suggested requirements for grantees to the BEAD Program should have been requested within this detailed process that occurred last year.

The CPUC submitted Volume I and Volume II of the BEAD Initial Proposal to NTIA in December of 2023. NTIA is currently reviewing the Volumes to ensure compliance with the requirements of the Notice of Funding Opportunity and NTIA program guidance."

5. Double Referral

The Senate Committee on Rules also referred this bill to the Senate Committee on Energy, Utilities, and Communications.

6. Prior Legislation

SB 1325 (Durazo, 2024) would authorize Best Value Procurement for cities, states, and public agencies to use public dollars to create quality products and good jobs while advancing racial, gender, and climate equity.

SB 1375 (Durazo, 2024) would create the Equity, Climate Resilience, and Quality Jobs Fund to finance workforce training and standards to meet our climate resiliency workforce needs. Projects funded by these federal investments will prioritize good jobs and equity, making California competitive for more federal funding. This measure would require MOUs between public agencies administering federal infrastructure funds to ensure investments using IIJA, CHIPS Act, and IRA funds have standards, and reporting to the California Workforce Development Board to perform analysis on equity, climate resilience, and quality jobs outcomes.

AB 662 (Boerner, 2023) would have established requirements for the administration of the BEAD program, and would have prohibited the CPUC from taking any actions to administer the BEAD program that are not specified in the bill. *The bill was held in the Senate Committee on Appropriations.*

SB 150 (Durazo et al., Chapter 61, Statutes of 2023) required the Labor and Workforce Development Agency, the Government Operations Agency, and the Transportation Agency to convene stakeholders and develop recommendations for procurement models to ensure that federal IIJA, IRA, and CHIPS Act investments include enforceable commitments to job quality as a material term of our public contracts with measurable results to ensure equity. This bill also required the entities to consult with the Civil Rights Department, other relevant state agencies, and a UC research institution in developing the recommendations.

SB 822 (Durazo, 2023) would have established agreements between state agencies to advance high road procurement, contracting, and incentive programs. These agreements would have included policies and programs to create or support high-quality jobs in the energy, resources, communications, and transportation sectors and expand access to those jobs through high-quality education and training. *In his veto message, Governor Newsom stated "…I have signed several bills that ensure public contracting dollars are also investing in human infrastructure, including SB 150 that requires the Labor and Workforce Development Agency, Government Operations Agency, and the State Transportation Agency to convene relevant stakeholders and draft recommendations to ensure that investments maximize benefits to marginalized and disadvantaged communities. The recommendations are due by March 30, 2024."*

SB 674 (Durazo, Chapter 875, Statutes of 2022) established the High Road Jobs in Transportation Related Public Contracts and Grants Pilot Program to support the creation of equitable high-quality transportation and related manufacturing and infrastructure jobs. SB 674 required a covered public contract for the acquisition of zero-emission transit vehicles or

electric vehicle supply equipment valued at $10 million or more, to incorporate high road job standards.

AB 2095 (Kalra, 2022) would have required employers with 1,000 or more employees to report worker-related statistics on an annual basis to the Labor and Workforce Development Agency (LWDA) and would have required LWDA to publish the statistics on its internet website. *The bill was held by the Assembly Appropriations Committee.*

AB 14 (Aguiar-Curry, Chapter 658, Statutes of 2021) revised and extended the CASF by increasing speed standards for CASF-funded infrastructure to 100/20 Mbps, expanded eligibility to communities that lack broadband service meeting federal standards, expanded local governments' eligibility for CASF grants, and extended CASF's operation and funding until 2032.

SB 4 (Gonzalez, Chapter 671, Statutes of 2021) was identical to AB 14.

AB 680 (Burke, Chapter 746, Statutes of 2021) established the California Jobs Plan Act of 2021 which requires the California Air Resources Board (CARB) to work with the LWDA to update, by July 1, 2025, the funding guidelines for administering agencies to ensure that all applicants to grant programs funded by the Greenhouse Gas Reduction Fund meet fair and responsible employer standards and provide inclusive procurement policies.

AB 794 (Carrillo, Chapter 748, Statutes of 2021) attached labor standards to eligibility for various clean vehicle incentive programs administered by CARB for fleet purchasers of new drayage or short haul trucks.

SB 156 (Committee on Budget, Chapter 112, Statutes of 2021) implemented broadband infrastructure spending approved in the 2021 Budget Act and established the FFA within the CASF to fund broadband infrastructure projects using one time funds. This bill also required Department of Transportation to oversee the construction of a state-owned, open access middle mile broadband network.

AB 398 (E. Garcia, Chapter 135, Statutes of 2017) directed CWDB to assess the need for increased education, job training, and workforce development resources to help workers and communities transition to a low carbon economy. This bill also required CWDB to submit a report to the Legislature by January 1, 2019, on the need for increased education, career technical education, job training, and workforce development resources or capacity to help industry, workers, and communities' transition to economic and labor market changes related to specified statewide greenhouse gas emissions reduction goals.

SUPPORT

Communication Workers of America (Sponsor)
California Labor Federation

OPPOSITION

California Broadband and Video Association
USTelecom – The Broadband Association

-- END --

AMENDMENTS TO SENATE BILL NO. 1460
AS AMENDED IN SENATE MARCH 20, 2024

Amendment 1

In the title, in line 1, strike out "Chapter 6.10", strike out lines 2 and 3 and insert:

Section 14018 to the Unemployment Insurance Code, relating to broadband.

Amendment 2

On page 3, before line 1, insert:

SECTION 1. Section 14018 is added to the Unemployment Insurance Code, to read:

14018. (a) This section shall be known, and may be cited, as the Broadband Labor Standards Act.

(b) By January 1, 2026, the board shall convene relevant stakeholders and state agencies, including, but not limited to, recognized labor unions, the Public Utilities Commission, and the Department of Industrial Relations, to do both of the following:

(1) (A) Develop model contract terms, as specified in subparagraph (B), for broadband deployment projects that are awarded grants by state agencies.

(B) The contract terms developed pursuant to subparagraph (A) shall serve to increase the utilization of recognized labor unions' apprenticeships in the telecommunications sector.

(2) (A) Provide a recommendation on a memorandum of understanding between the board and the Public Utilities Commission that would enable the development of high road job creation on broadband deployment projects and expand access to those jobs for priority populations through high-quality education and training.

(B) The recommendation specified in subparagraph (A) shall ensure that the state has the workforce and industry-based training partnerships necessary to meet its broadband goals, while building pathways into the middle class and beyond for Californians who have been historically excluded from quality jobs and economic prosperity.

(c) By July 1, 2026, the board shall do both of the following:

(1) Post the contract terms developed pursuant to paragraph (1) of subdivision (b) on the board's internet website.

(2) (A) Submit a report to the Legislature, pursuant to Section 9795 of the Government Code, which includes both of the following:

(i) A summary of discussions with relevant stakeholders and state agencies to develop model contract terms pursuant to paragraph (1) of subdivision (b).

(ii) The recommendation from relevant stakeholders and state agencies on a memorandum of understanding pursuant to paragraph (2) of subdivision (b).

(B) The requirement for submitting a report imposed under subparagraph (A) is inoperative on July 1, 2030, pursuant to Section 10231.5 of the Government Code.

Amendment 3
On page 3, strike out lines 1 to 38, inclusive, and strike out pages 4 and 5

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PROPOSED AMENDMENTS TO SENATE BILL NO. 1460

AMENDED IN SENATE MARCH 20, 2024

SENATE BILL **No. 1460**

Introduced by Senator Durazo

February 16, 2024

Amendment 1

An act to add ~~Chapter 6.10 (commencing with Section 7000) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts.~~ *Section 14018 to the Unemployment Insurance Code, relating to broadband.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1460, as amended, Durazo. Broadband Labor Standards Act: ~~public contracts: broadband labor standards.~~ *broadband deployment projects: model contract terms: memorandum of understanding.*

Existing law establishes the California Broadband Council in state government for the purpose of promoting broadband deployment in unserved and underserved areas of the state and broadband adoption throughout the state and imposes specified duties on the council relating to that purpose, including taking actions to ensure that state agencies are coordinating efforts and resources to promote broadband deployment and adoption. Existing law also establishes the California Workforce Development Board as the body responsible for assisting the Governor in the development, oversight, and continuous improvement of California's workforce investment system and the alignment of the education and workforce investment systems to the needs of the 21st century economy and workforce.

This bill would enact the Broadband Labor Standards Act. The bill would require the board, by January 1, 2026, to convene relevant stakeholders and state agencies to develop model contract terms for

broadband deployment projects that are awarded grants by state agencies and to provide a recommendation on a memorandum of understanding between the board and the Public Utilities Commission to enable development of high road job creation on broadband deployment projects and expand access to those jobs, as specified. By July 1, 2026, the bill would require the board to post the model contract terms on the board's internet website and submit a report to the Legislature on specified matters, including a summary of the discussions with relevant stakeholders and state agencies to develop the model contract terms.

~~(1) Existing law establishes specified procedures governing contracts between public entities and their contractors and subcontractors. Existing law also establishes the Department of Industrial Relations, Department of Technology, Department of Transportation, Public Utilities Commission, and California Workforce Development Board within the state government and sets forth their regulatory duties.~~

~~Existing law expresses the intent of the Legislature to develop procurement models in alignment with initiatives to enhance the state's training and access pipeline for quality jobs and the application of community benefits on infrastructure and manufacturing investments that are federally funded, as specified. In connection with that legislative intent, existing law requires the Labor and Workforce Development Agency, Government Operations Agency, and Transportation Agency to convene relevant stakeholders to provide input on recommendations to establish material terms to be included as a material part of a contract.~~

~~This bill would enact the Broadband Labor Standards Act. Under that act, the bill would require any state agency that constructs a broadband project, as defined, with federal funds received by the state on or after July 1, 2025, as specified, and prescribed state entities, including the Department of Technology, to collaboratively develop and establish specified contract terms and requirements, including contract provisions on training and certifications under penalty of perjury regarding compliance with certain labor laws, to be included in their public contracts or subcontracts and procurement processes relating to the construction of those projects. The bill would require these state agencies to consult with relevant stakeholders in developing and establishing contract requirements, as specified, and by March 1, 2025, to submit a report to the Legislature on stakeholder involvement. By March 30, 2025, the bill would require these state agencies to develop and establish the contract requirements and post that information on specified internet~~

~~websites. For any contract related to the construction of a broadband project that is federally funded, as specified, the bill would require a state agency to incorporate these contract terms and requirements into the state agency's procurement processes and contracts entered into, amended, or renewed beginning on July 1, 2025, as specified.~~

~~By requiring contractors and subcontractors to make certain certifications under penalty of perjury, this bill would expand the crime of perjury and impose a state-mandated local program.~~

~~This bill would state that its provisions are severable.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

Amendment 2

+ *SECTION 1. Section 14018 is added to the Unemployment Insurance Code, to read:*
+ *14018. (a) This section shall be known, and may be cited, as the Broadband Labor Standards Act.*
+ *(b) By January 1, 2026, the board shall convene relevant stakeholders and state agencies, including, but not limited to, recognized labor unions, the Public Utilities Commission, and the Department of Industrial Relations, to do both of the following:*
+ *(1) (A) Develop model contract terms, as specified in subparagraph (B), for broadband deployment projects that are awarded grants by state agencies.*
+ *(B) The contract terms developed pursuant to subparagraph (A) shall serve to increase the utilization of recognized labor unions' apprenticeships in the telecommunications sector.*
+ *(2) (A) Provide a recommendation on a memorandum of understanding between the board and the Public Utilities Commission that would enable the development of high road job creation on broadband deployment projects and expand access to those jobs for priority populations through high-quality education and training.*

+ *(B) The recommendation specified in subparagraph (A) shall ensure that the state has the workforce and industry-based training partnerships necessary to meet its broadband goals, while building pathways into the middle class and beyond for Californians who have been historically excluded from quality jobs and economic prosperity.*
+ *(c) By July 1, 2026, the board shall do both of the following:*
+ *(1) Post the contract terms developed pursuant to paragraph (1) of subdivision (b) on the board's internet website.*
+ *(2) (A) Submit a report to the Legislature, pursuant to Section 9795 of the Government Code, which includes both of the following:*
+ *(i) A summary of discussions with relevant stakeholders and state agencies to develop model contract terms pursuant to paragraph (1) of subdivision (b).*
+ *(ii) The recommendation from relevant stakeholders and state agencies on a memorandum of understanding pursuant to paragraph (2) of subdivision (b).*
+ *(B) The requirement for submitting a report imposed under subparagraph (A) is inoperative on July 1, 2030, pursuant to Section 10231.5 of the Government Code.*

Page 3

Amendment 3

~~SECTION 1. Chapter 6.10 (commencing with Section 7000) is added to Part 1 of Division 2 of the Public Contract Code, to read:~~

~~CHAPTER 6.10. BROADBAND LABOR STANDARDS ACT~~

+

~~7000. This chapter shall be known, and may be cited, as the Broadband Labor Standards Act.~~

~~7000.1. For the purposes of this chapter, the following definitions apply:~~

~~(a) "Broadband project" means a middle-mile, last-mile, or other broadband project.~~

~~(b) "Contract" means a state contract or subcontract related to the construction of a broadband project that is funded by federal funds received by the state on or after July 1, 2025, and allocated by the Public Utilities Commission.~~

~~7000.2. (a) By March 30, 2025, the Department of Industrial Relations, the Department of Technology, the Department of Transportation, the Public Utilities Commission, the California~~

Page 3

~~Workforce Development Board, and any state agency that constructs a broadband project shall collaboratively develop and establish contract terms and requirements, as specified in subdivision (b), to be included in their public contracts or subcontracts and procurement processes.~~

~~(b) (1) A contract shall include a material contract provision on mandatory contractor and subcontractor training related to Title 8 of the California Code of Regulations.~~

~~(2) A contractor and subcontractor shall certify that they shall comply with both of the following:~~

~~(A) All applicable federal, state, and local laws pertaining to paid sick leave, including any antiretaliation provisions contained in those laws.~~

~~(B) The federal Americans with Disabilities Act of 1990 (Public Law 101-336; 42 U.S.C. Sec. 12101 et seq.) and all regulations thereunder.~~

~~(3) A contractor and subcontractor shall certify that they shall not misclassify any individual performing work to fulfill the contract as an independent contractor.~~

Page 4

~~(4) A contractor and subcontractor shall provide information on all of the following:~~

~~(A) The history of compliance with applicable federal, state, and local labor laws.~~

~~(B) The number of individuals the contractor or subcontractor anticipates hiring to perform work to fulfill the contract.~~

~~(C) For each job title, the minimum compensation and benefits paid to an employee who performs work to fulfill the contract.~~

~~(D) A plan to recruit, hire, and train individuals who face barriers to employment or underrepresented individuals to perform work to fulfill the contract.~~

~~(E) A plan to prioritize hiring individuals within the local community in which the project is located to perform work to fulfill the contract.~~

~~(F) A plan to hire individuals from an apprenticeship program to perform work to fulfill the contract.~~

~~(c) (1) The state agencies described in subdivision (a) shall consult with relevant stakeholders, including, but not limited to, recognized labor unions, in developing and establishing contract terms and requirements, as specified in subdivision (b).~~

~~(2) By March 1, 2025, the state agencies described in subdivision (a) shall submit a report to the Legislature on both of the following pursuant to Section 9795 of the Government Code:~~

~~(A) A list of stakeholders the state agencies consulted with pursuant to paragraph (1) and the number of times state agencies consulted with these stakeholders.~~

~~(B) A description of the consultations pursuant to paragraph (1).~~

~~(3) The requirement for submitting a report imposed under paragraph (2) is inoperative on March 1, 2029, pursuant to Section 10231.5 of the Government Code.~~

~~(d) By March 30, 2025, the state agencies described in subdivision (a) shall post the contract terms and requirements developed and established pursuant to subdivision (b) on their internet websites.~~

~~7000.3. (a) For any contract, a state agency shall incorporate contract terms and requirements that comply with subdivision (b) of Section 7000.2 into the state agency's procurement processes and contracts entered into, amended, or renewed for those broadband projects.~~

~~(b) A state agency that enters into a contract may incorporate higher standards than the terms and requirements described in subdivision (b) of Section 7000.2 into the state agency's procurement processes and contracts for broadband projects.~~

~~7000.4. The provisions of this chapter are severable. If any provision of this chapter 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.~~

~~SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

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

Bill No:	SB 1340	**Hearing Date:**	April 24, 2024
Author:	Smallwood-Cuevas		
Version:	April 10, 2024		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Emma Bruce		

SUBJECT: Discrimination

KEY ISSUE

This bill authorizes local government entities to enforce California's state civil rights laws through a specified process.

This bill directs the California Civil Rights Department to develop a database to track *all* infrastructure contracting and procurement activities by state agencies, including employee demographic data provided by contractors and subcontractors, as specified.

This bill directs the Department of Industrial Relations to establish the California Public Infrastructure Task Force, as specified.

ANALYSIS

Existing federal law:

1. Makes it unlawful, pursuant to Title VII of the Civil Rights Act of 1964, for employers with 15 or more employees to discriminate on the basis of race, color, sex, pregnancy status, religion, or national origin in all aspects of an employment relationship, including hiring, discharge, compensation, assignments, and other terms, conditions and privileges of employment. (42 U.S.C. §2000e et seq.)

2. Establishes an administrative agency, the Equal Employment Opportunity Commission (EEOC), charged with receiving, investigating, and adjudicating allegations of workplace discrimination. (42 U.S.C. §2000e-4.)

3. Permits state or local agencies to accept and investigate allegations that federal workplace antidiscrimination laws have been violated, provided that the state or local agency has entered into a worksharing agreement with the EEOC that requires specified case-handling procedures and coordination with the EEOC such that filing with the state or local agency also constitutes filing with the EEOC (so-called "dual filing"). (42 U.S.C. §2000e-5(c))

Existing state law:

1. Prohibits workplace discrimination, as specified, on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic information, marital status, sex, gender,

gender identity, gender expression, age, sexual orientation, or veteran or military status, through the Fair Employment and Housing Act (FEHA). (Government Code §12940)

2. Establishes an administrative agency, the Civil Rights Department (CRD), responsible for receiving, investigating, and adjudicating allegations of housing and workplace discrimination under FEHA. (Government Code §12930)

3. Requires an aggrieved worker to exhaust CRD's administrative remedies prior to filing a lawsuit in court for workplace discrimination. (Government Code §§ 12960, 12965)

4. Requires if a civil action is not brought by CRD within 150 days after the filing of a complaint, or if CRD earlier determines that no civil action will be brought, requires CRD to promptly notify the person claiming to be aggrieved in writing that CRD shall issue, on request, a right-to-sue-notice. If the person claiming to be aggrieved does not request a right-to-sue notice, CRD shall issue the right-to-sue notice upon completion of its investigation, and not later than one year after the filing of the complaint. (Government Code §12965(c)(1)(A))

5. Expresses the intent of the Legislature to occupy the field of enforcing FEHA's prohibition on workplace discrimination to the exclusion of any city, city and county, county, or other political subdivision of the state. (Government Code §12993(c))

6. Notwithstanding 5), above, provides that a city, county, or district attorney in a location having an enforcement unit established on or before March 1, 1991, pursuant to a local ordinance enacted for the purpose of prosecuting HIV/AIDS discrimination claims, acting on behalf of any person claiming to be aggrieved due to HIV/AIDS discrimination, may also bring a civil action under FEHA against the person, employer, labor organization, or employment agency named in the notice. (Government Code §12965(c)(2))

7. Empowers CRD to investigate, approve, certify, decertify, monitor, and enforce nondiscrimination programs proposed by a contractor with the state for public works or for goods or services, as specified. (Government Code §12990)

8. Establishes procedures for state agencies to enter into contracts for goods and services, including generally requiring that certain contracts by a state agency to construct, alter, improve, repair, or maintain public property be approved by the Department of General Services (DGS). (Government Code §10300 et seq.)

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

10. Requires specified state agencies, including LWDA, to convene relevant stakeholders to develop and provide contractual and procurement model recommendations that maximize benefits to disadvantaged communities to the Governor and Legislature by March 30, 2024. (Public Contract Code §6990.1)

11. Provides that it is the intent of the Legislature in enacting the provisions described in 10) to develop procurement models in alignment with initiatives to enhance the state's training and access pipeline for quality jobs and the application of community benefits on infrastructure and manufacturing investments funded by specified federal law. (Public Contract Code §6999)

This bill:

1. States that it is the intent of the Legislature that, to the extent possible, the funding for the provisions of this bill include, but not be limited to, the federal Infrastructure Investment and Jobs Act, the Inflation Reduction Act of 2022, and the CHIPS and Science Act of 2022.

FEHA Enforcement

2. Authorizes efforts by any city, city and county, county, or other political subdivision of the state (local agency) to enforce state law prohibiting employment discrimination against any of the enumerated classes of persons covered by FEHA.

3. Adds Article 1.1 to FEHA that specifies the process a complainant must follow in order to have their complaint processed by the local agency and ensures only one avenue is pursued.

4. Requires CRD, in collaboration with the Division of Labor Standards Enforcement, to develop partnerships with local agencies that allow local agencies to assist with preventing and eliminating unlawful practices under FEHA, as specified.

5. Requires a local agency that pursues a complaint pursuant to these provisions to receive, investigate, and adjudicate the complaint using procedures that are substantially similar to the procedures that CRD must adhere to within one year of the complaint being filed with the local agency.

6. Authorizes a person claiming to be aggrieved by an alleged unlawful practice to file a verified complaint with CRD that requests that the complaint be pursued by a local agency pursuant to these provisions.

7. Prescribes procedures of a complaint pursued by a local agency.

8. Requires CRD to include in the annual report required by Section 12930 of the Government Code a list of local agencies that have entered into partnerships pursuant to these provisions, the number of complaints processed by local agencies, and a summary of the results of the cases, as specified, and defines various terms for these purposes.

9. Specifies that while it is the intention of the Legislature that FEHA occupy the field of regulation of discrimination in employment and housing, FEHA does not limit or restrict the application of the Unruh Civil Rights Act.

10. Provides that, commencing on January 1, 2026, nothing in FEHA shall be construed to limit or restrict efforts by local entities to enforce state law prohibiting discrimination

against classes of persons covered by FEHA in employment, provided that the enforcement complies with the provisions described above.

Infrastructure Database

11. Directs CRD to establish and maintain a comprehensive database to track *all* state infrastructure contracting and procurement activities by state agencies, which shall include, but not be limited to:

    a. Contracts awarded by state agencies, including, but not limited to, project details, pay scales for employees of the contractors and subcontractors, and relevant compliance measures or terms.
    b. Contractors and subcontractors utilized by state agencies.
    c. Demographic data of employees of contractors and subcontractors utilized by state agencies, including, but not limited to, all of the following:
        1. Race
        2. Gender
        3. Marital Status
        4. County of Residence

12. Directs CRD, commencing July 1, 2026, to annually publish a report summarizing the data collected through the infrastructure database that includes both of the following:

    a. Any disparities or trends the department observed.
    b. Recommendations for improving equity and inclusion in public infrastructure and procurement.

13. Requires a contractor or subcontractor under an infrastructure contract awarded by a state agency to report to CRD, commencing on July 1, 2025 and annually on July 1 thereafter, demographic data of their employees, as specified.

14. Directs a contractor or subcontractor under an infrastructure contract awarded by a state agency to provide each employee with the option to participate in a survey for the purpose of collecting and reporting the information described above, as specified.

15. Requires contractors and subcontractors collecting demographic data through a survey to distribute a written disclosure to employees notifying them that, among other things, participation is voluntary and any adverse action against an employee who declines to participate is prohibited.

16. Provides that a contractor or subcontractor under an infrastructure project awarded by a state agency required to conduct a survey pursuant to these provisions shall do both of the following:

    a. Collect survey response data from employees in a manner that maintains the anonymity of the responding employee and the confidentiality of the data reported.
    b. Transmit the survey response data to CRD in a manner that does not associate the survey response data with an individual employee.

CRD and Infrastructure Outreach

17. Requires CRD to collaborate with relevant state agencies, local governments, and stakeholders to develop and implement strategies for promoting diversity, equity, and inclusion in public infrastructure contracting and procurement. Requires CRD to also conduct outreach and educational activities to raise awareness of civil rights laws and regulations that impact public infrastructure contracting and procurement.

Task Force

18. Directs DIR to establish a California Public Infrastructure Task Force (Task Force), consisting of representatives from all of the following entities that engage in public infrastructure contracting and procurement projects:
    a. State agencies
    b. Local governments and agencies
    c. Contractors and subcontractors
    d. Unions
    e. Apprenticeship and preapprenticeship programs
    f. Job and worker centers
    g. Community colleges
    h. Tribal Employment Rights Offices
    i. Women in Apprenticeship and Nontraditional Occupations grantees

19. Directs the Task Force to do all of the following:

    a. Regularly conduct meetings to make recommendations regarding recruiting and removing barriers to employment in public infrastructure projects for underrepresented communities.
    b. Conduct outreach and engagement activities with contractors and subcontractors to promote employment in public infrastructure projects for underrepresented communities.
    c. Provide ongoing compliance assistance at the prebid and postbid stages to contractors and subcontractors in public infrastructure projects regarding their nondiscrimination obligations.
    d. Evaluate the efforts of contractors and subcontractors to recruit and utilize talent from underrepresented communities in public infrastructure projects.

COMMENTS

1. Local enforcement of civil rights laws:

Please see the Senate Judiciary Committee's analysis of SB 1340 for background on past attempts to enable local enforcement of civil rights laws and comments on the provisions in this bill that attempt to do the same.

2. Federal investments:

Over the course of 2021 and 2022, the Federal Government made significant investments in infrastructure and the green economy through the Infrastructure Investment and Jobs Act, the

Inflation Reduction Act, and the CHIPS and Science Act. Combined, the money from these three pieces of legislation amounts to over a trillion dollars that will be distributed to states over the next decade. California is developing a green economy that focuses on sustainability and designing innovative solutions to the challenges posed by climate change. The money coming from the above federal investments is vital to the state's ability to link its climate, workforce, and equity goals.

Infrastructure Investment and Jobs Act (IIJA)

The IIJA, signed into law on November 15, 2021, represents an investment of $1.2 trillion by the federal government for the purposes of modernizing the country's physical infrastructure[1]. California can expect to receive a guaranteed $41.9 billion, with $7.53 billion already distributed[2]. The principal labor standard for IIJA-funded projects is payment of prevailing wage under the Davis-Bacon Act. Additionally, IIJA funding distributed by the Department of Energy through grants requires applicants to submit a Community Benefit Plan (CBP) that counts for as much as 20% of an applicant's score on their funding proposal. These CBPs encourage applicants to collaborate with community organizations and unions to develop quality jobs and set equity goals.

Inflation Reduction Act (IRA)

The IRA, signed into law on August 16, 2022, invests $390 billion in climate and clean energy programs. This is the single largest climate investment in American history. IRA funding consists of grants, tax credits, and loans. Similar to the IIJA funding described above, prevailing wages are also required. In California, public works contracts valued at $30,000 or more carry an obligation to use registered apprentices. This means that the majority of IRA grant-funded and direct-pay funded projects are subject to apprenticeship requirements. Requiring registered apprentices secures necessary hands-on experience for the next generation of workers.

Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act

The CHIPS and Science Act, signed into law on August 9, 2022, consists of $52.7 billion broken down into $39 billion for manufacturing incentives, $13.2 billion for research and workforce development, and $500 million to provide for international information communications technology security and semiconductor supply chain activities[3]. Awards under this program take the form of direct funding, federal loans, and/or federal guarantees of third-party loans. The program includes six priorities, one of which is requiring applicants to have a workforce development plan. This key component requires applicants to commit to developing and maintaining a highly skilled, diverse workforce. The CHIPS and Science Act also requires the payment of prevailing wages in program-funded construction projects.

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[1] UC Berkeley Labor Center, "Research Update on Federal Investments" https://slper.senate.ca.gov/sites/slper.senate.ca.gov/files/UCB%20Labor%20Center%20Research%20Update.pdf

[2] "IIJA By The Numbers: federal funds improving transportation in California," Rebuilding California, February 2, 2024, https://rebuildingca.ca.gov/iija-by-the numbers/#:~:text=IIJA%20includes%20funding%20for%20multiple

[3] "Fact Sheet: CHIPS and Science Act" https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/09/fact-sheet-chips-and-science-act-will-lower-costs-create-jobs-strengthen-supply-chains-and-counter-china/

Justice40 Initiative

President Biden established the Justice40 Initiative in January 2021 when he issued Executive Order 14008, Tackling the Climate Crisis at Home and Abroad. Justice40 directs 40 percent of the overall benefits of certain federal climate, clean energy, affordable and sustainable housing, and other investments to disadvantaged communities that are marginalized by underinvestment and overburdened by pollution. The three pieces of legislation described above are included in this initiative. All Justice40 covered programs are required to engage in stakeholder consultation and ensure opportunities for local community members to be involved in determining program benefits.

2. SB 150 (Durazo, Statutes of 2023) overview:

In July 2023, Governor Newsom signed into law SB 150 which directed the LWDA, Government Operations Agency, and Transportation Agency to convene stakeholders to provide input on recommendations to develop procurement models for investments funded by the IIJA, IRA, and CHIPS and Science Act. These models should be in alignment with initiatives to enhance the state's training and access pipeline for quality jobs. The recommendations developed through the SB 150 process were finalized in an April 2, 2024 report entitled "SB 150 Stakeholder Workshops Update & Recommendations: Report to the Governor and Legislature."

The report detailed the three lead agencies' approach to convening stakeholder workshops and highlighted existing state efforts to ensure federal and state investments include labor standards and reach disadvantaged workers. The report provided, as specified in SB 150, the recommended terms "to be included as a material part of a contract, including measurable results to ensure that investments maximize benefits to marginalized and disadvantaged communities."

For federal infrastructure funds, the report recommended, among other things:
- Updating the state's Non-Discrimination Contract Clause
- Increasing project apprenticeship ratios
- Adding a standard requirement for compliance with federal labor law

Outside of their formal recommendations, the report also suggested exploring the potential to establish an MOU between the LWDA and key state agencies and prioritizing new manufacturing apprenticeship programs

Specifically for transportation infrastructure funded through the IIJA, the report recommended:
- Shifting bidding policies to "best value" or "most qualified"
- Establishing local hire goals
- Incentivizing contractors to hire disadvantaged workers
- Improving data collection to increase accountability.

3. Los Angeles County Metropolitan Transportation Authority (LA Metro) demographic reporting:

The voluntary demographic reporting required by these provisions is modeled after the demographic data LA Metro collects from its contractors. LA Metro adopted the

Construction Careers Policy (CCP) and Project Labor Agreement (PLA) on January 26, 2012 to encourage construction employment and training opportunities on LA Metro projects for workers living in economically disadvantaged areas and for disadvantaged workers, as defined in the PLA/CCP[4]. The PLA requires 40 percent participation of construction workers residing in economically disadvantaged areas, 10 percent participation of disadvantaged workers, and a 20 percent participation of apprentices on all projects it covers.

The Los Angeles/Orange County Building and Construction Trades Council is the primary source of construction labor for Metro transportation projects covered by the above PLA/CCP. Once contractors, subcontractors, and employers successfully bid on a LA Metro project, they engage with a jobs coordinator to identify and refer targeted workers. Targeted disadvantaged workers include those who face at least two of the following barriers to employment: are homeless; a custodial single parent; receive public assistance; lack a GED or high school diploma; have a history of involvement with the criminal justice system; have experienced chronic unemployment; are emancipated from foster care; are a veteran; are an apprentice with less than 15 percent of the hours required to graduate journey-level. To ensure compliance, an employment hiring plan (EHP), that includes a description of how the contractor will meet targeted hiring requirements, is completed. After construction begins, contractors submit monthly compliance reports to LA Metro, which include a breakdown of the hours worked by economically disadvantaged workers, their race and gender, and their craft level.

5. Author Amendments:

The author would like to amend the bill so that the database only tracks state infrastructure and contracting projects that receive funding through the IIJA, IRA, and CHIPS and Science Act. Additionally, the author would like to require contractors working on projects funded by these three pieces of federal legislation to submit the voluntary demographic data they collect on their employees monthly instead of annually.

6. Need for this bill?

According to the author, "California can expect to receive a guaranteed $41.9 billion from the (IIJA) formula funding, with $7.53 billion already distributed, for a variety of construction projects. Additional federal funding sources such as the Inflation Reduction Act (IRA) and the Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act are likely to add billions more to support California's clean energy infrastructure development. Unfortunately, these massive investments currently have very little oversight, transparency, and community input. And it is unlikely that the departments have the necessary staff to properly oversee how these dollars are being used and course-correct in real time."

Furthermore, "The only way to ensure that these dollars go towards good jobs in the communities that need them most is to require tracking and reporting on metrics such race, gender, and income level in contracting and procurement. To empower the departments charged with oversight to enforce the policies for using these dollars correctly. And to create a task force made up of subject matter experts who can act as an intermediary between the

[4] LA Metro, "LA Metro is Putting Americans to Work" https://media.metro.net/about_us/pla/images/122212_ntc_project_labor_fact_sheet.eng.lo.r.pdf

departments, contractors, and labor to review current policies and practices and make recommendations to recruit California's most vulnerable populations for employment."

6. Proponent Arguments:

According to the sponsors of the measure, the Southern California Black Worker Hub, "While the law tasks the California Civil Rights Department, formerly the Department of Fair House and Employment, with the enforcement of workplace discrimination through the Fair Housing and Employment Act, SB 1340 that would strengthen the state's enforcement capacity by providing authority to local civil and human rights departments to adjudicate workplace discrimination cases in partnership with the California Civil Rights Department. The bill would provide another valuable avenue to all Californians who encounter discrimination by empowering them to file complaints with local departments in the cities where the discrimination occurred. Under the current state process, addressing workplace discrimination within the judicial system is too costly for most low-wage workers, especially Black workers who represent a disproportionate number of violations and employment complaints and are less likely to receive remedies in the court system. Across the state, research has shown that California has seen an approximately 34% increase in discrimination complaints since the 1980s, though we have not seen a proportionate growth in the state's capacity to handle and process these complaints. We cannot rely on the current system to adequately address worker complaints without the power and reach of local enforcement."

According to the California Labor Federation, "workers deserve equitable access to jobs, especially good jobs that pay living wages with benefits. California is poised to receive billions for infrastructure, climate, and manufacturing through the federal Infrastructure Investment and Jobs Act, the Inflation Reduction Act of 2022, and the CHIPS and Science Act of 2022. Some of those funding streams have requirements to ensure equitable access to jobs and the recruitment, hiring, and retention of workers from marginalized and disadvantaged communities. To ensure those goals are met, the state needs data and tracking to assist companies in implementation."

7. Opponent Arguments:

None received.

8. Dual Referral:

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

9. Prior Legislation:

SB 1325 (Durazo, 2024) would authorize Best Value Procurement to empower cities, states, and public agencies to use public dollars to create quality products and good jobs while advancing racial, gender, and climate equity.

SB 150 (Durazo et al., Chapter 61, Statutes of 2023) required the Labor and Workforce Development Agency, the Government Operations Agency, and the Transportation Agency to convene stakeholders and develop recommendations for procurement models to ensure

that federal IIJA, IRA, and CHIPS Act investments include enforceable commitments to job quality and consult with the Civil Rights Department, other relevant state agencies, and a UC research institution to develop and finalize recommendations by March 30, 2024.

SB 16 (Smallwood-Ceuvas, 2023) would allow for local enforcement of FEHA, as specified. This bill was held in the Assembly Appropriations Committee.

SB 822 (Durazo, 2023, Vetoed) would have established agreements between state agencies to advance high road procurement, contracting, and incentive programs.

SB 218 (Bradford, 2019, Vetoed) would have authorized local governments within the County of Los Angeles to enact and enforce workplace anti-discrimination laws, including establishing remedies and penalties for violations, subject to specified procedural requirements.

SUPPORT

Southern California Black Worker Hub (Sponsor)
California Labor Federation

OPPOSITION

None received

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